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Presidential Documents

Title 3—

The President

Memorandum of June 1, 2010

Delegation of Authority to Appoint Commissioned Officers of the Ready Reserve Corps of the Public Health Service

Memorandum for the Secretary of Health and Human Services

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the functions of the President under section 203 of the Public Health Service Act, as amended by Public Law 111–148, to appoint commissioned officers of the Ready Reserve Corps. The exercise of this authority is limited to appointments of individuals who were extended offers of employment for appointment and call to active duty in the Reserve Corps of the Public Health Service with an appointment date subsequent to March 23, 2010, the date of enactment of Public Law 111–148, but who were not on active duty on that date, and those individuals who are selected for the 2010 Commissioned Officer Student Training and Extern Program. This authority may not be re-delegated.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, June 1, 2010

[FR Doc. 2010–13844
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Presidential Documents

Memorandum of June 2, 2010

Extension of Benefits to Same-Sex Domestic Partners of Federal Employees

Memorandum for the Heads of Executive Departments and Agencies

For far too long, many of our Government's hard-working, dedicated LGBT employees have been denied equal access to the basic rights and benefits their colleagues enjoy. This kind of systemic inequality undermines the health, well-being, and security not just of our Federal workforce, but also of their families and communities. That is why, last June, I directed the heads of executive departments and agencies (agencies), in consultation with the Office of Personnel Management (OPM), to conduct a thorough review of the benefits they provide and to identify any that could be extended to LGBT employees and their partners and families. Although legislative action is necessary to provide full equality to LGBT Federal employees, the agencies have identified a number of benefits that can be extended under existing law. OPM, in consultation with the Department of Justice, has provided me with a report recommending that all of the identified benefits be extended.

Accordingly, I hereby direct the following:

Section 1. *Immediate Actions To Extend Benefits.* Agencies should immediately take the following actions, consistent with existing law, in order to extend benefits to the same-sex domestic partners of Federal employees, and, where applicable, to the children of same-sex domestic partners of Federal employees:

(a) The Director of OPM should take appropriate action to:

(i) clarify that the children of employees' same-sex domestic partners fall within the definition of "child" for purposes of Federal child-care subsidies, and, where appropriate, for child-care services;

(ii) clarify that, for purposes of employee assistance programs, same-sex domestic partners and their children qualify as "family members";

(iii) issue a proposed rule that would clarify that employees' same-sex domestic partners qualify as "family members" for purposes of noncompetitive appointments made pursuant to Executive Order 12721 of July 30, 1990;

(iv) issue a proposed rule that would add a Federal retiree's same-sex domestic partner to the list of individuals presumed to have an insurable interest in the employee pursuant to 5 U.S.C. 8339(k)(1), 8420;

(v) clarify that under appropriate circumstances, employees' same-sex domestic partners and their children qualify as dependents for purposes of evacuation payments made under 5 U.S.C. 5522–5523; Folio: 1632

(vi) amend its guidance on implementing President Clinton's April 11, 1997, memorandum to heads of executive departments and agencies on "Expanded Family and Medical Leave Policies" to specify that the 24 hours of unpaid leave made available to Federal employees in connection with (i) school and early childhood educational activities; (ii) routine family medical purposes; and (iii) elderly relatives' health or care needs, may be used to meet the needs of an employee's same-sex domestic partner or the same-sex domestic partner's children; and

(vii) clarify that employees' same-sex domestic partners qualify as dependents for purposes of calculating the extra allowance payable under 5 U.S.C. 5942a to assist employees stationed on Johnston Island, subject to any limitations applicable to spouses.

(b) The Administrator of General Services should take appropriate action to amend the definitions of "immediate family" and "dependent" appearing in the Federal Travel Regulations, 41 C.F.R. Chs. 300–304, to include same-sex domestic partners and their children, so that employees and their domestic partners and children can obtain the full benefits available under applicable law, including certain travel, relocation, and subsistence payments.

(c) All agencies offering any of the benefits specified by OPM in implementing guidance under section 3 of this memorandum, including credit union membership, access to fitness facilities, and access to planning and counseling services, should take all appropriate action to provide the same level of benefits that is provided to employees' spouses and their children to employees' same-sex domestic partners and their children.

(d) All agencies with authority to provide benefits to employees outside of the context of title 5, United States Code should take all appropriate actions to ensure that the benefits being provided to employees' spouses and their children are also being provided, at an equivalent level wherever permitted by law, to their employees' same-sex domestic partners and their children.

Sec. 2. *Continuing Obligation To Provide New Benefits.* In the future, all agencies that provide new benefits to the spouses of Federal employees and their children should, to the extent permitted by law, also provide them to the same-sex domestic partners of their employees and those same-sex domestic partners' children. This section applies to appropriated and nonappropriated fund instrumentalities of such agencies.

Sec. 3. *Monitoring and Guidance.* The Director of OPM shall monitor compliance with this memorandum, and may instruct agencies to provide the Director with reports on the status of their compliance, and prescribe the form Folio: 1633and manner of such reports. The Director of OPM shall also issue guidance to ensure consistent and appropriate implementation.

Sec. 4. *Reporting.* By April 1, 2011, and annually thereafter, the Director of OPM shall provide the President with a report on the progress of the agencies in implementing this memorandum until such time as all recommendations have been appropriately implemented.

Sec. 5. *General Provisions.* (a) Except as expressly stated herein, nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law or Executive Order to an agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 6. *Publication.* The Director of OPM is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, June 2, 2010

[FR Doc. 2010–13848
Filed 6–7–10; 8:45 am]
Billing code 6325–01–P Folio: 1634

Rules and Regulations

Federal Register
Vol. 75, No. 109
Tuesday, June 8, 2010

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0250 Directorate Identifier 2010–CE–011–AD; Amendment 39–16325; AD 2010–12–04]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Model PC–7 Airplanes

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

ACTION: Final Rule.

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

This Airworthiness Directive (AD) is prompted due to the discovery of corrosion at the bonding strap connections on the left and right lower longerons between fuselage frames 1 and 1A. The possibility of corrosion is increased because of the high electrical current flow between the tinned copper terminal lug of the bonding strap and the aluminum longeron.

Such a condition, if left uncorrected, could lead to failure of the longeron and will prejudice the structural integrity of the aircraft.

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

DATES: This AD becomes effective July 13, 2010.

On July 13, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 15, 2010 (75 FR 12150). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is prompted due to the discovery of corrosion at the bonding strap connections on the left and right lower longerons between fuselage frames 1 and 1A. The possibility of corrosion is increased because of the high electrical current flow between the tinned copper terminal lug of the bonding strap and the aluminum longeron.

Such a condition, if left uncorrected, could lead to failure of the longeron and will prejudice the structural integrity of the aircraft.

In order to correct and control the situation, this AD requires a one time inspection of the longeron structure and the terminal lugs of the bonding straps for signs of corrosion.

For left and right lower longerons where corrosion is found during the inspection, the MCAI also requires repair of any longeron where corrosion is found.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter supports the NPRM.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 10 products of U.S. registry. We also estimate that it will take about 4.5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $3,825 or $383 per product.

In addition, we estimate that any necessary follow-on actions will take about 3 work-hours and require parts costing $500, for a cost of $755 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–12–04 PILATUS Aircraft Ltd.: Amendment 39–16325; Docket No. FAA–2010–0250; Directorate Identifier 2010–CE–011–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 13, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PC–7 airplanes, all serial numbers, certificated in any category.

Subject

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

Reason

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

This Airworthiness Directive (AD) is prompted due to the discovery of corrosion at the bonding strap connections on the left and right lower longerons between fuselage frames 1 and 1A. The possibility of corrosion is increased because of the high electrical current flow between the tinned copper terminal lug of the bonding strap and the aluminum longeron.

Such a condition, if left uncorrected, could lead to failure of the longeron and will prejudice the structural integrity of the aircraft. In order to correct and control the situation, this AD requires a one time inspection of the longeron structure and the terminal lugs of the bonding straps for signs of corrosion.

For left and right lower longerons where corrosion is found during the inspection, the MCAI also requires repair of any longeron where corrosion is found.

Actions and Compliance

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

(1) Within the next 120 days after July 13, 2010 (the effective date of this AD), perform a visual inspection of the forward bonding points and the terminal lugs on the left and right lower longerons between fuselage frames 1 and 1A for signs of corrosion. Do the inspection following paragraphs 3.C.(1), (2), and (3) of PILATUS PC–7 Service Bulletin No. 53–007, dated January 5, 2010.

(2) If any signs of corrosion are found during the inspection required in paragraph (f)(1) of this AD, prior to further flight, perform corrective actions in accordance with the Accomplishment Instructions in paragraph 3.D of PILATUS PC–7 SB No. 53–007, dated January 5, 2010. If the corrosion damage is out of limits, record the values; apply to PILATUS for a repair scheme at: PILATUS AIRCRAFT LTD., Customer Service Manager, CH–6371 STANS, Switzerland; telephone: +41 (0) 41 619 62 08; fax: +41 (0) 41 619 73 11; and implement the repair scheme.

Note 1: The Federal Office of Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, will work with PILATUS in reviewing the results of the initial inspection as specified in PILATUS PC–7 Service Bulletin No. 53–007, dated January 5, 2010. From this, a repetitive inspection requirement or other action may be established. The FAA will evaluate any such action and determine whether further rulemaking is necessary.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, 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: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI FOCA AD HB–2010–001, dated February 12, 2010; and PILATUS PC–7 Service Bulletin No. 53–007, dated January 5, 2010, for related information.

Material Incorporated by Reference

(i) You must use PILATUS PC–7 Service Bulletin No. 53–007, dated January 5, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Service Manager, CH–6371 STANS, Switzerland; *telephone:* +41 (0) 41 619 62 08; *fax:* +41 (0) 41 619 73 11; *Internet: http://www.pilatus-aircraft.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For

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

Issued in Kansas City, Missouri, on May 27, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–13400 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0201; Directorate Identifier 2008–NE–47–AD; Amendment 39–16314; AD 2010–11–09]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Models TAE 125–01 and TAE 125–02–99 Reciprocating Engines Installed in, but Not Limited to, Diamond Aircraft Industries Model DA 42 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

Engine in-flight shutdown incidents have been reported on Diamond Aircraft Industries DA 42 airplanes equipped with TAE 125 engines. The investigations showed that it was mainly the result of failure of the Proportional Pressure Reducing Valve (PPRV) (also known as Propeller Control Valve) due to high vibrations. This condition, if not corrected, could lead to further cases of engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Since the release of European Aviation Safety Agency (EASA) AD 2008–0145, the engine gearbox has been identified as the primary source of vibrations for the PPRV, and it has also been determined that failure of the electrical connection to the PPRV could have contributed to some power loss events or in-flight shutdowns.

We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

DATES: This AD becomes effective July 13, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 13, 2010.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) and a supplemental NPRM to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 17, 2009 (74 FR 17795) and that supplemental NPRM was published in the **Federal Register** on February 23, 2010 (75 FR 7996). That supplemental NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Engine in-flight shutdown incidents have been reported on Diamond Aircraft Industries DA 42 airplanes equipped with TAE 125 engines. The investigations showed that it was mainly the result of failure of the Proportional Pressure Reducing Valve (PPRV) (also known as Propeller Control Valve) due to high vibrations. This condition, if not corrected, could lead to further cases of engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Since the release of European Aviation Safety Agency (EASA) AD 2008–0145, the engine gearbox has been identified as the primary source of vibrations for the PPRV, and it has also been determined that failure of the electrical connection to the PPRV could have contributed to some power loss events or in-flight shutdowns.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAIs and, in general, agree with their substance. But we have found it necessary to not reference the second paragraph of the unsafe condition from EASA AD 2009–0224. That sentence stated that the problem has only manifested itself on those Thielert engines installed on Diamond Aircraft Industries DA 42 aircraft. The affected engines which require a PPRV could be used on other make and model airplanes in the future.

We also did not incorporate the February 28, 2010 compliance date which is in EASA AD 2009–0193R1, or the January 31, 2010 compliance date which is in EASA AD 2009–0224.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 300 TAE 125–01 and TAE 125–02–99 reciprocating engines installed in Diamond Aircraft Industries Model DA 42 airplanes of U.S. registry. We also estimate that it will take about 0.25 work-hour per engine to replace a PPRV and install a vibration isolator to the gearbox assembly. The average labor rate is $85 per work-hour. Required parts will cost about $275 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $88,875.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–11–09 Thielert Aircraft Engines GmbH: Amendment 39–16314. Docket No. FAA–2009–0201; Directorate Identifier 2008–NE–47–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 13, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Thielert Aircraft Engines GmbH (TAE) models TAE 125–01 and TAE 125–02–99 reciprocating engines designated with part number (P/N) 05–7200–K000301 or 02–7200–1401R1. The engines are installed on, but not limited to, Diamond Aircraft Industries Model DA 42 airplanes.

Reason

(d) Engine in-flight shutdown incidents have been reported on Diamond Aircraft Industries DA 42 airplanes equipped with TAE 125 engines. The investigations showed that it was mainly the result of failure of the Proportional Pressure Reducing Valve (PPRV) (also known as Propeller Control Valve) due to high vibrations. This condition, if not corrected, could lead to further cases of engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Since the release of European Aviation Safety Agency (EASA) AD 2008–0145, the engine gearbox has been identified as the primary source of vibrations for the PPRV, and it has also been determined that failure of the electrical connection to the PPRV could have contributed to some power loss events or in-flight shutdowns.

We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

Actions and Compliance

(e) Unless already done, do the following actions:

TAE 125–02–99 Reciprocating Engines

(1) For TAE 125–02–99 reciprocating engines with engine P/N 05–7200–K000301, within 55 flight hours after the effective date of this AD:

(i) Replace the existing PPRV with PPRV, P/N 05–7212–E002801. Use paragraphs A. through B. of Thielert Service Bulletin (SB) No. TM TAE 125–1007 P1, Revision 2, dated April 29, 2009, to do the replacement.

(ii) Install a vibration isolator, P/N 05–7212–K022302, to the gearbox assembly. Use paragraphs 1 through 20 of Thielert SB No. TM TAE 125–1009 P1, Revision 3, dated October 14, 2009, to do the installation.

Repetitive PPRV Replacements

(2) Thereafter, within every 300 flight hours, replace the PPRV, P/N 05–7212–E002801, with the same P/N PPRV.

TAE 125–01 Reciprocating Engines

(3) For TAE 125–01 reciprocating engines with engine P/N 02–7200–1401R1, within 55 flight hours after the effective date of this AD:

(i) Replace the existing PPRV with a PPRV, P/N NM–0000–0124501 or P/N 05–7212–K021401. Use paragraph 1 of Thielert SB No. TM TAE 125–0018, Revision 1, dated November 12, 2008, to do the replacement.

(ii) Inspect the electrical connectors of the PPRV and replace the connectors if damaged, and install a vibration isolator, P/N 05–7212–K023801, to the gearbox assembly. Use paragraphs 1 through 27 of Thielert SB No. TM TAE 125–0020, Revision 1, dated November 25, 2009, to do the inspection and installation.

Repetitive PPRV Replacements

(4) Thereafter, within every 300 flight hours, replace the PPRV with a PPRV, P/N NM–0000–0124501 or P/N 05–7212–K021401.

FAA Differences

(f) We have found it necessary to not reference the second paragraph of the unsafe condition from the MCAI EASA AD 2009–0224. That sentence stated that the problem has only manifested itself on those Thielert engines installed on Diamond Aircraft Industries DA 42 aircraft. The affected engines which require a PPRV could be used on other make and model airplanes in the future.

(g) We also did not reference the February 28, 2010 compliance date, which is in EASA AD 2009–0193R1, or the January 31, 2010 compliance date which is in EASA AD 2009–0224.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to EASA AD 2009–0224, dated October 20, 2009 (TAE 125–02–99), and EASA AD 2009–0193R1, dated December 1, 2009 (TAE 125–01), for related information.

(j) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(k) You must use the service information specified in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, telephone: +49–37204–696–0; fax: +49–37204–696–2912; *e-mail: info@centurion-engines.com.*

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Thielert Service Bulletin No.	Page	Revision	Date
TM TAE 125–1007 P1 ..... Total Pages: 4	ALL	2	April 29, 2009.
TM TAE 125–1009 P1 ..... Total Pages: 26	ALL	3	October 14, 2009.
TM TAE 125–0018 ..... Total Pages: 2	ALL	1	November 12, 2008.
TM TAE 125–0020, including Annexes A and B ..... Total Pages: TM TAE 125–0020, 42; Annex A, 3; Annex B, 4	ALL	1	November 25, 2009.

Issued in Burlington, Massachusetts, on May 19, 2010.

Tracy Murphy,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–12540 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0495; Directorate Identifier 2009–NM–049–AD; Amendment 39–16316; AD 2010–11–11]

RIN 2120–AA64

Airworthiness Directives; Learjet Inc. Model 60 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 60 airplanes. This AD requires revising the Tire-Servicing section of the airplane maintenance manual and revising the Tires Limitation section of the airplane flight manual to incorporate revised procedures for servicing tires and checking for proper tire inflation. This AD results from a report of the main landing gear tires blowing out during a takeoff roll. We are issuing this AD to prevent tire failure, which could result in failures of the braking and thrust reverser systems. In a critical phase of operation such as takeoff, loss of airplane control may result.

DATES: This AD is effective July 13, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 13, 2010.

ADDRESSES: For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Don Ristow, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4120; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 60 airplanes. That NPRM was published in the **Federal Register** on May 29, 2009 (74 FR 25682). That NPRM proposed to require revising the Tire-Servicing section of the airplane maintenance manual (AMM) and revising the Tires Limitation section of the airplane flight manual (AFM) to incorporate revised procedures for servicing tires and checking for proper tire inflation.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the 10 commenters.

Support for the NPRM

The National Transportation and Safety Board (NTSB), and Mike Waggoner, a private citizen, support the NPRM. The NTSB states that it would prefer that the tires be checked daily for proper pressure, but that 96 hours between pressure checks specified in the Tires Limitations section of the AFM (specified in paragraph (h) of the NPRM) allows for recognition of an under-inflated tire before it reaches a point where the tire would need to be changed. Mr. Waggoner agrees that a means of bringing attention to the importance of checking tire pressures at a minimum of 96 hours before flight is mandatory.

Request To Extend the Comment Period of the Proposed AD

Aviation Properties requests that we extend the comment period an additional 45 days following the release of the NTSB final report on the September 19, 2008, accident of a Model 60 airplane. The commenter states that all of the relevant information concerning that accident has not been determined and made public, and that extending the comment period would allow comments to be made with all the data being available to everyone.

We do not agree to extend the comment period and thereby delay the AD. While it is true that the final NTSB report is not published, the analysis determined with certainty that the tires were subject to internal heat damage resulting from under-inflation, overloading, or a combination of both. As a result of the tire blow-out, other airplane systems were compromised. Based on the design of the Model 60 airplanes in particular, we decided to act now to address the unsafe condition. If at a later date additional action is deemed appropriate, we might consider further rulemaking, which would allow for public comment at that time. We have not changed the AD in this regard.

Requests To Withdraw the NPRM or Certain Requirements

Aviation Properties states that the proposed AD is unnecessary for three reasons: The tires blowing out on takeoff could potentially be traced back to improperly serviced tires; the cost of the AD is financially overburdening to U.S. operators; and the AD, as proposed, could cause another accident because of the possibility that future revisions to the AMM might not include the relevant information in the temporary revisions. If unaware of the AD, maintenance persons could follow a procedure that does not meet the intent of the AD. We infer that the commenter requests that we withdraw the NPRM.

Cloud Nine Aviation states that the AFM requirement of a pre-flight pressure measurement is unnecessary, as the Model 60 has been flying for 16 years without a problem except one. The commenter further states that the cost is overly burdensome, and that pilots know to pay particular attention to tire pressures, for which the recent FAA Safety Alert for Operators (SAFO 09012, June 12, 2009) has been a good reminder. We infer that the commenter believes the SAFO sufficiently addresses the unsafe condition stated in the NPRM. We infer that the commenter requests that we remove the AFM requirements from the NPRM.

We do not agree to withdraw the NPRM or to remove the proposed AFM requirements. A review of the Model 60 airplane shows a vulnerability to system damage due to a blown tire. Rarely is an accident caused by a single event, but rather by a series of events. The AD addresses tire inflation pressure, which would mitigate one event of a possible chain of events that can lead to an accident. The AD, which requires that the temporary revisions be inserted into the AMM and the temporary changes be inserted into the AFM, is the appropriate vehicle to address this issue and is necessary to prevent the unsafe condition. The AD requires that the relevant information from the temporary revisions (TRs) be in the general revisions before the TRs can be removed. We have not changed the AD in this regard.

We address the issue of costs in our response to "Requests to Revise the Costs of Compliance" later in this section of the AD.

Request for Information on Global Efforts for Tire Safety

Electrolux Home Products (Electrolux) notes that Bombardier Advisory Wire 32–046 "is one element of a strategic effort to promote safety across the entire aviation industry with respect to proper tire inflation," and asks if the FAA will follow suit.

From this request we infer that the commenter is asking if the FAA plans to publish further tire safety information applying to the entire aviation industry. No additional publications are planned at this time. FAA Advisory Circular (AC) 20–97B, dated April 18, 2005, provides guidance on the installation, inflation, maintenance, and removal of tires. In addition, that AC provides guidance on those operational practices necessary to maintain safe airplane operations. More recently, the FAA Flight Standards Service has twice published a safety alert for operators (SAFO), titled "Dangers of Improperly Inflated Tires." No change to this AD is necessary.

Request for Training

Aviation Properties and William Detig, a private citizen, suggest that training is needed. Aviation Properties asks if there is a plan to develop educational material and awareness in lieu of mandating tire pressure checks for one specific airplane model, while Mr. Detig proposes training pilots to monitor tire pressures with calibrated tire gauges, and to comply with required preflight checks to determine that tires are in airworthy condition.

We know of no plans for training on this issue at this time. For specific information on tires and tire pressure, FAA Advisory Circular (AC) 20–97B, dated April 18, 2005, titled "Aircraft Tire Maintenance and Operational Practices," can be found at *http://www.rgl.faa.gov.* The AC provides recommended tire care and maintenance practices needed to assure the safety of support personnel and the continued airworthiness of airplanes. Specifically, the AC provides guidance on the installation, inflation, maintenance, and removal of airplane tires. In addition, the AC provides guidance on those operational practices necessary to maintain safe airplane operations. We have not changed this AD in this regard.

Requests To Include Other Airplane Models in the Applicability

Electrolux, Chantilly Air, Goodyear Tire & Rubber Company (Goodyear), Aviation Properties, the NTSB, and private citizens Mike Waggoner and William Detig request that we expand the applicability of the NPRM to include other airplane models. In summary, the commenters state that checking tire pressure should not be limited to just the Model 60 airplanes, that other accidents and incidents have involved the Model 35 and Model 55 airplanes, and that this issue is relevant to all business jets and other large airplanes and to those with high takeoff and landing speeds.

Electrolux states that tire pressure is a maintenance issue, which is relevant to all business jets and other large airplanes, and that Bombardier has issued Advisory Wires 32–046, dated December 10, 2008, and 32–047, dated March 11, 2009, applying to all models and specifying that tire pressures must be checked prior to the first flight of the day.

Chantilly Air states that tire pressure is not just a Model 60 issue, because the incident described in the NPRM is one of many in which malfunctioning airplane tires may have been a safety issue.

Goodyear states that its recommendations for checking tire pressure should be incorporated into maintenance programs for the Model 60 airplanes and all airplanes.

Aviation Properties states that improper servicing of tires is a danger to any airplanes certified in any category made by any manufacturer, that the Model 60 airplanes should not be discriminated against, and that any AD written with reference to tire servicing procedures should be written to include all certified airplanes.

The NTSB states that the risk of unsafe tire pressure is not limited to the Model 60 airplanes, and the NPRM should be expanded to include at least Model 55 airplanes (since the Model 60 airplane design is based on the Model 55 airplane design) and any airplanes that have high rates of multiple tire failure or that are equipped with tires operating near their margin of safety.

Mr. Waggoner states that several accidents and incidents have occurred due to improperly serviced tires, that issuing an AD against the Model 60 airplanes will not resolve the problem that all airplanes with high takeoff and landing speeds experience, and that the industry should do more than issue an AD against any one airplane model.

Mr. Detig states that all airplanes would be subject to the identified unsafe condition if the pilots try to take off with tires that are under-serviced.

We partially agree with the commenters. We agree that the importance of ensuring proper tire inflation pressure cannot be over-emphasized, especially on high-performance airplanes. To this end, both Learjet and Goodyear provide tire-care and maintenance instructions. We also published Advisory Circular 20–97B (Aircraft Tire Maintenance and

Operational Practices, April 18, 2005) that is applicable to all airplane tires.

However, we do not agree to expand the AD applicability to include other airplanes. This AD applies to the Model 60 airplanes because of the disproportionate number of tire failure events per number of airplanes built, compared to other models. From the data gathered from service difficulty reports, the Model 60 airplanes have more than twice the number of tire failure events as the Model 30 series and a third greater rate than the Model 55 series. While the Models 55 and 60 airplanes are similar in design, the Model 60 airplane has a higher gross weight and tire pressure than the Model 55 airplane. In addition, a review of the hydraulic, brake, and thrust reverser systems of the Model 60 airplanes has revealed their vulnerability to damage due to a burst tire. For these reasons, we have determined that an unsafe condition exists and is more likely to occur in the Model 60 airplanes than other models of business jets. If we learn that other airplanes blow out tires to the same extent as the Model 60 airplanes and have similar system vulnerability, we might consider additional rulemaking. We have not changed the AD in this regard.

Requests To Reduce the Pressure Check Interval

Mike Waggoner and Goodyear request that we remove the 96-hour requirement to check tire pressure and replace it with a check prior to the first flight of the day. To summarize, the commenters state that the Learjet 60 AMM, the Goodyear Aircraft Tire Care And Maintenance Manual, and FAA Advisory Circular 20–97B all recommend that tire pressure checks be conducted daily.

Mr. Waggoner recommends performing a tire condition and pressure check on all airplanes with high takeoff and landing speeds a minimum of 24 hours prior to takeoff, which could be done with available technology without the need to hook up tire pressure gauges.

Goodyear states that its Aircraft Tire Care and Maintenance Manual, and FAA Advisory Circular 20–97B, recommend that tire pressure checks be conducted daily for the Model 60 airplanes and all airplanes. Goodyear sees no reason to depart from its recommendation for checking pressure daily or prior to the first flight of the day when tires are cool (at ambient temperature).

We do not agree to require daily pressure checks. While checking tire pressure daily is encouraged, regulations do not require it unless specifically made a part of an inspection program specified by sections 91.409(e) and 91.409(f) of the Federal Aviation Regulations (14 CFR 91.409(e) and 91.409(f)), or an airworthiness limitation or AD action. According to this AD, the tire pressure check would be applied uniformly to all affected airplanes. To minimize the impact on operators of the affected airplanes, we considered the daily average tire pressure leakage rate and determined that with a properly serviced tire, a period of up to four days (96 hours) could be allowed and still be within a safe pressure range. For this reason, we can still mitigate an unsafe condition and provide some flexibility to the airplane operators. We have not changed the AD in this regard.

Requests for an Exemption Allowing Certain Pilots to Check Tire Pressure

Learjet, Chantilly Air, Goodyear, and Tim Rounds, a private citizen, request that we issue an exemption to section 43.3(g) of the Federal Aviation Regulations (14 CFR 43.3(g)) that would allow pilots operating under part 135 of the Federal Aviation Regulations (14 CFR part 135) to perform tire pressure checks. To summarize, the commenters state that, without the exemption, only a certificated mechanic could check tire pressure under 14 CFR part 135 operating rules. Conversely, under part 91 of the Federal Aviation Regulations (14 CFR part 91), a pilot is allowed to perform the same tire pressure check.

Learjet states that not allowing properly trained pilots of 14 CFR part 135 airplanes to check tire pressure might overshadow the intended consequence of the NPRM, which is to prevent tire failures, and that the proposed AD can and should authorize all properly trained pilots to conduct pressure checks.

Chantilly Air requests that we address the issue of pilots under 14 CFR part 135 not being able to do the pressure checks, which is no more or less difficult than checking oil on preflight. Similarly, Goodyear states that, with an exemption in place for 14 CFR part 135 operators, tire pressure can be checked by the pilot.

Mr. Rounds requests that an exemption be incorporated into the AD for 14 CFR parts 121, 129, and 135 pilots, because some local Certificate-Holding District Offices are reluctant to issue such an exemption even after training requirements suggested by Bombardier Advisory Wire 32–047 have been submitted and aircrews have been trained.

We do not agree to issue an exemption to an operating rule with this AD. The AD is intended to globally address an unsafe condition by specifying special maintenance practices, regardless of the operating rules used. The owner/operator of the airplane determines its intended use and, in turn, what set of operating and maintenance procedures apply. It is not our intent to distinguish or specify in this AD who can perform a tire pressure check, nor to amend or change an existing rule in 14 CFR part 43. For this reason, we will treat a request or petition for exemption as a separate action to this AD. We have not changed the AD in this regard.

Requests To Revise the Costs of Compliance

Cloud Nine Aviation, Aviation Properties, and Chantilly Air request that we revise the Costs of Compliance section of the NPRM to include the cost of recurring actions and materials. To summarize, the commenters state that the cost estimate covers only one event per airplane and not the recurring action.

Cloud Nine Aviation states that the cost of additional preflight tire servicing will be substantial, putting the Model 60 airplanes at an economic disadvantage as a charter airplane. The commenter also states that costs can accumulate and the actions might be needed more than every 96 work hours as specified in the TRs described in the NPRM, and that the costs of compliance estimate in the NPRM ignores these costs to the operator.

Aviation Properties states that the costs listed in the NPRM cover only one event per airplane and do not consider the recurring action that will be required, and that each event will be required at least every 10 days and as much as every 4 days. The commenter gives an example of the annual costs at those intervals.

Chantilly Air states that the burden of more costs is being put on the operator, especially if hangar time is needed in very cold weather, and states that they have been charged $95 to $140 per hour to comply with the TRs as proposed in the NPRM.

We do not agree to revise the Costs of Compliance section of this AD as requested. Based on the best data available, the manufacturer provided an estimate of one work-hour necessary to do the required actions—in this case, to revise the AFM and AMM.

The number of work-hours represents the time necessary to perform only the actions actually required by this AD. We recognize that operators might incur incidental costs in addition to the direct costs. The cost analysis in AD

rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate.

Because ADs require explicit actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because operators are obliged to maintain and operate their airplanes in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining and operating safe airplanes, prudent operators would accomplish the required actions even if they were not required to do so by the AD. In any case, we have determined that the safety benefits of the AD still outweigh the direct and incidental costs. We have not changed the AD in this regard.

Request for Definition of "Cold"

Cloud Nine Aviation states that "cold tire in service pressure" is referenced in Table 301 of Learjet TR 12–16, dated March 18, 2009, to the Learjet 60 Maintenance Manual (specified in paragraph (g) of this AD), and requests that we define "cold" as it relates to tire pressure.

We agree to define the term. The TR refers to "cold tire operating pressure range." Rather than defining cold as a specific temperature, it is the ambient temperature when the tire has been at rest for a period of time, generally at least 2 hours since use. We have not changed the AD in this regard.

Request for Information About Temperature Changes

Chantilly Air requests information concerning a specific scenario, as follows. Within the content of Learjet TR 12–16, dated March 18, 2009, to the Learjet 60 Maintenance Manual, in very cold climates, the airplane tire pressure has been increased to adjust for a temperature drop, which will occur once the airplane is moved outside the hangar and has not had a chance to cold soak prior to a quick departure.

We agree to provide the following information. In the scenario presented by the commenter, the airplane should be serviced to readjust the tire pressure to within the normal operating range if it is outside the allowable pressure range. Learjet TR 12–16, dated March 18, 2009, specifies to adjust the tire pressure to account for temperature changes if the airplane will be parked for more than one hour. If departure is sooner, the tire pressure should be readjusted accordingly. We have not changed the AD in this regard.

Request for Clarification of Logbook Entry Requirements

Chantilly Air requests that we clarify why, within the content of Learjet TR 12–16, dated March 18, 2009, to the Learjet 60 Maintenance Manual, an airplane logbook entry is not required for the tire pressure check.

We agree to clarify why a logbook entry is not required. A maintenance record could be made in the traditional airplane logbook. However, as a practical matter, we do not advocate carrying this logbook aboard the airplane. Alternatively, according to FAA Advisory Circular 43–9C, dated June 8, 1998, titled "Maintenance Records," the maintenance records may be kept in any format that provides continuity, includes required contents, lends itself to the addition of new entries, provides for signature entry, and is intelligible. Airplane logbooks are one form of recording maintenance. For the purposes of this AD, the example of a tire pressure check record given in Learjet TR 12–16, dated March 18, 2009, is one method that meets this requirement. We have not changed the AD in this regard.

Request for Definition

Cloud Nine Aviation requests that we define, within the content of Learjet TR 12–16, dated March 18, 2009, to the Learjet 60 Maintenance Manual, what is meant by keeping the dual main gear tire pressures "as close as possible."

We agree to define the term. The specified normal cold tire operating pressure range (10 pounds per square inch gauge difference) is sufficient. Ideally, the closer the pressures are, the better to minimize unequal tire loading between adjacent tires. We have not changed the AD in this regard.

Request for Clarification

Aviation Properties requests that we clarify the difference between "will" and "should" for checking tire pressure on airplanes parked for extended periods (10 or more consecutive days) within the content of Learjet TR 12–16, dated March 18, 2009, to the Learjet 60 Maintenance Manual, and Temporary Flight Manual Change 2009–03, dated March 9, 2009, to the Learjet 60 and Learjet 60XR AFMs.

We agree to clarify the terms following a discussion with Learjet Inc. In the AFM, the term "will" does not mean that a tire pressure check is required every 10 days. The appropriate reference for servicing the tires is the AMM. Chapter 12 of the AMM stipulates the minimum acceptable tire pressure ranges and associated actions (Table 301) and recommends that the tire pressures "should" be checked every 10 days while the airplane is parked. It is up to the individual owner/operator to determine if every 10 days is feasible. However, if the tires have been rolled or taxied below the minimums specified in the AMM, they may not be used and are scrap. We have not changed the AD in this regard.

Request for Clarification of AMM Requirement

Aviation Properties requests that we clarify what is required by the AMM versus section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The commenter states that Learjet TR 12–16, dated March 18, 2009, to the Learjet 60 Maintenance Manual, required as proposed in the NPRM, specifies both the date and time of each pressure check, while 14 CFR 43.9 requires only the date.

We agree to clarify the requirement. The step-by-step instructions remain in the appropriate chapter of the AMM. As the commenter mentions, 14 CFR 43.9 does not require recording time of completion or documentation of tire pressure values. However, the critical aspect of this AD is time. We specified 96 hours between tire pressure checks to be more precise, as opposed to calendar days which could potentially lead to a longer interval between checks. Therefore, it is an additional requirement above the minimum specified in 14 CFR 43.9.

We placed the tire pressure check requirement in the AFM to emphasize to the flightcrew the critical nature of tire pressure for safely operating the airplane. We decided that the pilot, as the person ultimately responsible for the outcome of the flight, should be made directly aware of this requirement and be able to take steps to ensure that it is satisfied. We have not changed the AD in this regard.

Request for Information About AMM Reference

Aviation Properties states that within the content of Learjet TR 12–16, dated March 18, 2009, to the Learjet 60 Maintenance Manual, the statement "Do not decrease pressure of a hot tire" could not be found in the previous revision of Section 12–10–05, Section 1, of the Learjet 60 Maintenance Manual. The commenter speculates that since the statement was not in the previous

revision, the tires on the incident airplane may have been under-serviced.

We infer that the commenter requests that we clarify the manual reference. The quoted statement is found in Section 12–10–05, Section 1, Paragraph 15(f), of the previous revision of the Learjet 60 Maintenance Manual dated June 27, 2005. We have not changed the AD in this regard.

Explanation of Change Made to This AD

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

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Explanation of Change to Costs of Compliance

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

Costs of Compliance

We estimate that this AD affects 240 airplanes of U.S. registry. We also estimate that it takes about 1 work-hour per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $20,400, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–11–11 Learjet Inc.: Amendment 39–16316. Docket No. FAA–2009–0495; Directorate Identifier 2009–NM–049–AD.

Effective Date

(a) This airworthiness directive (AD) is effective July 13, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Inc. Model 60 airplanes, certificated in any category, serial numbers 60–002 through 60–369 inclusive.

Subject

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

Unsafe Condition

(e) This AD results from a report of the main landing gear tires blowing out during a takeoff roll. The Federal Aviation Administration is issuing this AD to prevent tire failure, which could result in failures of the braking and thrust reverser systems. In a critical phase of operation such as takeoff, loss of airplane control may result.

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.

Revise the Maintenance Manual (MM)

(g) Within 14 days after the effective date of this AD, revise the Tire—Servicing Section of the Learjet 60 MM to include the information in Learjet 60 Temporary Revision (TR) 12–16, dated March 18, 2009.

Note 1: The actions required by paragraph (g) of this AD may be done by inserting a copy of Learjet 60 TR 12–16, dated March 18, 2009, into the Learjet 60 MM. When the TR has been included in general revisions of the Learjet 60 MM, the general revisions may be inserted in the MM, provided the relevant information in the general revision is identical to that in the TR.

Revise the Airplane Flight Manual (AFM)

(h) Within 14 days after the effective date of this AD, revise the Tires Limitations Section of the Learjet 60 AFM or Learjet 60XR AFM, as applicable, to include the information in the Learjet 60 Temporary Flight Manual Change (TFMC) 2009–03, dated March 9, 2009. Thereafter, operate the airplane according to the limitations and procedures in the TFMC.

Note 2: The actions required by paragraph (h) of this AD may be done by inserting a copy of Learjet 60 TFMC 2009–03, dated March 9, 2009, into the Learjet 60 AFM or Learjet 60XR AFM, as applicable. When Learjet 60 TFMC 2009–03 has been included in general revisions of the applicable AFM, the general revisions may be inserted in the applicable AFM, provided the relevant information in the general revision is identical to that in the TFMC.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Wichita Aircraft Certification Office, 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:* Don Ristow, Aerospace Engineer, Mechanical Systems and Propulsion Branch, ACE–116W, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4120; fax (316) 946–4107.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Material Incorporated by Reference

(j) You must use Learjet 60 Temporary Revision 12–16, dated March 18, 2009, to the Learjet 60 Maintenance Manual; and Learjet 60 Temporary Flight Manual Change 2009–03, dated March 9, 2009, to the Learjet 60 or Learjet 60XR Airplane Flight Manual; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. (The issue date of Learjet 60 Temporary Flight Manual Change 2009–03 is specified only on the first page of the document.)

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

(2) For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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

Issued in Renton, Washington, on April 1, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–12676 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0982; Directorate Identifier 2009–NE–19–AD; Amendment 39–16323; AD 2010–12–02]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. MAKILA 1A and 1A1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued 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 installation of TU250 comparator/selector (CS) boards, however, has resulted in a few occurrences of erratic engine behaviour, in the form of unexpected N1 variations and/or illumination of the "GOV" warning light. The conclusions from an investigation by Turboméca are that these malfunctions are due to a lapse of quality control in the varnishing process applied to the boards, and that only boards in a specific serial number range, as defined under "Applicability" and referred to below as the "suspect batch", are affected.

We are issuing this AD to prevent loss of automatic engine control during flight due to an uncommanded engine roll-back, which could result in the inability to continue safe flight.

DATES: This AD becomes effective July 13, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 13, 2010.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kevin.dickert@faa.gov;* telephone (781) 238–7117, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 31, 2010 (75 FR 16022). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

The installation of TU250 CS boards, however, has resulted in a few occurrences of erratic engine behaviour, in the form of unexpected N1 variations and/or illumination of the "GOV" warning light. The conclusions from an investigation by Turbomeca are that these malfunctions are due to a lapse of quality control in the varnishing process applied to the boards, and that only boards in a specific serial number range, as defined under "Applicability" and referred to below as the "suspect batch", are affected.

Comments

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

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 10 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts will cost about $3,500 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $35,850.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–12–02 Turbomeca S.A.: Amendment 39–16323. Docket No. FAA–2009–0982; Directorate Identifier 2009–NE–19–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 13, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca S.A. Makila 1A and 1A1 turboshaft engines with a comparator/selector (CS) board, part number (P/N) 0 177 99 716 0, and a serial number (S/N) between 241EL and 1192EL (inclusive) installed. These engines are installed on, but not limited to, Eurocopter AS 332 C, AS 332 C1, AS 332 L, and AS 332 L1 helicopters.

Reason

(d) The European Aviation Safety Agency (EASA) AD 2009–0090, dated April 28, 2009, states that this AD results from the following:

(1) The installation of TU250 CS boards, however, has resulted in a few occurrences of erratic engine behaviour, in the form of unexpected N1 variations and/or illumination of the "GOV" warning light. The conclusions from an investigation by Turboméca are that these malfunctions are due to a lapse of quality control in the varnishing process applied to the boards, and that only boards in a specific serial number range, as defined under "Applicability" and referred to below as the "suspect batch", are affected.

(2) We are issuing this AD to prevent loss of automatic engine control during flight due to an uncommanded engine roll-back, which could result in the inability to continue safe flight.

Actions and Compliance

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

(1) Within 50 operating hours from the effective date of this AD, replace any CS board, P/N 0 177 99 716 0, with a S/N from 241EL to 1192EL (inclusive), that has fewer than 200 hours-since-new (HSN). Use paragraph 2 of Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 298 73 0809 Version A, dated February 12, 2008, to replace the boards.

(2) During the next 500-hour inspection, replace any CS board, P/N 0 177 99 716 0, with a S/N from 241EL to 1192EL (inclusive), that has 200 HSN or more. Use paragraph 2 of Turbomeca S.A. MSB No. 298 73 0810 Version B, dated April 27, 2009, to replace the boards.

FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) and/or service information as follows:

(1) This AD requires replacing within 50 operating hours after the effective date of this AD, all comparator/selector boards, P/N 0 177 99 716 0, with an S/N from 241EL to 1192EL (inclusive) that have fewer than 200 HSN.

(2) This AD requires replacing at the next 500-hour routine inspection after the effective date of this AD, all comparator/selector boards, P/N 0 177 99 716 0, with a S/N from 241EL to 1192EL (inclusive) that have 200 HSN or more.

Alternative Methods of Compliance (AMOCS)

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2009–0090, dated April 28, 2009, for related information.

(i) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kevin.dickert@faa.gov;* telephone (781) 238–7117, fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use the service information specified in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00; fax 33 05 59 74 45 15.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Turbomeca mandatory Service Bulletin No.	Page	Version	Date
298 73 0809.			
Total Pages: 7	ALL	A	February 12, 2008.
298 73 0810.			
Total Pages: 7	ALL	B	April 27, 2009.

Issued in Burlington, Massachusetts, on May 24, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–13433 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0606; Directorate Identifier 2009–NE–11–AD; Amendment 39–16324; AD 2010–12–03]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. Models CFM56–3 and –3B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain CFM International, S.A. models CFM56–3 and –3B turbofan engines. This AD requires initial and repetitive inspections for damage to the fan blades. This AD results from a report of a failed fan blade with severe out-of-limit wear on the underside of the blade platform where it contacts the damper. We are issuing this AD to prevent failure of multiple fan blades, which could result in an uncontained failure of the engine and damage to the airplane.

DATES: This AD becomes effective July 13, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 13, 2010.

ADDRESSES: You can get the service information identified in this AD from CFM International, S. A., Technical Publication Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *antonio.cancelliere@faa.gov*; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to certain CFM International, S.A. models CFM56–3 and –3B turbofan engines. We published the proposed AD in the **Federal Register** on July 23, 2009 (74 FR 36420), and published a supplemental proposed AD in the **Federal Register** on April 1, 2010 (75 16361). Those actions proposed to require initial and repetitive inspections for damage to the fan blades.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We previously responded to the comments received on the original proposed AD in the supplemental proposed AD. We have considered the one comment received on the supplemental proposed AD. The commenter supports the proposal.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 50 engines installed on airplanes of U.S. registry. We also estimate that it will take about 8 work-hours per engine to perform the AD actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $38,000 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $1,932,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–12–03 CFM International, S.A.: Amendment 39–16324. Docket No. FAA–2009–0606; Directorate Identifier 2009–NE–11–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 13, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CFM International, S.A. models CFM56–3 and –3B turbofan engines with 25 degrees midspan shroud fan blades, part numbers (P/Ns) 9527M99P08, 9527M99P09, 9527M99P10, 9527M99P11, 1285M39P01, or fan blade pairs, P/Ns 335–088–901–0, 335–088–902–0, 335–088–903–0, and 335–088–904–0 installed. These engines are installed on, but not limited to, Boeing 737 series airplanes.

(d) CFM International, S.A. has added to the basic engine model number on the engine nameplate to identify minor variations in engine configuration, installation components, or reduced ratings peculiar to aircraft installation requirements.

(e) Those engines marked on the engine data plate as CFM56–3–B1 are included in this AD as CFM56–3 turbofan engines.

(f) Those engines marked on the engine data plate as CFM56–3B–2 are included in this AD as CFM56–3B turbofan engines.

Unsafe Condition

(g) This AD results from a report of a failed fan blade with severe out-of-limit wear on the underside of the blade platform where it contacts the damper. We are issuing this AD to prevent failure of multiple fan blades, which could result in an uncontained failure of the engine and damage to the airplane.

Compliance

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

Inspection for Wear

(i) Within 900 cycles-in-service after the effective date of this AD, perform an on-wing or in-shop inspection of the fan blade and damper for wear. Use paragraphs 3.A.(1) through 3.A.(5) or paragraphs 3.B.(1) through 3.B.(5) respectively, of the Accomplishment Instructions of CFM International Service Bulletin (SB) No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

(j) If you find out-of-limit wear on at least one fan blade platform underside, perform the additional inspections and disposition the parts, as specified in paragraphs 3.A.(3) and 3.A.(5) or paragraphs 3.B.(3) and 3.B.(5) respectively, of the Accomplishment Instructions of CFM International SB No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

(k) Thereafter, within intervals not to exceed 3,000 cycles-since-last inspection, perform an on-wing or in-shop inspection for wear. Use paragraphs 3.A.(1) through 3.A.(5) or paragraphs 3.B.(1) through 3.B.(5) respectively, of the Accomplishment Instructions of CFM International SB No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

(l) If you find wear on at least one fan blade platform underside, perform additional inspections and disposition the parts, as specified in paragraphs 3.A.(3) and 3.A.(5) or paragraphs 3.B.(3) and 3.B.(5) respectively, of the Accomplishment Instructions of CFM International SB No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

Installation Prohibition

(m) After the effective date of this AD, don't install any 25 degrees midspan shroud fan blades, P/Ns 9527M99P08, 9527M99P09, 9527M99P10, 9527M99P11, 1285M39P01, or fan blade pairs, P/Ns 335–088–901–0, 335–088–902–0, 335–088–903–0, and 335–088–904–0, unless they have passed an inspection specified in paragraph 3. of the Accomplishment Instructions of CFM International SB No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007.

Optional Terminating Action

(n) Replacing the 25 degrees midspan shroud fan blade set with a 37 degrees midspan shroud fan blade set terminates the repetitive inspection requirements specified in paragraph (k) of this AD.

Alternative Methods of Compliance

(o) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(p) Contact Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *antonio.cancelliere@faa.gov*; telephone (781) 238–7751; fax (781) 238–7199, for more information about this AD.

(q) European Aviation Safety Agency AD 2009–0036, dated February 20, 2009, also addresses the subject of this AD.

Material Incorporated by Reference

(r) You must use CFM International Service Bulletin No. CFM56–3/3B/3C S/B 72–1067, dated February 15, 2007, to perform the inspections and parts dispositions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact CFM International, S. A., Technical Publication Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on May 25, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–13432 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1223; Directorate Identifier 2009–NM–114–AD; Amendment 39–16327; AD 2010–12–06]

RIN 2120–AA64

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

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

ACTION: Final rule.

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

During final Acceptance Test Procedure (ATP), a small oil leak was discovered on the Spoiler Unload Valve and Rudder Shutoff Valve bodies. Investigation revealed that a number of valves were manufactured with an incorrect wall thickness. This thin wall condition caused cracking, subsequent external weeping and pressure loss from the subject valves.

This condition, if not corrected, will cause a loss of hydraulic fluid and subsequent loss of spoiler and/or rudder control.

* * * * *

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

DATES: This AD becomes effective July 13, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 13, 2010.

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 30, 2009 (74 FR 69038). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During final Acceptance Test Procedure (ATP), a small oil leak was discovered on the Spoiler Unload Valve and Rudder Shutoff Valve bodies. Investigation revealed that a number of valves were manufactured with an incorrect wall thickness. This thin wall condition caused cracking, subsequent external weeping and pressure loss from the subject valves.
>
> This condition, if not corrected, will cause a loss of hydraulic fluid and subsequent loss of spoiler and/or rudder control.
>
> Revision 1 of this directive mandates a new interval for the initial inspection, clarifies the time for replacement of the valve(s) specified in Paragraphs 1.2 and 2.2, and clarifies the labeling of the inspected valves in Paragraph 3 of this directive.

Required actions include doing detailed inspections of the left-hand and right-hand spoiler unload and rudder shutoff valve for leaking and weeping, replacing discrepant left-hand and right-hand spoiler unload and rudder shutoff valves with new or serviceable valves, and eventually replacing all valves having a certain part number.

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

Comments

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

Request To Address Valves Inspected Previously

Horizon Air requests that we address valves that have been inspected previously by the manufacturer by revising paragraphs (g)(1) and (g)(2) of the NPRM to include the phrase "without suffix 'A' after the serial number." Horizon Air explains that the NPRM, as written, requires the inspection to be done on all valves, regardless if they have been modified or unmodified. Horizon Air suggests that with the recommended phrasing, the NPRM would continue to require inspection of valves with the identified unsafe condition, but would not require inspection of valves inspected previously.

We agree. Adding the phrase "without suffix 'A' after the serial number" will eliminate unnecessary inspections for valves that have been inspected previously by the manufacturer. We have revised paragraphs (g)(1) and (g)(2) of this AD accordingly.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Explanation of Change to Costs of Compliance

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

Costs of Compliance

We estimate that this AD will affect 61 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $15,555, or $255 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–12–06 Bombardier, Inc.: Amendment 39–16327. Docket No. FAA–2009–1223; Directorate Identifier 2009–NM–114–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 13, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, DHC–8–401, and DHC–8–402 series airplanes, certificated in any category, serial numbers 4105 through 4179 inclusive.

Subject

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

Reason

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

During final Acceptance Test Procedure (ATP), a small oil leak was discovered on the Spoiler Unload Valve and Rudder Shutoff Valve bodies. Investigation revealed that a number of valves were manufactured with an incorrect wall thickness. This thin wall condition caused cracking, subsequent external weeping and pressure loss from the subject valves.

This condition, if not corrected, will cause a loss of hydraulic fluid and subsequent loss of spoiler and/or rudder control.

Revision 1 of this directive mandates a new interval for the initial inspection, clarifies the time for replacement of the valve(s) specified in Paragraphs 1.2 and 2.2, and clarifies the labeling of the inspected valves in Paragraph 3 of this directive.

Required actions include doing detailed inspections of the left-hand and right-hand spoiler unload and rudder shutoff valve for leaking and weeping, replacing discrepant left-hand and right-hand spoiler unload and rudder shutoff valves with new or serviceable valves, and eventually replacing all valves having a certain part number.

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 actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable.

(1) For airplanes having serial numbers 4105 through 4172 inclusive: Within 750 flight hours after the effective date of this AD, do a detailed inspection of the left-hand and right-hand spoiler unload valves having part number (P/N) 396000–1005 without suffix "A" after the serial number, for leaking and weeping, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–37, dated February 5, 2009. For airplanes with left-hand and right-hand spoiler unload valves having P/N 396000–1005 with suffix "A" after the serial number, no further action is required by this paragraph.

(i) If any leaking or weeping is found, prior to further flight, replace the affected spoiler unload valve with a new or serviceable valve, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–37, dated February 5, 2009.

(ii) If no leaking and no weeping are found, replace the valves with new or serviceable valves within 6,000 flight hours after the initial inspection required by paragraph (g)(1) of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–37, dated February 5, 2009.

(2) For airplanes having serial numbers 4113 through 4179 inclusive: Within 750 flight hours after the effective date of this AD, do a detailed inspection of the left-hand and right-hand rudder shutoff valves having P/N 412700–1001 without suffix "A" after the serial number, for leaking and weeping, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–39, dated February 5, 2009. For airplanes with left-hand and right-hand rudder shutoff valves having P/N 412700–1001 with suffix "A" after the serial number, no further action is required by this paragraph.

(i) If any leaking or weeping is found, prior to further flight, replace the affected rudder shutoff valve with a new or serviceable valve, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–39, dated February 5, 2009.

(ii) If no leaking and no weeping are found, replace the valves with new or serviceable valves within 6,000 flight hours after the initial inspection required by paragraph (g)(2) of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–39, dated February 5, 2009.

(3) As of the effective date of this AD, no person may install a spoiler unload valve assembly having P/N 396000–1005, having a serial number from 0289 through 0424 inclusive, or rudder shutoff valve having P/N 412700–1001, having a serial number from 0239 through 0384 inclusive, on any airplane, unless the valve has been inspected by the manufacturer and labeled with a suffix "A" after the serial number.

FAA AD Differences

Note 1: 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 Canadian Airworthiness Directive CF–2009–25R1, dated July 23, 2009; Bombardier Service Bulletin 84–27–37, dated February 5, 2009; and Bombardier Service Bulletin 84–27–39, dated February 5, 2009; for related information.

Material Incorporated by Reference

(j) You must use Bombardier Service Bulletin 84–27–37, dated February 5, 2009; or Bombardier Service Bulletin 84–27–39, dated February 5, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on May 25, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–13425 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0171; Directorate Identifier 2009–NM–185–AD; Amendment 39–16329; AD 2010–12–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A310 Series Airplanes

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

ACTION: Final rule.

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

During a maintenance check performed by an A310 operator, the recommended modification of the lower attachment beam of rack 101VU by accomplishment of Airbus Service Bulletin (SB) A310–53–2076 was embodied on the aeroplane, leading the operator to find three cracks on the FR15A crossbeam above the NLG [nose landing gear] box at the splicing with rack 107VU fitting.

This condition, if not detected and corrected, could degrade the structural integrity of the crossbeam on NLG FR15A Web attachment fitting of rack 107VU. Rack 107VU contains major airworthiness system components whose functioning could be adversely affected by the loss of the attachment fitting.

As the A300 and A300–600 aeroplanes share this design feature, they are also affected.

* * * * *

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

DATES: This AD becomes effective July 13, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 13, 2010.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 25, 2010 (75 FR 8549). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During a maintenance check performed by an A310 operator, the recommended modification of the lower attachment beam of rack 101VU by accomplishment of Airbus Service Bulletin (SB) A310–53–2076 was embodied on the aeroplane, leading the operator to find three cracks on the FR15A crossbeam above the NLG [nose landing gear] box at the splicing with rack 107VU fitting.

This condition, if not detected and corrected, could degrade the structural integrity of the crossbeam on NLG FR15A Web attachment fitting of rack 107VU. Rack 107VU contains major airworthiness system components whose functioning could be adversely affected by the loss of the attachment fitting.

As the A300 and A300–600 aeroplanes share this design feature, they are also affected.

For the reasons stated above, this AD requires repetitive inspections for cracks of the crossbeam on NLG FR15A Web face attachment fitting of rack 107VU and corrective action, depending on findings.

The corrective actions include contacting Airbus for repair instructions, and doing the repair if any crack is found. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter, FedEx Express, supports the NPRM.

Explanation of Change Made to This AD

We have revised the subject header of this AD to identify the affected airplane models as published in the most recent type certificate data sheet.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 206 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $35,020, or $170 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–12–08 Airbus: Amendment 39–16329. Docket No. FAA–2010–0171; Directorate Identifier 2009–NM–185–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 13, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, B4–203, B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, and F4–622R airplanes; Model C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category.

Subject

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

Reason

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

During a maintenance check performed by an A310 operator, the recommended modification of the lower attachment beam of rack 101VU by accomplishment of Airbus Service Bulletin (SB) A310–53–2076 was embodied on the aeroplane, leading the operator to find three cracks on the FR15A crossbeam above the NLG [nose landing gear] box at the splicing with rack 107VU fitting.

This condition, if not detected and corrected, could degrade the structural integrity of the crossbeam on NLG FR15A Web attachment fitting of rack 107VU. Rack 107VU contains major airworthiness system components whose functioning could be adversely affected by the loss of the attachment fitting.

As the A300 and A300–600 aeroplanes share this design feature, they are also affected.

For the reasons stated above, this AD requires repetitive inspections for cracks of the crossbeam on NLG FR15A Web face attachment fitting of rack 107VU and corrective action, depending on findings.

The corrective actions include contacting Airbus for repair instructions, and doing the repair if any crack is found.

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) At the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD: Do a detailed inspection for cracks of the crossbeam on the nose landing gear FR15A Web attachment fitting of rack 107VU, in accordance with the Accomplishment Instructions in the applicable service bulletin specified in Table 1 of this AD.

(i) Before the accumulation of 6,600 total flight cycles.

(ii) Within 2,300 flight cycles or 30 months after the effective date of this AD, whichever occurs first.

(2) Thereafter, at intervals not to exceed 2,300 flight cycles, repeat the inspection specified in paragraph (g)(1) of this AD.

TABLE 1—SERVICE BULLETINS

Model	Service bulletin	Date
Airbus Model A300 series airplanes	Airbus Mandatory Service Bulletin A300–53–0388, including Appendix 01	March 17, 2009.
Airbus Model 300–600 series airplanes ...	Airbus Mandatory Service Bulletin A300–53–6164, including Appendix 01	March 17, 2009.
Airbus Model A310 series airplanes	Airbus Mandatory Service Bulletin A310–53–2131, including Appendix 01	March 17, 2009.

(3) If any crack is found during any inspection required by paragraphs (g)(1) and (g)(2) of this AD, before further flight contact Airbus for approved repair instructions and do the repair.

(4) Submit an inspection report of the inspection required by paragraph (g)(1) of this AD to Airbus Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 33 33; fax +33 5 61 93 28 06; e-mail *sb.reporting@airbus.com;* at the applicable time specified in paragraph (g)(4)(i) or (g)(4)(ii) of this AD. The report must include the information specified on the inspection report sheet provided in Appendix 01 of the applicable service bulletin identified in Table 1 of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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:* Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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

(i) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0165, dated July 31, 2009, and the service information specified in Table 1 of this AD, for related information.

Material Incorporated by Reference

(j) You must use the applicable service information contained in Table 2 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

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

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

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Date
Airbus Mandatory Service Bulletin A300–53–0388, including Appendix 01	March 17, 2009.
Airbus Mandatory Service Bulletin A300–53–6164, including Appendix 01	March 17, 2009.
Airbus Mandatory Service Bulletin A310–53–2131, including Appendix 01	March 17, 2009.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–13435 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0249; Airspace Docket No. 10–ASO–22]

Establishment of Class E Airspace; Panama City, Tyndall AFB, FL.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** April 1, 2010 that establishes Class E airspace at Tyndall AFB, Panama City, FL.

DATES: *Effective Date:* 0901 UTC, June 8, 2010.

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

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on April 1, 2010 (75 FR 16331), Docket No. FAA–2010–0249; Airspace Docket No. 10–ASO–22. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 3, 2010. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on May 27, 2010.

Barry A. Knight,

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

[FR Doc. 2010–13635 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0069; Airspace Docket No. 10–ASO–15]

Establishment of Class E Airspace; Mount Pleasant, SC.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** April 1, 2010 that establishes Class E airspace at Mt Pleasant Regional Airport-Faison Field, Mount Pleasant, SC.

DATES: *Effective Date:* 0901 UTC, June 8, 2010.

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

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on April 1, 2010 (75 FR 16335), Docket No. FAA–2010–0069; Airspace Docket No. 10–ASO–15. The FAA uses the direct final rulemaking procedure for a non-controversial rule

where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 3, 2010. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, Georgia, on May 27, 2010.

Barry A. Knight,

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

[FR Doc. 2010–13637 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0080; Airspace Docket No. 10–AAL–2]

Revision of Class E Airspace; Wainwright, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Wainwright, AK, to accommodate amended Standard Instrument Approach Procedures (SIAPs), and one new Obstacle Departure Procedure (ODP) at Wainwright Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at Wainwright Airport.

DATES: Effective 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; *e-mail: gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

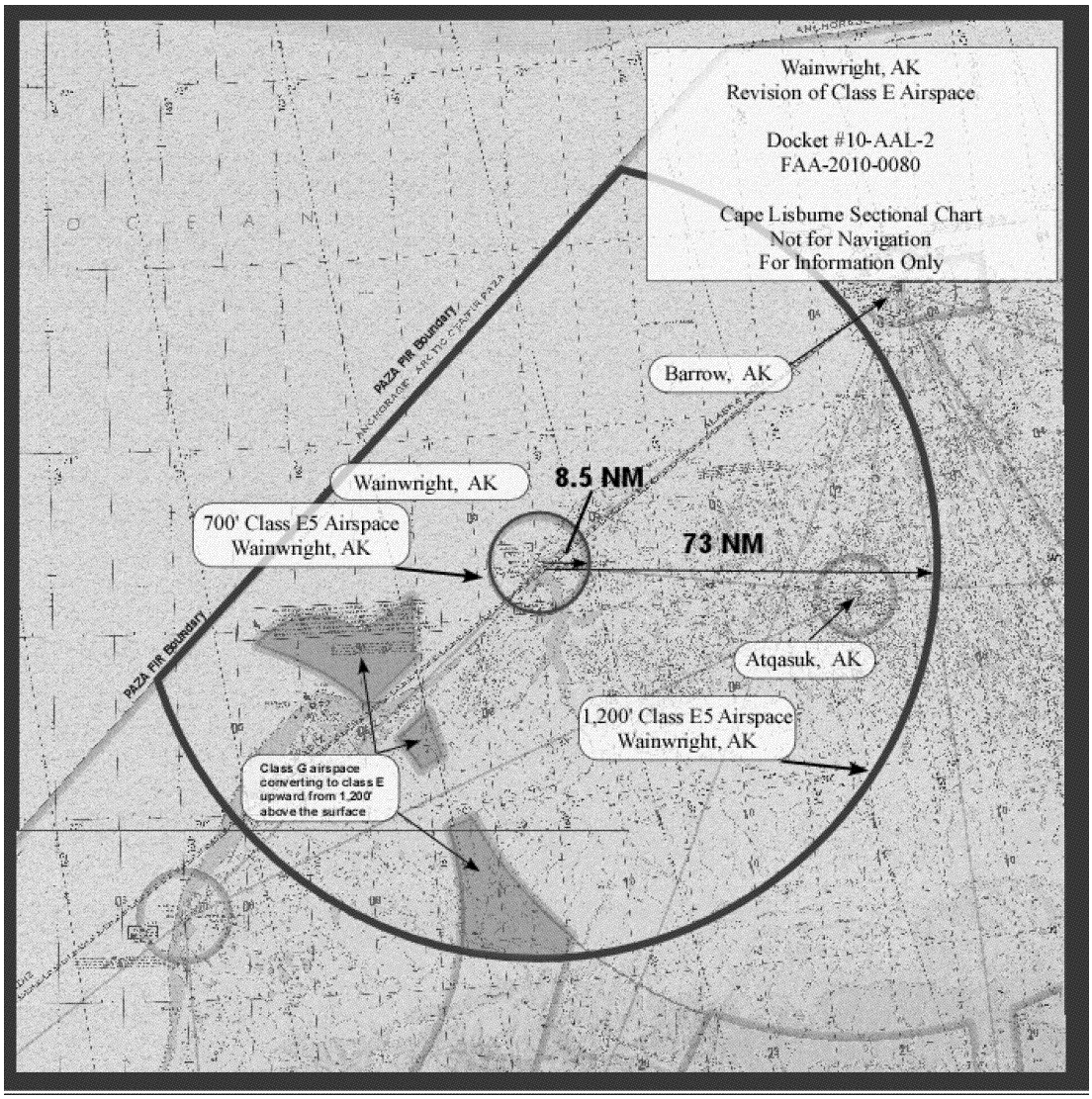
SUPPLEMENTARY INFORMATION:

History

On Thursday, March 11, 2010, the FAA published a notice of proposed rulemaking in the **Federal Register** to revise Class E airspace at Wainwright, AK (75 FR 11480).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received. Refer to Figure 1 below to see the affected airspace. The commenter agreed with the 700 foot requirement, but asked why the 1,200 foot controlled airspace had to extend 70 miles from the airport, and disagreed with the proposal by questioning the need to extend that distance. The commenter asserted that if he were not able to contact the clearance authority, it would be illegal and unsafe to fly in controlled airspace under IFR without a clearance. The 70-mile requirement is based on Area Navigation (RNAV) instrument approach requirements based on what are called Terminal Arrival Areas (TAAs). A typical approach is designed to begin at the Initial Approach Fix (IAF) approximately 30 miles from the airport. The air traffic control's controlled airspace requirement begins another 30 miles outside the IAF. In this case, the extension requires a 70-mile radius. Additionally, the commenter asserted that flights out to 70 miles in this area are in Class G airspace. In fact, only a small portion of Class G would be converted to Class E (approximately 5–10% of the area). The remainder is already 1,200 foot Class E airspace associated with airport IFR service at Barrow, Point Lay, and Atqasuk. TAA's in Alaska are good for pilots where non-radar operations are common. They essentially allow the arrival to be reduced to no more than two 90 degree turns to final, without extended non-radar clearances for excessive distances. The trade off in this case is less Class G airspace. However, even in Alaska, the Class G airspace is being converted to Class E where other TAAs have been published, and is quickly becoming unusable for any great distance. Regarding safety, the commenter is correct. Should he encounter inadvertent Instrument Meteorological Conditions (IMC) and have to climb to remain clear of clouds, he would have to either turn to remain VMC or declare an emergency, as he would anywhere else in the country. His comments are reasonable and thoughtful, and we appreciate his participation in this process. However, after consideration of the comment, the rule is adopted as proposed.

Figure 1



The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Wainwright Airport, AK, to accommodate amended RNAV SIAPs, and a new ODP at Wainwright Airport. This Class E airspace will provide adequate controlled airspace upward from 700 and 1,200 feet above the surface for safety and management of IFR operations at Wainwright Airport.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Wainwright Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Wainwright, AK [Revised]

Wainwright Airport, AK
(Lat. 70°38′17″ N., long. 159°59′41″ W.)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Wainwright Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Wainwright Airport, AK, excluding that portion extending outside the Anchorage Arctic CTA/FIR (PAZA) boundary.

* * * * *

Issued in Anchorage, AK, on May 26, 2010.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–13624 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0081; Airspace Docket No. 10–AAL–3]

Revision of Class E Airspace; Nenana, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Nenana, AK, to accommodate amended Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs), and one Obstacle Departure Procedure (ODP) at Nenana Municipal Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at Nenana Municipal Airport.

DATES: Effective 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 11, 2010, the FAA published a notice of proposed rulemaking in the **Federal Register** to revise Class E airspace at Nenana, AK (75 FR 11481).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Nenana Municipal Airport, AK, to accommodate amended RNAV SIAPs, and an ODP at Nenana Municipal Airport. This Class E airspace will provide adequate controlled airspace upward from 700 and 1,200 feet above the surface for safety and management of IFR operations at Nenana Municipal Airport.

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Nenana Municipal Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Nenana, AK [Revised]

Nenana Municipal Airport, AK
(Lat. 64°32′50″ N., long. 149°04′26″ W.)
Ice Pool NDB
(Lat. 64°32′44″ N., long. 149°04′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Nenana Municipal Airport, AK, and within 3 miles each side of the 249 bearing of the Ice Pool NDB, extending from the 6.5-mile radius to 10.3 miles southwest of the Nenana Municipal Airport, AK.

* * * * *

Issued in Anchorage, AK, on May 26, 2010.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–13631 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0082; Airspace Docket No. 10–AAL–4]

Revision of Class E Airspace; Kaltag, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Kaltag, AK, to accommodate an amended Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) at Kaltag Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at Kaltag Airport.

DATES: Effective 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/*.

SUPPLEMENTARY INFORMATION:

History

On Thursday March 11, 2010, the FAA published a notice of proposed rulemaking in the **Federal Register** to revise Class E airspace at Kaltag, AK (75 FR 11479).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Kaltag Airport, AK, to accommodate an amended RNAV SIAP at Kaltag Airport. This Class E airspace will provide adequate controlled airspace upward from 700 and 1,200 feet above the surface for safety and management of IFR operations at Kaltag Airport.

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Kaltag Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Kaltag, AK [Revised]

Kaltag Airport, AK
(lat. 64°19′08″ N., long. 158°44′29″ W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Kaltag Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 72-mile radius of the Kaltag Airport, AK.

* * * * *

Issued in Anchorage, AK, on May 26, 2010.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. 2010–13633 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL MEDIATION BOARD

29 CFR Parts 1202 and 1206

[Docket No. C–6964]

RIN 3140–ZA00

Representation Election Procedure

AGENCY: National Mediation Board.

ACTION: Final rule; delay of effective date.

SUMMARY: The National Mediation Board (NMB) is delaying the effective date of its rule regarding representation election procedures from June 10, 2010 to June 30, 2010. The purpose of this notice is to notify participants under the Railway Labor Act (RLA) that the rule will apply to applications filed on or after June 30, 2010.

DATES: *Effective Date:* The effective date of the rule amending 29 CFR Parts 1202 and 1206 published at 75 FR 26062, May 11, 2010, is delayed until June 30, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Johnson, General Counsel, National Mediation Board, 202–692–5050, *infoline@nmb.gov.*

SUPPLEMENTARY INFORMATION: On May 11, 2010, the NMB published a Final Rule in the **Federal Register** (75 FR 26062) with the effective date of June 10, 2010. Due to upcoming proceedings in litigation related to the Final Rule, the NMB is delaying the implementation of the rule for 20 days. The new effective date is June 30, 2010. No other changes to the Representation Election Procedure Rule have been made. The NMB will notify participants if there are any further changes.

Dated: June 3, 2010.

Mary Johnson,

General Counsel, National Mediation Board.

[FR Doc. 2010–13696 Filed 6–7–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket No. USCG–2010–0448]

RIN 1625–AA00

Safety Zone; DEEPWATER HORIZON at Mississippi Canyon 252 Outer Continental Shelf MODU in the Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a continued safety zone around the riser for the DEEPWATER HORIZON, a Mobile Offshore Drilling Unit (MODU), at Mississippi Canyon 252 in the Outer Continental Shelf. The safety zone in place pursuant to the Temporary Final Rule at docket USCG–2010–0323 terminates on May 26, 2010. This safety zone is needed to protect personnel involved in oil pollution response efforts. Continuing the safety zone around the riser will significantly reduce the threat of collisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment. Oil pollution response efforts are taking place on the water's surface and subsurface.

DATES: This rule is effective in the CFR on June 8, 2010 through August 26, 2010. This rule is effective with actual notice for purposes of enforcement on May 26, 2010 and will remain in effect through August 26, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0448 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0448 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 temporary rule, call or e-mail Dr. Madeleine McNamara, U.S. Coast Guard, District Eight Waterways Management Coordinator; telephone 504–671–2103, *madeleine.w.mcnamara@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 it is impracticable due to the emergency nature of the operations. Immediate action is necessary to protect first responders and to prevent entry into the area that is most impacted by the oil spill.

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**. Good cause exists because immediate action is necessary to protect first responders and to prevent entry into the area that is most impacted by the oil spill.

Basis and Purpose

The Coast Guard is establishing a safety zone in the deepwater area of the Gulf of Mexico in response to the sinking of the DEEPWATER HORIZON, a Mobile Offshore Drilling Unit (MODU), near Mississippi Canyon 252 with a center point at 28–44–18N and 088–21–54W.

The safety zone is located in the location of the riser attached to the seabed of the Outer Continental Shelf. The safety zone is established to protect both environmental responders and the environment. Efforts are underway to stop the flow of oil using submersible remote operating vehicles. In evaluating this request, the Coast Guard explored relevant safety factors and considered several criteria, including but not limited to, (1) the level of shipping activity around the facility, (2) safety concerns for personnel aboard the facility, (3) concerns for the environment, (4) the likeliness that an allision would result in a catastrophic event based on proximity to shipping fairways, offloading operations, production levels, and size of the crew, (5) the volume of traffic in the vicinity of the proposed area, (6) the types of vessels navigating in the vicinity of the proposed area, and (7) the structural configuration of the facility. We have determined that a safety zone is needed to protect persons and vessels in the vicinity of the oil spill.

Discussion of Rule

The Coast Guard is establishing a safety zone encompassing all areas within 500 meters around the position 28–44–18N and 088–21–54W. The safety zone is located in the deepwater area of the Gulf of Mexico near Mississippi Canyon 252. For the purpose of this regulation, the deepwater area is considered to be waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ)

contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. The deepwater area also includes an extensive system of fairways. Navigation in the vicinity of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel.

Results from a thorough and comprehensive examination of the criteria, IMO guidelines, and existing regulations warrant the establishment of a safety zone of 500 meters around the position 28–44–18N latitude and 088–21–54W longitude. The regulation will reduce significantly the threat of collisions, allisions, oil spills, and releases of natural gas and increase the safety of life, property, and the environment in the Gulf of Mexico by prohibiting entry into the zone unless specifically authorized by the Commander, Eighth Coast Guard District.

In accordance with the general regulations located at 33 CFR part 147, entry into this zone is prohibited unless specifically authorized by the Commander, Eighth Coast Guard District or a designated representative. They may be contacted on VHF–FM Channel 13 or 16 or by telephone at 504–589–6225.

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.

This rule is not a significant regulatory action due to the location of the riser for the MODU DEEPWATER HORIZON—on the Outer Continental Shelf—and its distance from both land and safety fairways. Vessels traversing waters near the proposed safety zone will be able to safely travel around the zone without incurring additional costs.

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 might be small entities: The owners or operators of vessels intending to transit or anchor in Mississippi Canyon block 252.

This safety zone will not have a significant economic impact or a substantial number of small entities for the following reasons: This rule will enforce a safety zone around a MODU that is in an area of the Gulf of Mexico not frequented by vessel traffic and is not in close proximity to a safety fairway. Further, vessel traffic can pass safely around the safety zone without incurring additional costs.

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 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, from further environmental documentation since implementation of this action will not result in any significant cumulative impacts on the human environment; does not involve a substantial change to existing environmental conditions; and is consistent with Federal, State, and/or local laws or administrative determinations relating to the environment. This rule involves establishing a safety zone.

Pursuant to paragraph (34)(g) of the Instruction, an environmental checklist and a categorical exclusion checklist are available in the docket indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.T08–849 to read as follows:

§ 147.T08–849 DEEPWATER HORIZON Mobile Offshore Drilling Unit Safety Zone.

(a) Location. All areas within 500 meters (1640.4 feet) around the position of the riser at 28–44–18N and 088–21–54W are part of a safety zone. This area surrounds the DEEPWATER HORIZON, a Mobile Offshore Drilling Unit (MODU), that sank in the deepwater area of the Gulf of Mexico near Mississippi Canyon 252. The riser, which is attached to the seabed of the Outer Continental Shelf, is still in place and discharging oil.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending or first response vessel; or

(2) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

Dated: May 24, 2010.

J.E. Tunstall,

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

[FR Doc. 2010–13644 Filed 6–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0139]

RIN 1625–AA11

Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, Harvey Canal, Algiers Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a regulated navigation area (RNA) to prohibit all vessels from being within the Inner Harbor Navigation Canal (IHNC), Harvey Canal, and Algiers Canal during severe hurricane conditions. Vessels will not be permitted to stay in the RNA past 24 hours in advance of and through the storm passage, except those vessels moored pursuant to mooring plans approved by the Captain of the Port. Alternate routes exist for vessels to transit around or depart from the RNA. This RNA is needed to protect the floodwalls, levees, and adjacent communities within the IHNC, Harvey, and Algiers Canals from potential hazards associated with vessels being in this area during a hurricane.

DATES: This interim rule is effective in the CFR on June 8, 2010. This rule is effective with actual notice for purposes of enforcement on May 21, 2010. Comments and related material must be received by the Coast Guard on or before July 8, 2010. Requests for public meetings must be received by the Coast Guard on or before June 18, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0139 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *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 interim rule, call or e-mail Lieutenant Commander (LCDR) Marty Daniels, Coast Guard; telephone 504–565–5044, e-mail *William.M.Daniels@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–2009–0139), 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–2009–0139" 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–2009–0139" 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 on or before 10 days after date of publication in the **Federal Register**, 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.**

Regulatory Information

On 14 May, 2009 we published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, New Orleans, LA" in the **Federal Register** (74 FR 22722). No public hearings were held. We received 7 comments on the proposed rule.

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.** A 30 day delay would be contrary to the public interest in avoiding floodwall or levee damage, and resulting flooding, in the event of a hurricane or other storm surge. The interim rule establishes a regulated navigation area that would be enforced only in the relatively infrequent event of such conditions. The hurricane season begins on June 1 of each year and a 30 day delay would leave the New Orleans area unprotected by this RNA for the first portion of the 2010 hurricane season.

Basis and Purpose

The legal basis for this interim rule is the Coast Guard's authority to establish regulated navigation areas under 33 CFR part 165 and the statutes and delegation cited therein. The purpose of this interim rule is to establish an RNA to protect floodwalls and levees in the New Orleans area from possible storm surge damage from moored barges and vessels, and to avoid damaging flooding in the New Orleans area that could result from any resulting damage to floodwalls and levees. We request public comments on this interim rule and will amend or rescind it if public comments indicate a need to do so. Moreover, we intend to reevaluate the need for the RNA established by this interim rule, upon completion of the U.S. Army Corps of Engineers Gulf Intracoastal Waterway Surge Barrier project and the West Closure Complex project, both scheduled for completion by June 1, 2011.

During Hurricanes Katrina and Gustav, multiple barges and vessels were moored next to or nearby floodwalls and levees surrounding the City of New Orleans. During Hurricane Gustav, several vessels broke free in the Inner Harbor Navigation Canal and nearly damaged the Almonaster Street Bridge. If the storm surge had been higher, they might have struck and damaged nearby floodwalls, re-creating the flooding of New Orleans that followed Katrina. As a result, following the 2008 hurricane season, the State of Louisiana requested that the Coast Guard prohibit vessels from the IHNC, in New Orleans. Subsequent to this request, the Coast Guard determined that certain regions in the New Orleans area are at risk of flooding from vessels which might break free during a storm and damage floodwalls and levees. This interim rule attempts to respond to these perceived risks.

Discussion of Comments and Changes

We received 7 comments in response to our NPRM. Some of these were received late but all late comments were reviewed and considered.

One commenter expressed three concerns with the NPRM's proposed RNA: (1) It could eliminate a safe haven for over 100 barges that currently take refuge in the proposed restricted area during hurricane conditions; (2) it did not adequately address waivers; and (3) it did not address when it would terminate. The commenter also made two requests of the Coast Guard: (1) To identify alternate locations for vessels to moor during hurricanes to mitigate the risk from barges breaking away and causing damage; and (2) to establish a Command Center with the U.S. Army Corps of Engineers (USACE) and area stakeholders to identify the locking priority of USACE equipment located in the RNA before it takes effect.

There are many other waterways throughout the Eighth District in which vessels can travel and moor. The Coast Guard does not feel that a specific safe

haven needs to be identified. The interim rule allows vessels applying for a waiver to stay in the RNA pending approval of the waiver by the Captain of the Port, New Orleans (COTP).

With regard to termination of the RNA, the need for the RNA will be reevaluated upon completion of the U.S. Army Corps of Engineers' (USACE) Gulf Intracoastal Waterway Surge Barrier and West Closure Complex projects, which is anticipated by June 1, 2011. Since the publication of the NPRM, the USACE equipment located in the RNA has been reduced by 75% and the Coast Guard does not feel that a Command Center is needed to address this issue any longer. We will continue to cooperate with the maritime industry to ensure an efficient locking process is in place based on Joint Hurricane Team Protocols.

One commenter requested that the Algiers Canal be included in the RNA due to the potential for flooding of the New Orleans west bank area if a breakaway vessel caused a breach of the canal levees. The Coast Guard agrees and has added the Algiers Canal, from the Algiers Lock to the intersection of the Algiers Canal and the Harvey Canal, in this interim rule.

One commenter suggested that a contingency plan be developed for vessels that are prevented from departing the Inner Harbor Navigation Canal, due to a bridge or lock malfunction, prior to experiencing severe hurricane conditions. The Coast Guard agrees and this interim rule provides ways to request a waiver from the COTP if a vessel is prevented from departure due to a bridge or lock malfunction.

One commenter conveyed that the Harvey and Algiers Canals have traditionally been safe havens for vessels escaping the weather and water fluctuations on the Mississippi River. Concern was also expressed for the volume of equipment that would have to be evacuated from the Harvey Canal. The Coast Guard understands that the Harvey and Algiers Canals have been used as safe havens and considered this when drafting this interim rule. The interim rule addresses this concern by allowing vessels to stay in the RNA if they have mooring plans approved by the COTP. Concerns regarding the evacuation of equipment are largely resolved with the reduction of USACE construction equipment by 75% since last year. Vessel and equipment congestion transiting through these areas will continue to be tempered as time progresses. Additionally, some congestion during evacuation will be relieved by the interim rule's waiver options; vessels with waivers will not be required to depart.

One commenter was concerned about the lack of tugs and personnel available to move equipment, the amount of time it would take to move equipment, and the congestion that would result from moving equipment out of the RNA. Additionally, the commenter was concerned about the inclusion of the Algiers Canal in the RNA due to the protection it affords vessels and equipment in the canal, and the vulnerability that would be created for the equipment and vessels by requiring evacuation of this area. The concerns regarding the equipment have been resolved by the 75% reduction in construction traffic in the regulated areas throughout the past year, and the Coast Guard believes that there will be a significant number of vessels and facilities which could have approved mooring plans. Therefore, with the reduced number of vessels that would need to be evacuated, the Coast Guard feels that the availability of tugs and personnel would be sufficient to move the equipment remaining in the RNA in the given amount of time. The Coast Guard notes the concern regarding inclusion of the Algiers Canal but feels that it needs to be included as a RNA. Concerns regarding the congestion that would result from moving equipment out of the RNA are reduced with the lower level of construction activity and the anticipated number of vessels with approved mooring plans.

One commenter requested that the Coast Guard conduct outreach efforts to provide companies with adequate notice about the rule. The commenter also requested that the RNA be implemented as a temporary measure to address the possibility of vessel breakaways until the new West Closure Complex flood protection system is constructed just west of the RNA. The concern regarding outreach has been addressed; the Coast Guard has and will continue to conduct outreach efforts to provide adequate notice for this rule. With the publication of this interim rule, the public has a second opportunity to provide comments on the RNA. The Coast Guard agrees with the reevaluation of the need for the RNA upon the completion of the West Closure Complex. This interim rule will be reevaluated upon completion of the USACE Gulf Intracoastal Waterway Surge Barrier project and the West Closure Complex project, both scheduled for completion by June 1, 2011.

Jefferson Parish officials called a public meeting to learn more about the issues after some of their constituents received COTP orders informing them that they were not able to remain in their current location in the event of a hurricane during the 2009 season. Vessel and facility operators were ordered to immediately remove vessels and any other objects that might break free and cause damage, in anticipation of the imminent arrival of a hurricane. The COTP issued these orders as a result of previous events that occurred during the landfall of Hurricane Gustav, which made it clear to the COTP that preemptive measures must be taken to prevent damage to or destruction of bridges, floodwalls, and other structures on, in, or adjacent to the navigable waters on the IHNC. The COTP attended this meeting on August 13, 2009. A synopsis of this meeting can be found on the public docket. Based on comments received from the public at the meeting, we included in this interim rule the opportunity for vessels to request waivers to remain in the RNA.

Discussion of Rule

Under the interim rule, all vessels are prohibited from being within the Inner Harbor Navigation Canal, Harvey Canal, and Algiers Canal during severe hurricane conditions. Those conditions include:

(1) Predicted winds of 74 miles per hour (mph) or more and/or a predicted storm surge of 8 feet or more for the Inner Harbor Navigation Canal;

(2) Predicted winds of 111 mph or more and/or a predicted storm surge of 10.5 feet or more for the Harvey and Algiers Canals through post storm landfall, or other hurricane or tropical storm conditions as determined by the Captain of the Port; or

(3) Other hurricane or tropical storm conditions expected to inflict significant damage to low lying and vulnerable shoreline areas, as determined by the COTP through National Weather Service/Hurricane Center weather predictions.

The affected areas include:

(1) The Inner Harbor Navigation Canal from Mile Marker 22 (West of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and the Inner Harbor Navigation Canal, out to Lake Ponchartrain and to the Mississippi River in New Orleans, LA;

(2) The Harvey Canal, between the Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Canal; and

(3) The Algiers Canal, from the Algiers Lock to the intersection of the Algiers Canal and the Harvey Canal.

Vessels will not be permitted to stay in these areas past 24 hours in advance of and through the storm passage,

except with a mooring plan approved by the Captain of the Port. In the event that a particularly dangerous storm is predicted to have winds and/or storm surge which significantly exceeds the conditions outlined above, the Captain of the Port could implement the provisions of this regulated navigation area 72 hours in advance of the above stated conditions.

The surge levels of concern were determined to be at 8 feet for the IHNC and 10.5 feet for the Algiers and Harvey Canals respectively through collaboration between the U.S. Coast Guard, the National Weather Service (NWS), the National Oceanic and Atmospheric Administration (NOAA), and the U.S. Army Corps of Engineers (USACE). Currently, in the Harvey and Algiers Canals, a surge of 10.5 feet is required for vessels to reach and cause damage to floodwalls and levees. A surge of 8 feet is required to overtop portions of the Gulf Intracoastal Waterway floodgate, which will be protecting the IHNC from storm surge beginning in May 2010.

The need for the RNA will be reevaluated upon completion of the U.S. Army Corps of Engineers' Gulf Intracoastal Waterway Surge Barrier project and the West Closure Complex. Both are scheduled to be completed by June 1, 2011. The surge barriers are designed to reduce the risk of storm damage to some of the area's most vulnerable areas—New Orleans East, metro New Orleans, the 9th Ward, St. Bernard Parish, Gretna, and Algiers. These projects aim to protect these areas from storm surge coming from the Gulf of Mexico via adjacent bodies of water. This interim rule provides the necessary measures to protect the port infrastructure until these projects are completed. We intend to reevaluate these measures at that time. Under the interim rule, the COTP could impose measures, such as requirements for additional standby vessels, in addition to the barge mooring regulations in 33 CFR 165.803. Transient vessels (such as vessels from Houma, Fourchon, Lafitte, etc.) will only be permitted to seek safe haven in these areas during a hurricane if they have a prearranged agreement with a facility in the RNA, or a COTP-approved waiver for sheltering in place.

Alternate routes exist for vessels to transit around or depart from the areas affected by this interim rule.

We do not anticipate that this interim rule would need to be enforced very often. Historically, it would have been implemented only three times over the past five year period: For Hurricanes Cindy, Katrina, and Gustav.

Regulatory Analyses

We developed this interim 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. This interim rule intends to regulate only during specified time periods and based on comments received and addressed and anticipated approved mooring plans, this interim rule will not reach the level of a significant regulatory action, requiring no assessment of potential costs and benefits under section 6(a)(3) of the Executive Order. The Office of Management and Budget has not reviewed it under that Order.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this interim 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 interim rule would not have a significant economic impact on a substantial number of small entities. This interim rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the defined area effective in advance implementation of the measures of this interim rule. Small entities have the option of sheltering in place during tropical cyclone activity by submitting, and having approved, a mooring plan that explains how the small entity intends to ensure safe conditions on the navigable waterways during a hurricane. In addition, alternate routes for vessel traffic exist for transit around or departure from the area before the Regulated Navigation Area goes into effect.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this interim 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.

Collection of Information

This interim 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 interim 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 or more in any one year. Though this interim 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 interim 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 interim 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 interim rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This interim 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 interim 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 interim 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 interim rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this interim 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 interim rule involves establishing a regulated navigation area in the Inner Harbor Navigation Canal (IHNC), Harvey Canal and Algiers Canal which is categorically excluded under figure 2–1, paragraph (34)(g) of the Instruction. An environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this interim rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, 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 as follows:

Authority: 33 U.S.C. 1226, 46 U.S.C. Chapter 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 § 165.838 to read as follows:

§ 165.838 Regulated Navigation Area; New Orleans Area of Responsibility, New Orleans, LA

(a) *Regulated Navigation Area.* The following is a regulated navigation area (RNA):

(1) The Inner Harbor Navigation Canal (IHNC) from Mile Marker 22 (west of Chef Menteur Pass) on the Gulf Intracoastal Waterway, west through the Gulf Intracoastal Waterway and the Inner Harbor Navigation Canal, out to Lake Ponchartrain and to the Mississippi River in New Orleans, LA;

(2) The Harvey Canal, between the Lapalco Boulevard Bridge and the intersection of the Harvey Canal and the Algiers Canal of the Intracoastal Waterway; and

(3) The Algiers Canal, from the Algiers Lock to the intersection of the Algiers Canal and the Harvey Canal.

(b) *Definitions.* As used in this section:

COTP means the Captain of the Port, New Orleans; and

Floating vessel means any floating vessel to which the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq.,* applies.

(c) *Enforcement.* (1) The provisions of this paragraph (c) will be enforced only 24 hours in advance of, and during the duration of, any of the following predicted weather conditions:

(i) Predicted winds of 74 miles per hour (mph) or more or a predicted storm surge of 8 feet or more for the Inner Harbor Navigation Canal;

(ii) Predicted winds of 111 mph or more and/or a predicted storm surge of 10.5 feet or more for the Harvey or Algiers Canals through post storm landfall, or other hurricane or tropical storm conditions as determined by the COTP; or

(iii) Other hurricane or tropical storm conditions expected to inflict significant damage to low lying and vulnerable shoreline areas, as determined by the COTP through National Weather Service/Hurricane Center weather predictions.

(2) In the event that a particularly dangerous storm is predicted to have winds or storm surge significantly exceeding the conditions specified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section, the COTP may begin enforcement 72 hours in advance of the predicted conditions.

(3) During enforcement:

(i) All floating vessels are prohibited from entering or remaining in the RNA except pending approval of a waiver request made in accordance with paragraph (d) of this section or as authorized by a waiver approved by the COTP in accordance with paragraph (d);

(ii) Transient vessels will not be permitted to seek safe haven in the RNA except in accordance with a prearranged agreement between the vessel and a facility within the RNA, or as authorized by a waiver approved by the COTP in accordance with paragraph (d) of this section.

(4) The COTP will announce enforcement periods through Marine Safety Information Bulletins and Safety Broadcast Notices to Mariners.

(d) *Waivers.* (1) Upon request of the vessel owner or operator, the COTP may waive any provision of paragraph (c) of this section, if the COTP finds that the vessel's proposed operation can be conducted safely under the terms of that waiver.

(2) A request for waiver must be in writing, except as provided by paragraph (d)(3) of this section, and must describe or provide:

(i) The reason for requesting the waiver;

(ii) The vessel's current operations;

(iii) The name of any intended mooring facility, the specific mooring location within that facility, and a list of vessels routinely engaged in business at that facility;

(iv) The vessel's proposed operation during the RNA enforcement period, including intended mooring arrangements that comply with 33 CFR 165.803 and the mooring facility's equipment for supporting those arrangements; and

(v) Contact information for the vessel owner or operator during the RNA enforcement period.

(3) Under unusual circumstances due to time constraints, such as the malfunction of a bridge or lock within the RNA, the person in charge of a vessel may orally request an immediate waiver from the COTP, but the vessel owner or operator must send written confirmation of the request, containing the information required by paragraph (d)(2) of this section, to the COTP within five days of the oral request.

(4) The COTP may condition approval of a waiver request on the vessel owner's or operator's taking measures additional to those proposed in the waiver request, and may terminate a waiver at any time, if the COTP deems it necessary to provide safety.

(e) *Penalties.* Failure to comply with this section may result in civil or criminal penalties pursuant to the Ports and Waterways Safety Act, 33 U.S.C. 1221 et seq.

(f) *Notice of enforcement.* The COTP will notify the maritime community of periods during which this regulated navigation area will be enforced by providing advance notice through a Marine Safety Information Bulletin and Safety Broadcast Notice to Mariners.

Dated: May 24, 2010.

J.E. Tunstall,

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

[FR Doc. 2010–13641 Filed 6–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0315]

RIN 1625–AA00

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing 51 safety zones for marine events within the Captain of the Port Sector Northern New England area of responsibility for regattas, swim events, power boat races, row and paddle boat races, parades, and firework 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 June 8, 2010 through 11:59 p.m. on September 29, 2010. This rule is effective with actual notice for purposes of enforcement beginning at 8 p.m. on July 3, 2010. Comments and related material must reach the Coast Guard on or before July 23, 2010. Requests for public meetings must be received by the Coast Guard on or before June 29, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0315 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *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.

Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0315 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0176 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 interim 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:

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.

As this temporary interim rule will be in effect before the end of the comment period, the Coast Guard will evaluate and revise this rule as necessary to address significant public comments.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0315), 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 *http://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–2010–0315" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit 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 this 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–2010–0315" 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 on or before June 29, 2010 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.**

Regulatory Information

The Coast Guard is issuing this temporary interim 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 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. It is impractical to issue a NPRM and take public comment before July 3rd, 2010 when the first marine event necessitating a safety zone is scheduled to occur. Further, it is contrary to public interest to delay the effective date of this rule or to delay or cancel the scheduled events. Delaying the effective date by first publishing a NPRM 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, powerboat races, swim events and parades as well as the hazardous nature of fireworks including unexpected detonation and burning debris. We are requesting public comment on the safety zones, and if we receive public input that indicates a need to revise the safety zone regulations or the conditions they impose, or raises any other significant public concerns, we will address those concerns prior to issuing any final rule.

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, swim events, power boat races, row and paddle boat races, parades, and firework displays. 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. "Designated on-scene patrol personnel" are any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. 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 51 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 350 yard safety zone around all firework displays, a 200 foot safety zone around all swim event routes, and a 50 yard safety zone around all power boat races, row and paddle boat races, and regattas.

The tables below summarize the safety zone size that applies to each event along with the event name, date, time, and location:

Firework Displays: 350 Yard Safety Zone

Town of Islesboro Fireworks	• Date: July 3, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Grindle Point, Islesboro, Maine.
Burlington Independence Day Fireworks	• Date: July 3, 2010. • Time: 8 pm to 10:30 pm. • Location: From a barge in the vicinity of Burlington Harbor, Burlington, Vermont.
Bangor 4th of July Fireworks	• Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of the Bangor Waterfront, Bangor, Maine.
Bar Harbor 4th of July Fireworks	• Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Bar Harbor Town Pier, Bar Harbor, Maine.
Bath 4th of July Fireworks	• Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Reed and Reed Boat Yard, Woolwich, Maine.
Boothbay Harbor 4th of July Fireworks	• Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine.

Castine 4th of July Fireworks	• Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: From a float in the vicinity of Castine Harbor, Castine, Maine.
Colchester 4th of July Fireworks	• Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Bayside Beach and Mallets Bay in Colchester, Vermont.
Eastport 4th of July Fireworks	• Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: From the Waterfront Public Pier in Eastport, Maine.
Portland Harbor 4th of July Fireworks	• Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of East End Beach, Portland, Maine.
Stonington 4th of July Fireworks	• Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Two Bush Island, Stonington, Maine.
St. Albans Day Fireworks	• Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: From the St. Albans Bay dock in St. Albans Bay, Vermont.
Windjammer Days Fireworks (Rain Date)	• Rain Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine. This event is scheduled for June 23, 2010, though if that event is cancelled due to inclement weather, it will be held at the date and time indicated here.
Tenants Harbor Fireworks	• Date: July 17, 2010. • Time: 8 pm to 10:30 pm. • Location: From a barge in the vicinity of the inner harbor, Tenants Harbor, Maine.
Westerlund's Landing Party Fireworks	• Date: August 7, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Westerlund's Landing in South Gardiner, Maine.
Rockland Lobster Festival Fireworks	• Date: August 7, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Rockland Ferry Terminal, Rockland, Maine.
Windjammer Weekend Fireworks	• Date: September 3, 2010. • Time: 8 pm to 10:30 pm. • Location: From a barge in the vicinity of Northeast Point, Camden Harbor, Maine.
Eliot Festival Day Fireworks	• Date: September 25, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Eliot Town Boat Launch, Eliot, Maine.

In addition to the firework displays listed above, the Hampton Beach Fireworks event is an on-going event which occurs every Wednesday, Saturday, and Sunday between May 5, 2010 and September 29, 2010 in the vicinity of Hampton Beach, New Hampshire. This event was included in a previous regulation (USCG–2010–0239) to have a 350 yard safety zone during the time for each fireworks display from 8 p.m. to 10 p.m.

Swim Events: 200 Foot Safety Zone	
Urban/EPIC Triathlon	• Date: July 10, 2010. • Time: 7 am to 11 am. • Location: The regulated area includes all waters of Portland Harbor in the vicinity of East End Beach in Portland, Maine.
Peaks to Portland Swim	• Date: July 24, 2010. • Time: 5 am to 1 pm. • Location: The regulated area includes all waters of Portland Harbor between Peaks Island and East End Beach in Portland, Maine.
Sprucewold Cabbage Island Swim	• Date: August 7, 2010. • Time: 1 pm to 6 pm. • Location: The regulated area includes all waters of Linekin Bay between Cabbage Island and Sprucewold Beach in Boothbay Harbor, Maine.
Y–Tri Triathlon	• Date: August 7, 2010. • Time: 9 am to 10 am. • Location: The regulated area includes all waters of Treadwell Bay in the vicinity of Point Au Roche State Park, Plattsburgh, New York.
Greater Burlington YMCA Lake Swim	• Date: August 14, 2010. • Time: 8 am to 6 pm. • Location: The regulated area includes all waters in Lake Champlain in the vicinity of North Hero Island.
Tri for a Cure Triathlon	• Date: August 15, 2010. • Time: 8 am to 2 pm. • Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Spring Point Light.
Rockland Breakwater Swim	• Date: August 28, 2010. • Time: 8:30 am to 12:30 pm. • Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of Jameson Point.

The Lobsterman Triathlon	• Date: September 18, 2010. • Time: 8 am to 10 am. • Location: The regulated area includes all waters in the vicinity of Winslow Park in South Freeport, Maine.
Power Boat Races, Row and Paddle Boat Races, and Regattas: 50 Yard Safety Zone	
Moosabec Lobster Boat Races	• Date: July 4, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Jonesport, Maine.
The Great Race Row Boat Race	• Date: July 4, 2010. • Time: 10 am to 12:30 pm. • Location: The regulated area includes all waters of Lake Champlain in the vicinity of Saint Albans Bay in St. Albans, Vermont.
Festival of Lights Boat Parade	• Date: July 8, 2010. • Time: 7 pm to 11:30 pm. • Location: The regulated area includes all waters of Cumberland Bay on Lake Champlain in the vicinity of Plattsburgh, New York.
Mayor's Cup Regatta	• Date: July 10, 2010. • Time: 10 am to 4 pm. • Location: The regulated area includes all waters of Cumberland Bay on Lake Champlain in the vicinity of Plattsburgh, New York.
Searsport Lobster Boat Races	• Date: July 10, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Searsport Harbor, Maine.
Stonington Lobster Boat Races	• Date: July 10, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Stonington, Maine.
The Challenge Race Row and Paddle Boat Race.	• Date: July 17, 2010. • Time: 11 am to 3 pm. • Location: The regulated area includes all waters of Lake Champlain in the vicinity of Button Bay State Park in Vergennes, Vermont.
Friendship Lobster Boat Races	• Date: July 24, 2010. • Time: 9:30 am to 3 pm. • Location: The regulated area includes all waters of Friendship Harbor, Maine.
Arthur Martin Memorial Regatta	• Date: July 24, 2010. • Time: 10 am to 12 pm. • Location: The regulated area includes all waters of the Piscataqua River, in the vicinity of Kittery Point, Maine.
Harpswell Lobster Boat Races	• Date: July 25, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Potts Harbor, Maine.
Southport Rowgatta Row Boat Race	• Date: August 4, 2010. • Time: 8 am to 3 pm. • Location: The regulated area includes all waters of Sheepscot Bay and Booth Bay, on the shore side of Southport Island, Maine.
Eggemoggin Reach Regatta	• Date: August 7, 2010. • Time: 11 am to 7 pm. • Location: The regulated area includes all waters of Eggemoggin Reach and Jericho Bay in the vicinity of Naskeag Harbor, Maine.
Lake Champlain Dragon Boat Festival	• Date: August 8, 2010. • Time: 7 am to 5 pm. • Location: The regulated area includes all waters of Lake Champlain in the vicinity of Burlington Bay in Burlington, Vermont.
Monhegan Island Regatta and Boat Parade	• Date: August 12, 2010 through August 15, 2010. • Time: 11 am on day one through 10 am on day three. • Location: The regulated area for the start of the race includes all waters of Casco Bay, Maine in the vicinity of Long Island.
Winter Harbor Lobster Boat Races	• Date: August 14, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Winter Harbor, Maine.
Lake Champlain Antique Boat Show	• Date: August 14, 2010. • Time: 5 pm to 6 pm. • Location: The regulated area includes all waters of Lake Champlain in the vicinity of Burlington Bay in Burlington, Vermont.
Merritt Brackett Lobster Boat Races	• Date: August 15, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Pemaquid Harbor, Maine.
MS Poker Run Regatta	• Date: August 21, 2010. • Time: 11 am to 2 pm. • Location: The regulated area for the start of the race includes all waters of Casco Bay, Maine in the vicinity of Little Diamond Island and Fort Gorges.
MS Regatta	• Date: August 21, 2010. • Time: 10 am to 4 pm. • Location: The regulated area for the start of the race includes all waters of Casco Bay, Maine in the vicinity of Peaks Island.

Come Boating! Rowing Regatta	• Date: August 21, 2010. • Time: 9:30 am to 4 pm. • Location: The regulated area includes all waters of Belfast Bay, in the vicinity of Belfast, Maine.
Maine Retired Skippers Regatta and Boat Parade.	• Date: August 21, 2010. • Time: 12 pm to 6 pm. • Location: The regulated area for the start of the race includes all waters of Castine Harbor, Maine in the vicinity of Dice Head.
Tour Di Verona Row Boat Race	• Date: August 21, 2010. • Time: 12 pm to 3 pm. • Location: The regulated area includes all waters of the Penobscot River, on the shore side of Verona Island, Maine.
MS Harborfest Tugboat Race	• Date: August 22, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Portland Harbor, Maine.
Windjammer Weekend Fireworks	• Date: September 3, 2010. • Time: 8 pm to 10:30 pm. • Location: From a barge in the vicinity of Northeast Point, Camden Harbor, Maine.
Windjammer Weekend Regatta and Boat Parade.	• Date: September 4, 2010 through September 6, 2010. • Time: 9 am to 9 pm. • Location: The regulated area includes all waters in Camden Harbor, Camden, Maine.

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 are prohibited from entering, transiting through, remaining, 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 their temporary nature and limited size 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 interim 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 are available in the docket where indicated under **ADDRESSES**. Any comments received concerning environmental impacts will be considered and changes made to the environmental analysis checklist, categorical exclusion determination, and this rulemaking as appropriate.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, 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.T01–0315 to read as follows:

§ 165.T01–0315 Safety zones; Marine Events within the Captain of the Port Sector Northern New England Area of Responsibility, July through September.

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

Locations. The locations for each safety zone are provided in the below EVENTS TABLE. For all events listed in the EVENTS TABLE below, the safety zones for firework displays includes all navigable waters within a 350 yard radius of the fireworks launch site; for all swim events listed in the Events Table, a 200 foot radius around all participants; for all regattas, power boat races, row and paddle boat races, and parades listed in the EVENTS TABLE below, all navigable waters within a 50 yard radius around all vessels participating in the event.

EVENTS TABLE

7.0	July
7.1 Burlington Independence Day Fireworks	• Event Type: Fireworks Display. • Sponsor: City of Burlington, VT. • Date: July 3, 2010. • Time: 8 pm to 10:30 pm.

EVENTS TABLE—Continued

7.0	July
	• Location: From a barge in he vicinity of Burlington Harbor, Burlington, Vermont in approximate position 44°28′30″ N, 073°13′31″ W (NAD 83).
7.2 Town of Islesboro Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of Islesboro, Maine. • Date: July 3, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Grindle Point, Islesboro, Maine in approximate position 44°16′52″ N, 068°56′24″ W (NAD 83).
7.3 The Great Race	• Event Type: Row and Paddle Boat Race. • Sponsor: The Great Race Committee. • Date: July 4, 2010. • Time: 10 am to 12:30 pm. • Location: The regulated area includes all waters of Lake Champlain in the vicinity of Saint Albans Bay in St. Albans, Vermont within the following points (NAD 83): 44°47′18″ N, 073°10′27″ W. 44°47′10″ N, 073°08′51″ W.
7.4 Moosabec Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Moosabec Boat Race Committee. • Date: July 4, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Jonesport, Maine within the following points (NAD 83): 44°31′21″ N, 067°36′44″ W. 44°31′36″ N, 067°36′47″ W. 44°31′44″ N, 067°35′36″ W. 44°31′29″ N, 067°35′33″ W.
7.5 Bangor 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Bangor 4th of July Fireworks. • Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of the Bangor Waterfront, Bangor, Maine in approximate position 44°47′27″ N, 068°46′31″ W (NAD 83).
7.6 Bar Harbor 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Bar Harbor Chamber of Commerce. • Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Bar Harbor Town Pier, Bar Harbor, Maine in approximate position 44°23′30″ N, 068°2′16″ W (NAD 83).
7.7 Bath 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Main Street Bath. • Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Reed and Reed Boat Yard, Woolwich, Maine in approximate position 43°54′56″ N, 069°48′16″ W (NAD 83).
7.8 Boothbay Harbor 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of Boothbay Harbor. • Date: July 4, 2010. • 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).
7.9 Castine 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Castine Fire Department. • Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: From a float in the vicinity of Castine Harbor, Castine, Maine in approximate position 44°23′11″ N, 068°47′39″ W (NAD 83).
7.10 Colchester 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of Colchester Recreation Department. • Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Bayside Beach and Mallets Bay in Colchester, Vermont at approximate position 44°54′51″ N, 073°21′54″ W (NAD 83).
7.11 Eastport 4th of July Fireworks	• Event Type: Fireworks Display.

EVENTS TABLE—Continued

7.0	July
	• Sponsor: Eastport 4th of July Committee. • Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: From the Waterfront Public Pier in Eastport, Maine at approximate position 44°54′25″ N, 066°58′55″ W (NAD 83).
7.12 Portland Harbor 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Department of Parks and Recreation, Portland, Maine. • Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of East End Beach, Portland, Maine in approximate position 43°40′11″ N, 070°14′29″ W (NAD 83).
7.13 St. Albans Day Fireworks	• Event Type: Fireworks Display. • Sponsor: St. Albans Town Recreation Department. • Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: From the St. Albans Bay dock in St. Albans, Vermont in approximate position 44°48′25″ N, 073°08′23″ W (NAD 83).
7.14 Stonington 4th of July Fireworks	• Event Type: Fireworks Display. • Sponsor: Deer Isle—Stonington Chamber of Commerce. • Date: July 4, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Two Bush Island, Stonington, Maine in approximate position 44°08′57″ N, 068°39′54″ W (NAD 83).
7.15 Windjammer Days Fireworks (Rain Date)	• Event Type: Fireworks display. • Sponsor: Boothbay Harbor Region Chamber of Commerce. • Date: July 4, 2010. • 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).
7.16 Bath Heritage Days Fireworks	• Event Type: Fireworks Display. • Sponsor: Main Street Bath. • Date: July 5, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Reed and Reed Boat Yard, Woolwich, Maine in approximate position 43°54′56″ N, 069°48′16″ W (NAD 83).
7.17 Festival of Lights Boat Parade	• Event Type: Regatta and Boat Parade. • Sponsor: Plattsburgh Sunrise Rotary. • Date: July 8, 2010. • Time: 7 pm to 11:30 pm. • Location: The regulated area includes all waters of Cumberland Bay on Lake Champlain in the vicinity of Plattsburgh, New York within the following points (NAD 83): 44°43′10″ N, 073°25′50″ W. 44°42′01″ N, 073°25′59″ W. 44°40′57″ N, 073°26′05″ W. 44°40′49″ N, 073°26′27″ W.
7.18 Searsport Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Searsport Lobster Boat Race Committee. • Date: July 10, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Searsport Harbor, Maine within the following points (NAD 83): 44°26′50″ N, 068°55′20″ W. 44°27′04″ N, 068°55′26″ W. 44°27′12″ N, 068°54′35″ W. 44°26′59″ N, 068°54′29″ W.
7.19 Urban/EPIC Triathlon	• Event Type: Swim. • Sponsor: Tri-Maine Productions. • Date: July 10, 2010. • Time: 7 am to 11 am. • Location: The regulated area includes all waters of Portland Harbor in the vicinity of East End Beach in Portland, Maine within the following points (NAD 83): 43°40′00″ N, 070°14′20″ W. 43°40′00″ N, 070°14′00″ W. 43°40′15″ N, 070°14′29″ W.

EVENTS TABLE—Continued

7.0	July
	43°40′17″ N, 070°13′22″ W.
7.20 Mayor's Cup Regatta	• Event Type: Regatta and Boat Parade. • Sponsor: Plattsburgh Sunrise Rotary. • Date: July 10, 2010. • Time: 10 am to 4 pm. • Location: The regulated area includes all waters of Cumberland Bay on Lake Champlain in the vicinity of Plattsburgh, New York within the following points (NAD 83): 44°39′26″ N, 073°26′25″ W. 44°41′27″ N, 073°23′12″ W.
7.21 Stonington Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Stonington Lobster Boat Race Committee. • Date: July 10, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Stonington, Maine within the following points (NAD 83): 44°08′55″ N, 068°40′12″ W. 44°09′00″ N, 068°40′15″ W. 44°09′11″ N, 068°39′42″ W. 44°09′07″ N, 068°39′39″ W.
7.22 The Challenge Race	• Event Type: Row and Paddle Boat Race. • Sponsor: Lake Champlain Maritime Museum. • Date: July 17, 2010. • Time: 11 am to 3 pm. • Location: The regulated area includes all waters of Lake Champlain in the vicinity of Button Bay State Park, Vergennes, Vermont within the following points (NAD 83): 44°12′25″ N, 073°22′32″ W. 44°12′00″ N, 073°21′42″ W. 44°12′19″ N, 073°21′25″ W. 44°13′16″ N, 073°21′36″ W.
7.23 Tenants Harbor Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of St. George, Maine. • Date: July 17, 2010. • Time: 8 pm to 10:30 pm. • Location: From a barge in the vicinity of the inner harbor, Tenants Harbor, Maine in approximate position 43°57′40″ N, 069°12′48″ W (NAD 83).
7.24 Peaks to Portland Swim	• Event Type: Swim. • Sponsor: Cumberland County YMCA. • Date: July 24, 2010. • Time: 5 am to 1 pm. • Location: The regulated area includes all waters of Portland Harbor between Peaks Island and East End Beach in Portland, Maine within the following points (NAD 83): 43°39′20″ N, 070°11′58″ W. 43°39′45″ N, 070°13′19″ W. 43°40′11″ N, 070°14′13″ W. 43°40′08″ N, 070°14′29″ W. 43°40′00″ N, 070°14′23″ W. 43°39′34″ N, 070°13′31″ W. 43°39′13″ N, 070°11′59″ W.
7.25 Friendship Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Friendship Lobster Boat Race Committee. • Date: July 24, 2010. • Time: 9:30 am to 3 pm. • Location: The regulated area includes all waters of Friendship Harbor, Maine within the following points (NAD 83): 43°57′51″ N, 069°20′46″ W. 43°58′14″ N, 069°19′53″ W. 43°58′19″ N, 069°20′01″ W. 43°58′00″ N, 069°20′46″ W.
7.26 Arthur Martin Memorial Regatta	• Event Type: Row and Paddle Boat Race. • Sponsor: I Row. • Date: July 24, 2010. • Time: 10 am to 12 pm.

EVENTS TABLE—Continued

7.0	July
	• Location: The regulated area includes all waters of the Piscataqua River, in the vicinity of Kittery Point, Maine within the following points (NAD 83): 43°03′51″ N, 070°41′55″ W. 43°04′35″ N, 070°42′18″ W. 43°04′42″ N, 070°43′15″ W. 43°05′14″ N, 070°43′12″ W. 43°05′14″ N, 070°43′06″ W. 43°04′44″ N, 070°43′11″ W. 43°04′35″ N, 070°42′13″ W. 43°03′53″ N, 070°41′40″ W.
7.27 Harpswell Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Harpswell Lobster Boat Race Committee. • Date: July 25, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Potts Harbor, Maine within the following points (NAD 83): 43°43′55″ N, 070°02′36″ W. 43°44′23″ N, 070°02′14″ W. 43°44′16″ N, 070°01′51″ W. 43°43′48″ N, 070°02′24″ W.
8.0	August
8.1 Southport Rowgatta Row Boat Race	• Event Type: Row and Paddle Boat Race. • Sponsor: Boothbay Region YMCA. • Date: August 4, 2010. • Time: 8 am to 3 pm. • Location: The regulated area includes all waters of Sheepscot Bay and Booth Bay, on the shore side of Southport Island, Maine within the following points (NAD 83): 43°50′26″ N, 069°39′10″ W. 43°49′10″ N, 069°38′35″ W. 43°46′53″ N, 069°39′06″ W. 43°46′50″ N, 069°39′32″ W. 43°49′07″ N, 069°41′43″ W. 43°50′19″ N, 069°41′14″ W. 43°51′11″ N, 069°40′06″ W.
8.2 Westerlund's Landing Party Fireworks	• Event Type: Fireworks Display. • Sponsor: Portside Marina. • Date: August 7, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Westerlund's Landing in South Gardiner, Maine in approximate position 44°10′19″ N, 069°45′24″ W (NAD 83).
8.3 Rockland Lobster Festival Fireworks	• Event Type: Fireworks Display. • Sponsor: Rockland Festival Committee. • Date: August 7, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Rockland Ferry Terminal, Rockland, Maine in approximate position 44°06′19″ N, 069°06′06″ W (NAD 83).
8.4 Eggemoggin Reach Regatta	• Event Type: Regatta and Boat Parade. • Sponsor: Rockport Marine, Inc. and Brookline Boat Yard. • Date: August 7, 2010. • Time: 11 am to 7 pm. • Location: The regulated area includes all waters of Eggemoggin Reach and Jericho Bay in the vicinity of Naskeag Harbor, Maine within the following points (NAD 83): 44°15′16″ N, 068°36′26″ W. 44°12′41″ N, 068°29′26″ W. 44°07′38″ N, 068°31′30″ W. 44°12′54″ N, 068°33′46″ W.
8.5 Sprucewold Cabbage Island Swim	• Event Type: Swim. • Sponsor: Sprucewold Association. • Date: August 7, 2010. • Time: 1 pm to 6 pm. • Location: The regulated area includes all waters of Linekin Bay between Cabbage Island and Sprucewold Beach in Boothbay Harbor, Maine within the following points (NAD 83): 43°50′37″ N, 069°36′23″ W.

8.0	August
	43°50′37″ N, 069°36′59″ W. 43°50′16″ N, 069°36′46″ W. 43°50′22″ N, 069°36′21″ W.
8.6 Y-Tri Triathlon	• Event Type: Swim. • Sponsor: Plattsburgh YMCA. • Date: August 7, 2010. • Time: 9 am to 10 am. • Location: The regulated area includes all waters of Treadwell Bay in the vicinity of Point Au Roche State Park, Plattsburgh, New York within the following points (NAD 83): 44°46′30″ N, 073°23′26″ W. 44°46′17″ N, 073°23′26″ W. 44°46′17″ N, 073°23′46″ W. 44°46′29″ N, 073°23′46″ W.
8.7 Lake Champlain Dragon Boat Festival	• Event Type: Row and Paddle Boat Race. • Sponsor: Dragonheart Vermont. • Date: August 8, 2010. • Time: 7 am to 5 pm. • Location: The regulated area includes all waters of Burlington Bay within the following points (NAD 83): 44°28′51″ N, 073°13′28″ W. 44°28′40″ N, 073°13′40″ W. 44°28′37″ N, 073°13′29″ W. 44°28′40″ N, 073°13′17″ W.
8.8 Monhegan Island Race	• Event Type: Regatta and Boat Race. • Sponsor: Portland Yacht Club. • Date: August 12, 2010 through August 15, 2010. • Time: 11 am on day one until 10 am on day three. • Location: The regulated area for the start of the race includes all waters of Casco Bay, Maine in the vicinity of Long Island within the following points (NAD 83): 43°41′55″ N, 070°11′05″ W. 43°41′55″ N, 070°09′32″ W. 43°42′53″ N, 070°09′32″ W. 43°42′53″ N, 070°11′05″ W.
8.9 Greater Burlington YMCA Lake Swim	• Event Type: Swim. • Sponsor: Greater Burlington YMCA. • Date: August 14, 2010. • Time: 8 am to 6 pm. • Location: The regulated area includes all waters in Lake Champlain in the vicinity of North Hero Island within the following points (NAD 83): 44°46′55″ N, 073°22′14″ W. 44°47′08″ N, 073°19′05″ W. 44°46′48″ N, 073°17′13″ W. 44°46′09″ N, 073°16′39″ W. 44°41′08″ N, ;073°20′58″ W. 44°41′36″ N, 073°23′01″ W.
8.10 Winter Harbor Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Winter Harbor Chamber of Commerce. • Date: August 14, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Winter Harbor, Maine within the following points (NAD 83): 44°22′06″ N, 068°05′13″ W. 44°23′06″ N, 068°05′08″ W. 44°23′04″ N, 068°04′37″ W. 44°22′05″ N, 068°04′44″ W.
8.11 Lake Champlain Antique Boat Show	• Event Type: Regatta and Boat Parade. • Sponsor: Lake Champlain Antique and Classic Boat Society. • Date: August 14, 2010. • Time: 5 pm to 6 pm. • Location: The regulated area includes all waters of Burlington Bay within the following points (NAD 83): 44°28′51″ N, 073°13′28″ W. 44°28′40″ N, 073°13′36″ W. 44°28′33″ N, 073°13′31″ W. 44°28′33″ N, 073°13′18″ W.
8.12 Tri for a Cure Triathlon	• Event Type: Swim.

8.0	August
	• Sponsor: Maine Cancer Foundation. • Date: August 15, 2010. • Time: 8 am to 2 pm. • Location: The regulated area includes all waters of Portland Harbor, Maine in the vicinity of Spring Point Light within the following points (NAD 83): 43°39′01″ N, 070°13′32″ W. 43°39′07″ N, 070°13′29″ W. 43°39′06″ N, 070°13′41″ W. 43°39′01″ N, 070°13′36″ W.
8.13 Merritt Brackett Lobster Boat Races	• Event Type: Power Boat Race. • Sponsor: Town of Bristol, Maine. • Date: August 15, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Pemaquid Harbor, Maine within the following points (NAD 83): 43°52′16″ N, 069°32′10″ W. 43°52′41″ N, 069°31′43″ W. 43°52′35″ N, 069°31′29″ W. 43°52′09″ N, 069°31′56″ W.
8.14 MS Poker Run	• Event Type: Regatta and Boat Parade. • Sponsor: Maine Chapter, Multiple Sclerosis Society. • Date: August 21, 2010. • Time: 11 am to 2 pm. • Location: The regulated area for the start of the race includes all waters of Casco Bay, Maine in the vicinity of Little Diamond Island and Fort Gorges within the following points (NAD 83): 43°39′40″ N, 070°13′24″ W. 43°39′33″ N, 070°13′24″ W. 43°39′33″ N, 070°13′13″ W. 43°39′40″ N, 070°13′13″ W.
8.15 Come Boating! Row Regatta	• Event Type: Row and Paddle Boat Race. • Sponsor: Come Boating! • Date: August 21, 2010. • Time: 9:30 am to 4 pm. • Location: The regulated area includes all waters of Belfast Bay, in the vicinity of Belfast, Maine within the following points (NAD 83): 44°25′50″ N, 069°00′00″ W. 44°25′14″ N, 068°58′08″ W. 44°25′03″ N, 068°58′16″ W. 44°25′43″ N, 068°00′13″ W.
8.16 MS Regatta	• Event Type: Regatta and Sailboat Race. • Sponsor: Maine Chapter, Multiple Sclerosis Society. • Date: August 21, 2010. • Time: 10 am to 4 pm. • Location: The regulated area for the start of the race includes all waters of Casco Bay, Maine in the vicinity of Peaks Island within the following points (NAD 83): 43°40′24″ N, 070°14′20″ W. 43°40′36″ N, 070°13′56″ W. 43°39′58″ N, 070°13′21″ W. 43°39′46″ N, 070°13′51″ W.
8.17 Maine Retired Skippers Race	• Event Type: Regatta and Boat Race. • Sponsor: Maine Retired Skippers Race Committee. • Date: August 21, 2010. • Time: 12 pm to 6 pm. • Location: The regulated area for the start of the race includes all waters of Castine Harbor, Maine in the vicinity of Dice Head within the following points (NAD 83): 44°22′52″ N, 068°49′23″ W. 44°22′52″ N, 068°48′39″ W. 44°22′32″ N, 068°48′39″ W. 44°22′32″ N, 068°49′23″ W.
8.18 Tour Di Verona	• Event Type: Row and Paddle Boat Race. • Sponsor: Baldwin Boat Co. • Date: August 21, 2010. • Time: 12 pm to 3 pm. • Location: The regulated area includes all waters of the Penobscot River, on the shore side of Verona Island, Maine within the following points (NAD 83): 44°34′10″ N, 068°47′30″ W. 44°33′14″ N, 068°48′21″ W.

8.0	August
	44°31′33″ N, 068°48′06″ W. 44°30′02″ N, 068°46′54″ W. 44°30′34″ N, 068°45′38″ W. 44°31′58″ N, 068°45′27″ W. 44°32′42″ N, 068°46′05″ W. 44°33′58″ N, 068°46′35″ W.
8.19 MS Harborfest Tugboat Muster	• Event Type: Power Boat Race. • Sponsor: Maine Chapter, National Multiple Sclerosis Society. • Date: August 22, 2010. • Time: 10 am to 3 pm. • Location: The regulated area includes all waters of Portland Harbor, Maine within the following points (NAD 83): 43°40′24″ N, 070°14′20″ W. 43°40′36″ N, 070°13′56″ W. 43°39′58″ N, 070°13′21″ W. 43°39′46″ N, 070°13′51″ W.
8.20 Rockland Breakwater Swim	• Event Type: Swim. • Sponsor: Pen-Bay Masters. • Date: August 28, 2010. • Time: 8:30 am to 12:30 pm. • Location: The regulated area includes all waters of Rockland Harbor, Maine in the vicinity of Jameson Point within the following points (NAD 83): 44°06′15″ N, 069°04′38″ W. 44°06′13″ N, 069°04′36″ W. 44°06′12″ N, 069°04′43″ W. 44°06′17″ N, 069°04′44″ W. 44°06′17″ N, 069°04′40″ W.
9.0	September
9.1 Windjammer Weekend Fireworks	• Event Type: Fireworks Display. • Sponsor: Town of Camden, Maine. • Date: September 3, 2010. • Time: 8 pm to 10:30 pm. • Location: From a barge in the vicinity of Northeast Point, Camden Harbor, Maine in approximate position 44°12′32″ N, 069°02′58″ W (NAD 83).
9.2 Windjammer Weekend	• Event Type: Regatta and Boat Parade. • Sponsor: Windjammer Weekend Committee. • Date: September 4, 2010 through September 6, 2010. • Time: 9 am to 10 pm. • Location: The regulated area includes all waters in Camden Harbor, Camden, Maine within the following points (NAD 83): 44°12′13″ N, 069°03′18″ W. 44°12′33″ N, 069°02′47″ W.
9.3 The Lobsterman Triathlon	• Event Type: Swim. • Sponsor: Tri-Maine Productions. • Date: September 18, 2010. • Time: 8 am to 10 am. • Location: The regulated area includes all waters in the vicinity of Winslow Park in South Freeport, Maine within the following points (NAD 83): 43°47′59″ N, 070°06′56″ W. 43°47′44″ N, 070°06′56″ W. 43°47′44″ N, 070°07′27″ W. 43°47′57″ N, 070°07′27″ W.
9.4 Eliot Festival Day Fireworks	• Event Type: Fireworks Display. • Sponsor: Eliot Festival Day Committee. • Date: September 25, 2010. • Time: 8 pm to 10:30 pm. • Location: In the vicinity of Eliot Town Boat Launch, Eliot, Maine in approximate position 43°08′56″ N, 070°49′52″ 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 8 p.m. on July 3, 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 above. 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 or as indicated in the Local Notice to Mariners. 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 through, remaining, 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 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 on-scene representative may be on a Coast Guard vessel, a state or local law enforcement vessel, or other designated craft, or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(4) Vessel operators desiring to enter or operate within the safety zones shall request permission to do so by contacting the Captain of the Port Sector Northern New England at 207–767–0303, or via VHF Channel 16.

(5) The Captain of the Port or his designated representative may direct the delay, cancellation, or relocation of the specific area to be regulated within the generally described locations listed in the EVENTS TABLE above to ensure safety and compliance with environmental laws. Such changes in implementation of the safety zones may be required as a result of factors that could affect their associated marine events such as weather, vessel traffic density, spectator activities, participant behavior or potential environmental impacts.

Dated: May 19, 2010.

J. B. McPherson,

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

[FR Doc. 2010–13640 Filed 6–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

Nonduplication; Pension, Compensation, and Dependency and Indemnity Compensation; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendment.

SUMMARY: This document corrects the Department of Veterans Affairs (VA) regulation that governs nonduplication of the payment of benefits to the child of a veteran. This correction is required in order to amend a cross reference in the regulation. No substantive change to the content of the regulations is being made by this correcting amendment.

DATES: *Effective Date:* June 8, 2010.

FOR FURTHER INFORMATION CONTACT: Tracy Wang, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–4936.

SUPPLEMENTARY INFORMATION: VA published a final rule in the **Federal Register** on September 30, 1997, at 62 FR 51274, amending 38 CFR 3.503, by redesignating paragraphs (a) through (j) as paragraphs (a)(1) through (a)(10), respectively. Therefore, § 3.503(h) became § 3.503(a)(8). However, VA neglected to amend the cross reference to § 3.503(h) in 38 CFR 21.3023 to reflect this change. This document corrects this error by removing "*See* § 3.503(h)" and adding the correct citation in its place, "*See* § 3.503(a)(8)".

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

William F. Russo,

Deputy Director, Regulation Policy and Management.

■ For the reasons set out in the preamble, VA is correcting 38 CFR Part 21 as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

■ 1. The authority citation for part 21, subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, and as noted in specific sections.

§ 21.3023 [Corrected]

■ 2. In the cross reference to § 21.3023, remove "See § 3.503(h)" and add, in its place, "*See* § 3.503(a)(8)".

[FR Doc. 2010–13615 Filed 6–7–10; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0276; FRL–9139–7]

Revisions to the California State Implementation Plan, South Coast 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 South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern standards for continuous emission monitoring systems. We are approving local rules that regulate the monitoring of emissions under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on August 9, 2010 without further notice, unless EPA receives adverse comments by July 8, 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–2010–0276, 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 *http://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 *http://www.regulations.gov* or e-mail. *http://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 *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@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/amended by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule no.	Rule title	Adopted/ amended	Submitted
SCAQMD	218	Continuous Emission Monitoring	05/14/99	07/23/99
SCAQMD	218.1	Continuous Emission Monitoring Performance Specifications	05/14/99	07/23/99

On January 23, 2000, the submittal for SCAQMD Rules 218 and 218.1 was deemed by operation of law to meet 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 218 into the SIP on July 6, 1982 (47 FR 29231). The SCAQMD adopted revisions to the SIP-approved version on May 14, 1999 and CARB submitted them to us on July 23, 1999. There is no prior version of Rule 218.1.

C. What is the purpose of the submitted rule revisions?

Oxides of Nitrogen (NO_X) help produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Sulfur Dioxide (SO_2) exposure is associated with adverse respiratory effects and can contribute to the formation of fine particle pollution. Carbon Monoxide (CO) contributes to the formation of smog and can also harm human health. Section 110(a) of the CAA requires States to submit regulations that control the primary and secondary National Ambient Air Quality Standards (NAAQS), which includes NO_X, SO_2 and CO emissions.

Rule 218 establishes requirements for continuous stack emission monitors of NO_X, SO_2, gaseous sulfur compounds, and CO. Rule 218 was amended to better define specifications and guidelines for continuous emission monitoring systems (CEMS) to eliminate ambiguity in both the administrative and technical provisions of the rule. The original SIP approved rule was then separated into an administrative portion and a technical portion. Rule 218 now contains the administrative requirements for CEMS and covers applicability, the application and approval process for CEMS, and recordkeeping and reporting requirements for CEMS. The technical requirements for CEMS were updated and form the basis for a new rule, Rule 218.1.

Rule 218.1 is a new rule and contains requirements for the certification of CEMS, the performance specifications of CEMS, and the operation and maintenance of CEMS.

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) and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area and a PM nonattainment area *(see* 40 CFR part 81).

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

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

3. 40 CFR 60 Appendix B—Performance Specifications

4. 40 CFR 60 Appendix F—Quality Assurance Procedures

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time SCAQMD modifies Rules 218 and 218.1. These recommendations are to: increase the records retention requirement to five years in Rule 218, remove the de minimus concentration option for the relative accuracy performance specifications for NO_X and CO, and evaluate the ppropriateness of the de minimus concentration option for the relative accuracy performance specifications for SO_2 and reduced sulfur compounds the next time Rule 218.1 is amended.

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 July 8, 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 August 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 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.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Carbon Monoxide, 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 paragraphs (c)(268)(i)(A)(*2*)and(*3*)to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(268) * * *

(i) * * *

(A) * * *

(*2*) Rule 218, "Continuous Emission Monitoring," amended on May 14, 1999.

(*3*) Rule 218.1, "Continuous Emission Monitoring Performance Specification," adopted on May 14, 1999.

* * * * *

[FR Doc. 2010–13681 Filed 6–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2010–0288; FRL–9160–1]

Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action announces the Environmental Protection Agency's (EPA's) approval of alternative testing methods for use in measuring the levels of contaminants in drinking water and determining compliance with national primary drinking water regulations. The Safe Drinking Water Act (SDWA) authorizes EPA to approve the use of alternative testing methods through publication in the **Federal Register**. EPA is using this streamlined authority to make 12 additional methods available for analyzing drinking water samples required by regulation. This expedited approach provides public water systems, laboratories, and primacy agencies with more timely access to new measurement techniques and greater flexibility in the selection of analytical methods, thereby reducing monitoring costs while maintaining public health protection.

DATES: This action is effective June 8, 2010.

FOR FURTHER INFORMATION CONTACT: Safe Drinking Water Hotline (800) 426–4791 or Glynda Smith, Technical Support Center, Office of Ground Water and Drinking Water (MS 140), Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; *telephone number:* (513) 569–7652; *e-mail address: smith.glynda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Public water systems are the regulated entities required to measure contaminants in drinking water samples. In addition, EPA Regions as well as States and Tribal governments with authority to administer the regulatory program for public water systems under SDWA may also measure contaminants in water samples. When EPA sets a monitoring requirement in its national primary drinking water regulations for a given contaminant, the Agency also establishes in the regulations standardized test procedures for analysis of the contaminant. This action makes alternative testing methods available for particular drinking water contaminants beyond the testing methods currently established in the regulations. EPA is providing public water systems required to test water samples with a choice of using either a test procedure already established in the existing regulations or an alternative test procedure that has been approved in this action. Categories and entities that may ultimately be affected by this action include:

Category	Examples of potentially regulated entities	NAICS [1]
State, Local, & Tribal Governments	States, local and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local and tribal governments that themselves operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor.	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

[1] North American Industry Classification System.

This table is not exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be impacted. To determine whether your facility is affected by this action, you should carefully examine the applicability language in the *Code of Federal Regulations* (CFR) at 40 CFR 141.2 (definition of public water system). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get copies of this document and other related information?

Docket. EPA established a docket for this action under Docket ID No. EPA–HQ–OW–2010–0288. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Copyrighted materials are available only in hard copy. 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 Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Abbreviations and Acronyms Used in This Action

APHA: American Public Health Association
CFR: Code of Federal Regulations
E. coli: Escherichia coli
EPA: Environmental Protection Agency
GWR: Ground Water Rule
IC–ESI–MS/MS: Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry
NAICS: North American Industry Classification System
NEMI: National Environmental Methods Index
QC: Quality Control
SDWA: Safe Drinking Water Act
TCR: Total Coliform Rule
VCSB: Voluntary Consensus Standard Bodies

II. Background

A. What is the purpose of this action?

In this action, EPA is approving 12 analytical methods for determining contaminant concentrations in samples collected under SDWA. Regulated parties required to sample and monitor may use either the testing methods already established in existing regulations or the alternative testing methods being approved in this action. The new methods are listed in appendix A to subpart C of part 141 and on EPA's drinking water methods Web site at *http://www.epa.gov/safewater/methods/analyticalmethods_expedited.html.*

This action also includes the full text of three tables in Appendix A to Subpart C of Part 141. The tables do not include any new method approvals. EPA inadvertently deleted two table columns in the November 10, 2009, **Federal Register** notice (74 FR 57908) (USEPA 2009b). The corrected tables are titled:

- Alternative Testing Methods for Disinfectant Residuals Listed at 40 CFR 141.74(a)(2),
- Alternative Testing Methods for Contaminants Listed at 40 CFR 141.131(b)(1), and
- Alternative Testing Methods for Disinfectant Residuals Listed at 40 CFR 141.131(c)(1).

B. What is the basis for this action?

When EPA determines that an alternative analytical method is "equally effective" (*i.e.,* as effective as a method that has already been promulgated in the regulations), SDWA allows EPA to approve the use of the alternative method through publication in the **Federal Register**. (*See* Section 1401(1) of SDWA.) EPA is using this streamlined approval authority to make 12 additional methods available for determining contaminant concentrations in samples collected under SDWA. EPA has determined that, for each contaminant or group of contaminants listed in Section III, the additional testing methods being approved in this action are equally effective as one or more of the testing methods already established in the regulations for those contaminants. Section 1401(1) states that the newly approved methods "shall be treated as an alternative for public water systems

to the quality control and testing procedures listed in the regulation." Accordingly, this action makes these additional (and optional) 12 analytical methods legally available for meeting EPA's monitoring requirements.

This action does not add regulatory language, but does, for informational purposes, update an appendix to the regulations at 40 CFR part 141 that lists all methods approved under Section 1401(1) of SDWA. Accordingly, while this action is not a rule, it is updating CFR text and therefore is being published in the "Final Rules" section of this **Federal Register**.

EPA described this expedited methods approval process in an April 10, 2007, **Federal Register** notice (72 FR 17902) (USEPA 2007) and announced its intent to begin using the process. EPA published the first set of approvals in a June 3, 2008, **Federal Register** notice (73 FR 31616) (USEPA 2008) and added appendix A to 40 CFR part 141, subpart C. Additional methods were added to appendix A to subpart C in an August 3, 2009, **Federal Register** notice (74 FR 38348) (USEPA 2009a) and a November 10, 2009, **Federal Register** notice (74 FR 57908) (USEPA 2009b). Future approvals using this process are anticipated.

III. Summary of Approvals

EPA is approving 12 methods that are equally effective relative to methods previously promulgated in the regulations. By means of this notice, these 12 methods are added to appendix A to subpart C of part 141.

A. Methods Developed by EPA

EPA Method 557 is a direct-injection, ion chromatography, negative-ion electrospray ionization, tandem mass spectrometry (IC–ESI–MS/MS) method for the determination of nine haloacetic acids, dalapon, and bromate in finished drinking waters (USEPA 2009c). Each method analyte is qualitatively identified via a unique mass transition, and the concentration is calculated using the integrated peak area and the internal standard technique.

EPA Method 557 eliminates the labor intensive sample preparation steps (extraction and derivatization) that are required in other methods. It also reduces the use of solvents and potentially hazardous chemicals. The development work for this method is described in the method research summary (Zaffiro and Zimmerman 2009). EPA Method 557 has already been approved for determining haloacetic acids and bromate in drinking water (74 FR 57908) (USEPA 2009b); its approval is being expanded in this action to include dalapon.

The approved methods for dalapon are listed at 40 CFR 141.24(e)(1). The performance characteristics of EPA Method 557 for dalapon were compared to the characteristics of approved EPA Methods 552.2 (USEPA 1995), 552.3 (USEPA 2003), and 515.4 (USEPA 2000). EPA has determined that EPA Method 557 is equally effective for measuring dalapon as each one of these three previously approved methods. The basis for this determination is discussed in Smith (2010a). Therefore, EPA is approving EPA Method 557 for determining dalapon in drinking water and adding it to the list of approved methods in appendix A to subpart C of part 141 as an alternative method for contaminants listed at 40 CFR 141.24(e)(1). A copy of EPA Method 557 can be accessed and downloaded directly on-line at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

B. Methods Developed by Voluntary Consensus Standard Bodies (VCSB)

1. *Standard Methods for the Examination of Water and Wastewater.* In Standard Method 6640 B, chlorinated acids in drinking water are derivatized and analyzed using gas chromatography with electron capture detection. The method uses the identical sample handling protocols, analytical conditions, and quality control (QC) criteria as EPA Method 515.4 (USEPA 2000), which is approved for analyzing compliance samples for dalapon (40 CFR 141.24(e)(1)). EPA has determined that Standard Method 6640 B, published in the 21st edition of *Standard Methods for the Examination of Water and Wastewater* (APHA 2005), is equally effective relative to EPA Method 515.4 (Smith 2010b) for the analysis of compliance samples for dalapon. EPA has also determined that Standard Method 6640 B–01 (APHA 2001) is an identical on-line version of Standard Method 6640 B. Accordingly, EPA is approving Standard Method 6640 B and Standard Method 6640 B–01 for determining dalapon in drinking water and adding them to the list of approved methods in Appendix A to Subpart C of Part 141 as alternative methods for contaminants listed at 40 CFR 141.24(e)(1). The 21st edition can be obtained from the American Public Health Association (APHA), 800 I Street, NW., Washington, DC 20001–3710. Standard Method 6640 B–01 is available at *http://www.standardmethods.org.*

2. *ASTM International.* EPA compared the most recent versions of six ASTM International methods for radiochemicals in water to the versions of those methods that are already approved under 40 CFR 141.25(a). Changes between the approved version and the most recent version of each method are summarized in Umbaugh (2010). The revisions primarily involve editorial changes (i.e., updated references, definitions, terminology, and reorganization of text). The revised methods are the same as the approved versions with respect to drinking water sample collection and handling protocols, sample preparation, analytical methodology, and results. The QC requirements in the revised methods have been expanded and are more detailed than in the previous versions. EPA has determined that the new versions are equally effective relative to those cited in the regulation (ASTM Methods D3454–97, D2460–97, D5174–02, D3649–98a, D4785–00a, and D4107–98 (reapproved 2002)) (Umbaugh 2010). Therefore, EPA is approving the use of the six updated ASTM methods for radiochemicals listed in the following table:

ASTM Method	Contaminant
D3454–05 (ASTM International 2009a)	Radium-226.
D2460–07 (ASTM International 2009b)	Radium-226.
D5174–07 (ASTM International 2009c)	Uranium.
D3649–06 (ASTM International 2009d)	Radioactive Cesium. Radioactive Iodine. Gamma emitters.
D4785–08 (ASTM International 2009e)	Radioactive Iodine. Gamma emitters.
D4107–08 (ASTM International 2009f)	Tritium.

As of today's notice, measurements of radiochemicals in drinking water may be performed using either one of these six methods or one of the methods already approved at 40 CFR 141.25(a). The six ASTM methods are available from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959 or *http://www.astm.org.*

C. Methods Developed by Vendors

EPA previously approved by regulation the following alternative methods, which are listed at 40 CFR 141.21(f)(6), for determining *Escherichia coli* (E. coli) under the Total Coliform Rule (TCR): Readycult® (EMD Chemicals 2007), Chromocult® (EM Science 2000), and Modified Colitag™ (CPI International 2009). These three methods were not approved under the Ground Water Rule (GWR) (71 FR 65574, November 8, 2006) (USEPA 2006), because they were not evaluated by EPA prior to proposal of the GWR. However, these methods were evaluated under the Alternate Test Procedure (ATP) program and EPA determined that the methods were equally effective for *E. coli* determination relative to Standard Method 9221F (Best 2010), published in the 20th edition of *Standard Methods for the Examination of Water and Wastewater* (APHA 1998). Standard Method 9221F is approved for *E. coli* determination under the GWR (40 CFR 141.402(c)(2)). EPA is using today's notice to approve the use of Readycult®, Chromocult®, and Modified Colitag™ to meet *E. coli* monitoring requirements under GWR and is adding them to the list of approved methods in appendix A to subpart C of part 141 as alternative methods for contaminants listed at 40 CFR 141.402(c)(2).

The 20th edition of *Standard Methods for the Examination of Water and Wastewater* (1998) is available from the American Public Health Association (APHA), 800 I Street, NW., Washington, DC 20001–3710.

The Readycult® test is described in the document "Readycult® Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters, January 2007, Version 1.1," available from EMD Chemicals (an affiliate of Merck KGaA, Darmstadt Germany), 480 S. Democrat Road, Gibbstown, NJ 08027–1297. (Telephone (800) 222–0342). Internet address *http://www.readycult.com.*

The Chromocult® test is described in the document "Chromocult® Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters," November 2000, Version 1.0, available from EMD Chemicals (formerly EM Science) (an affiliate of Merck KGaA, Darmstadt Germany), 480 S. Democrat Road, Gibbstown, NJ 08027–1297. (Telephone (800) 222–0342).

The Modified Colitag® test is described in the document "Modified Colitag™ Test Method for the Simultaneous Detection of *E. coli* and other Total Coliforms in Water," August 28, 2009, available from CPI International, Inc., 5580 Skylane Blvd., Santa Rosa, CA, 95403. (Telephone (800) 878–7654, Fax (707) 545–7901). Internet address *http://www.cpiinternational.com.*

IV. Statutory and Executive Order Reviews

As noted in Section II, under the terms of SDWA Section 1401(1), this streamlined method approval action is not a rule. Accordingly, the Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3). Similarly, this action is not subject to the Regulatory Flexibility Act because it is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute. In addition, because this approval action is not a rule but simply makes alternative (optional) testing methods available for monitoring under SDWA, EPA has concluded that other statutes and executive orders generally applicable to rulemaking do not apply to this approval action.

V. References

American Public Health Association (APHA). 1998. *20th Edition of Standard Methods for the Examination of Water and Wastewater,* American Public Health Association, 800 I Street, NW., Washington, DC 20001–3710.

American Public Health Association (APHA). 2001. Standard Method 6640 B–01. Acidic Herbicide Compounds. Micro Liquid-Liquid Extraction Gas Chromatographic Method. Approved by Standard Methods Committee 2001. Standard Methods Online. (Available at *http://www.standardmethods.org.*)

American Public Health Association (APHA). 2005. *21st Edition of Standard Methods for the Examination of Water and Wastewater,* American Public Health Association, 800 I Street, NW., Washington, DC 20001–3710.

ASTM International. 2009a. ASTM D 3454–05. Standard Test Method for Radium-226 in Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. (Available at *http://www.astm.org.*)

ASTM International. 2009b. ASTM D 2460–07. Standard Test Method for Alpha-Particle-Emitting Isotopes of Radium in Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. (Available at *http://www.astm.org.*)

ASTM International. 2009c. ASTM D 5174–07. Standard Test Method for Trace Uranium in Water by Pulsed-Laser Phosphorimetry. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. (Available at *http://www.astm.org.*)

ASTM International. 2009d. ASTM D 3649–06. Standard Practice for High-Resolution Gamma-Ray Spectrometry in Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. (Available at *http://www.astm.org.*)

ASTM International. 2009e. ASTM D 4785–08. Standard Test Method for Low-Level Analysis of Iodine Radioisotopes in Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. (Available at *http://www.astm.org.*)

ASTM International. 2009f. ASTM D 4107–08. Standard Test Method for Tritium in Drinking Water. ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. (Available at *http://www.astm.org.*)

Best, J. 2010. Memo to the record describing basis for expedited approval of Modified Colitag™, Readycult®, and Chromocult® methods for determining *E. coli* as specified at 40 CFR 141.402(c)(2). January 27, 2010.

CPI International. 2009. Modified Colitag™ Method. Modified Colitag™ Test Method for the Simultaneous Detection of *E. coli* and other Total Coliforms in Water (ATP D05–0035). August 28, 2009. 5580 Skylane Boulevard, Santa Rosa, CA 95403.

EMD Chemicals (affiliate of Merck KGaA, Darmstadt, Germany). 2000. Chromocult® Method. Chromocult® Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters. November, 2000. Version 1.0. 480 S. Democrat Road, Gibbstown, NJ 08027–1297.

EMD Chemicals (affiliate of Merck KGaA, Darmstadt, Germany). 2007. Readycult® Method. Readycult® Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters. January, 2007. Version 1.1. 480 S. Democrat Road, Gibbstown, NJ 08027–1297.

Smith, G. 2010a. Memo to the record describing basis for expedited approval of EPA Method 557 for the analysis of dalapon. January 19, 2010.

Smith, G. 2010b. Memo to the record describing basis for expedited approval of Standard Method 6640 B and 6640 B–01 for the analysis of dalapon. January 27, 2010.

Umbaugh, L. 2010. Memo to the record describing basis for expedited approval of ASTM methods for radiochemicals in water. January 21, 2010.

USEPA. 1995. EPA Method 552.2, Determination of Haloacetic Acids and Dalapon in Drinking Water by Liquid-Liquid Extraction, Derivatization and Gas Chromatography with Electron Capture Detection in Methods for the Determination of Organic Compounds in Drinking Water, Supplement III, EPA/600/R–95–131, August 1995. (Available at *http://www.nemi.gov*.)

USEPA. 2000. EPA Method 515.4, Determination of Chlorinated Acids in Drinking Water by Liquid-Liquid Extraction, Derivatization, and Fast Gas Chromatography with Electron Capture Detection, EPA 815–B–00–001, April 2000. (Available at *http://www.epa.gov/safewater/methods/analyticalmethods_ogwdw.html*.)

USEPA. 2003. EPA Method 552.3, Determination of Haloacetic Acids and Dalapon in Drinking Water by Liquid-Liquid Microextraction, Derivatization, and Gas Chromatography with Electron Capture Detection, EPA 815–B–03–002, July 2003. (Available at *http://www.epa.gov/safewater/methods/analyticalmethods_ogwdw.html*.)

USEPA. 2006. National Primary Drinking Water Regulations: Ground Water Rule; Final Rule. 71 FR 65574. November 8, 2006.

USEPA. 2007. Expedited Approval of Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures. 72 FR 17902. April 10, 2007.

USEPA. 2008. Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures. 73 FR 31616. June 3, 2008.

USEPA. 2009a. Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures. 74 FR 38348. August 3, 2009.

USEPA. 2009b. Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures. 74 FR 57908. November 10, 2009.

USEPA. 2009c. EPA Method 557. Determination of Haloacetic Acids, Bromate, and Dalapon in Drinking Water by Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS), EPA 815–B–09–012, September 2009. (Available at *http://www.epa.gov/safewater/methods/analyticalmethods_ogwdw.html*.)

Zaffiro, A.D. and Zimmerman, M. 2009. EPA Method 557 Research Summary, Shaw Environmental Inc., Cincinnati OH. March 2009.

List of Subjects in 40 CFR Part 141

Chemicals, Environmental protection, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: June 2, 2010.

Cynthia C. Dougherty,

Director, Officer of Ground Water and Drinking Water.

■ For the reasons stated in the preamble, 40 CFR part 141 is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300j–4, and 300j–9.

■ 2. Appendix A to subpart C of part 141 is amended as follows:

■ a. By adding the entry for "Dalapon" after the entry for "Carbofuran" in the table entitled "Alternative testing methods for contaminants listed at 40 CFR 141.24 (e)(1)."

■ b. By revising the entries for "Radium 226," "Uranium," "Radioactive Cesium," "Radioactive Iodine," "Tritium," and "Gamma Emitters" in the table entitled "Alternative testing methods for contaminants listed at 40 CFR 141.25(a)."

■ c. By revising all entries in the table entitled "Alternative Testing Methods for Disinfectant Residuals Listed at 40 CFR 141.74(a)(2)."

■ d. By revising all entries in the table entitled "Alternative Testing Methods for Contaminants Listed at 40 CFR 141.131(b)(1)."

■ e. By revising all entries in the table entitled "Alternative Testing Methods for Disinfectant Residuals Listed at 40 CFR 141.131(c)(1)."

■ f. By revising all entries in the table entitled "Alternative Testing Methods for Contaminants Listed at 40 CFR 141.402(c)(2)" and,

■ g. By adding footnotes 20 and 21 to the table.

Appendix A to Subpart C of Part 141—Alternative Testing Methods Approved for Analyses Under the Safe Drinking Water Act.

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ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.24(e)(1)

Contaminant	Methodology	EPA method	SM 21st edition [1]	SM online [3]
* * * * *			*	*
Dalapon	Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS).	[14] 557	6640 B	6640 B–01.
* * * * *			*	*

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.25(A)

Contaminant	Methodology	SM 21st edition [1]	ASTM [4]
Naturally Occurring:			
* * *	* *	*	*
Radium 226	Radon emanation	7500–Ra C	D3454–05.
	Radiochemical	7500–Ra B	D2460–07.
* * *	* *	*	*
Uranium	Radiochemical	7500–U B	
	ICP–MS		D5673–05.
	Alpha spectrometry	7500–U C	
	Laser Phosphorimetry		D5174–07.
Man-Made:			

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.25(A)—Continued

Contaminant	Methodology	SM 21st edition [1]	ASTM [4]
Radioactive Cesium	Radiochemical	7500–Cs B	
	Gamma Ray Spectrometry	7120	D3649–06.
Radioactive Iodine	Radiochemical	7500–I B	D3649–06.
		7500–I C.	
		7500–I D.	
	Gamma Ray Spectrometry	7120	D4785–08.
* * *	* *	*	*
Tritium	Liquid Scintillation	7500–^{3}H B	D4107–08.
Gamma Emitters	Gamma Ray Spectrometry	7120	D3649–06.
		7500–Cs B	D4785–08.
		7500–I B.	

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ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.74(a)(2)

Residual	Methodology	SM 21st Edition [1]	ASTM [4]	Other
Free Chlorine	Amperometric Titration	4500–Cl D	D 1253–08.	
	DPD Ferrous Titrimetric	4500–Cl F.		
	DPD Colorimetric	4500–Cl G.		
	Syringaldazine (FACTS)	4500–Cl H.		
	On-line Chlorine Analyzer			EPA 334.0.[16]
	Amperometric Sensor			ChloroSense.[17]
Total Chlorine	Amperometric Titration	4500–Cl D	D 1253–08.	
	Amperometric Titration (Low level measurement)	4500–Cl E.		
	DPD Ferrous Titrimetric	4500–Cl F.		
	DPD Colorimetric	4500–Cl G.		
	Iodometric Electrode	4500–Cl I.		
	On-line Chlorine Analyzer			EPA 334.0.[16]
	Amperometric Sensor			ChloroSense.[17]
Chlorine Dioxide	Amperometric Titration	4500–ClO_2 C.		
	Amperometric Titration	4500–ClO_2 E.		
Ozone	Indigo Method	4500–O_3 B.		

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.131(b)(1)

Contaminant	Methodology	EPA Method	ASTM [4]	SM 21st Edition [1]
TTHM	P&T/GC/MS	[9] 524.3		
HAA5	LLE (diazomethane)/GC/ECD			6251 B.
	Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS).	[14] 557		
Bromate	Two-Dimensional Ion Chromatography (IC)	[18] 302.0		
	Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS).	[14] 557		
	Chemically Suppressed Ion Chromatography		D 6581–08 A.	
	Electrolytically Suppressed Ion Chromatography		D 6581–08 B.	
Chlorite	Chemically Suppressed Ion Chromatography		D 6581–08 A.	
	Electrolytically Suppressed Ion Chromatography		D 6581–08 B.	
Chlorite—daily monitoring as prescribed in 40 CFR 141.132(b)(2)(i)(A)..	Amperometric Titration			4500–ClO_2 E.

ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.131(c)(1)

Residual	Methodology	SM 21st Edition [1]	ASTM [4]	Other
Free Chlorine	Amperometric Titration	4500–Cl D	D 1253–08	
	DPD Ferrous Titrimetric	4500–Cl F.		

ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.131(c)(1)—Continued

Residual	Methodology	SM 21st Edition [1]	ASTM [4]	Other
	DPD Colorimetric	4500–Cl G.		
	Syringaldazine (FACTS)	4500–Cl H.		
	Amperometric Sensor			ChloroSense.[17]
	On-line Chlorine Analyzer			EPA 334.0.[16]
Combined Chlorine	Amperometric Titration	4500–Cl D	D 1253–08.	
	DPD Ferrous Titrimetric	4500–Cl F.		
	DPD Colorimetric	4500–Cl G.		
Total Chlorine	Amperometric Titration	4500–Cl D	D 1253–08.	
	Low level Amperometric Titration	4500–Cl E.		
	DPD Ferrous Titrimetric	4500–Cl F.		
	DPD Colorimetric	4500–Cl G.		
	Iodometric Electrode	4500–Cl I.		
	Amperometric Sensor			ChloroSense.[17]
	On-line Chlorine Analyzer			EPA 334.0.[16]
Chlorine Dioxide	Amperometric Method II	4500–ClO_2 E.		

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ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.402(c)(2)

Organism	Methodology	SM 20th edition [6]	SM 21st edition [1]	SM online [3]	Other
E. coli	Colilert		9223 B	9223 B–97.	
	Colisure		9223 B	9223 B–97.	
	Colilert-18	9223 B	9223 B	9223 B–97.	
	Readycult®				Readycult®.[20]
	Colitag				Modified Colitag™.[13]
	Chromocult®				Chromocult®.[21]
Enterococci	Multiple-Tube Technique.			*9230 B–04.*	

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[1] *Standard Methods for the Examination of Water and Wastewater,* 21st edition (2005). Available from American Public Health Association, 800 I Street, NW., Washington, DC 20001–3710.

* * * * *

[3] Standard Methods Online are available at *http://www.standardmethods.org*. The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[4] Available from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959 or *http://astm.org*. The methods listed are the only alternative versions that may be used.

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[6] *Standard Methods for the Examination of Water and Wastewater,* 20th edition (1998). Available from American Public Health Association, 800 I Street, NW., Washington, DC 20001–3710.

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[9] EPA Method 524.3, Version 1.0. "Measurement of Purgeable Organic Compounds in Water by Capillary Column Gas Chromatography/Mass Spectrometry," June 2009. EPA 815–B–09–009. Available at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

* * * * *

[13] Modified Colitag™; Method, "Modified Colitag™ Test Method for the Simultaneous Detection of *E. coli* and other Total Coliforms in Water (ATP D05–0035)," August 28, 2009. Available at *http://www.nemi.gov* or from CPI International, 5580 Skylane Boulevard, Santa Rosa, CA 95403.

[14] EPA Method 557. "Determination of Haloacetic Acids, Bromate, and Dalapon in Drinking Water by Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS)," September 2009. EPA 815–B–09–012. Available at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

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[16] EPA Method 334.0. "Determination of Residual Chlorine in Drinking Water Using an On-line Chlorine Analyzer," September 2009. EPA 815–B–09–013. Available at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

[17] ChloroSense. "Measurement of Free and Total Chlorine in Drinking Water by Palintest ChloroSense," August 2009. Available at *http://www.nemi.gov* or from Palintest Ltd, 21 Kenton Lands Road, PO Box 18395, Erlanger, KY 41018.

[18] EPA Method 302.0. "Determination of Bromate in Drinking Water using Two-Dimensional Ion Chromatography with Suppressed Conductivity Detection," September 2009. EPA 815–B–09–014. Available at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

* * * * *

[20] Readycult® Method, "Readycult® Coliforms 100 Presence/Absence Test for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters," January, 2007. Version 1.1. Available from EMD Chemicals (affiliate of Merck KGaA, Darmstadt, Germany), 480 S. Democrat Road, Gibbstown, NJ 08027–1297.

[21] Chromocult® Method, "Chromocult® Coliform Agar Presence/Absence Membrane Filter Test Method for Detection and Identification of Coliform Bacteria and *Escherichia coli* in Finished Waters," November, 2000. Version 1.0. EMD Chemicals (affiliate of Merck KGaA, Darmstadt, Germany), 480 S. Democrat Road, Gibbstown, NJ 08027–1297.

[FR Doc. 2010–13685 Filed 6–7–10; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–8133]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

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

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region I				
Connecticut:				
Bethel, Town of, Fairfield County	090001	July 25, 1975, Emerg; February 15, 1984, Reg; June 18, 2010, Susp.	June 18, 2010 ..	June 18, 2010.
Bridgeport, City of, Fairfield County	090002	August 7, 1973, Emerg; October 15, 1980, Reg; June 18, 2010, Susp.	*.....do	Do.
Danbury, City of, Fairfield County	090004	November 19, 1971, Emerg; May 2, 1977, Reg; June 18, 2010, Susp.	.....do	Do.
Darien, Town of, Fairfield County	090005	January 19, 1973, Emerg; January 2, 1981, Reg; June 18, 2010, Susp.	.....do	Do.
Greenwich, Town of, Fairfield County	090008	February 4, 1972, Emerg; September 30, 1977, Reg; June 18, 2010, Susp.	.....do	Do.
Monroe, Town of, Fairfield County	090009	April 24, 1975, Emerg; April 17, 1985, Reg; June 18, 2010, Susp.	.....do	Do.
New Fairfield, Town of, Fairfield County	090188	November 17, 1975, Emerg; February 15, 1984, Reg; June 18, 2010, Susp.	.....do	Do.
Newtown, Town of, Fairfield County	090011	August 28, 1975, Emerg; June 15, 1979, Reg; June 18, 2010, Susp.	.....do	Do.
Norwalk, City of, Fairfield County	090012	March 10, 1972, Emerg; April 3, 1978, Reg; June 18, 2010, Susp.	.....do	Do.
Redding, Town of, Fairfield County	090141	September 23, 1974, Emerg; June 15, 1982, Reg; June 18, 2010, Susp.	.....do	Do.
Shelton, City of, Fairfield County	090014	August 31, 1973, Emerg; September 29, 1978, Reg; June 18, 2010, Susp.	.....do	Do.
Stamford, City of, Fairfield County	090015	March 10, 1972, Emerg; January 16, 1981, Reg; June 18, 2010, Susp.	.....do	Do.
Stratford, Town of, Fairfield County	090016	August 18, 1972, Emerg; June 1, 1978, Reg; June 18, 2010, Susp.	.....do	Do.
Trumbull, Town of, Fairfield County	090017	January 15, 1974, Emerg; December 4, 1979, Reg; June 18, 2010, Susp.	.....do	Do.
Weston, Town of, Fairfield County	090018	September 8, 1972, Emerg; October 17, 1978, Reg; June 18, 2010, Susp.	.....do	Do.
Region III				
Virginia: Nelson County, Unincorporated Areas	510102	October 4, 1973, Emerg; August 1, 1978, Reg; June 18, 2010, Susp.	.....do	Do.
West Virginia:				
Grantsville, Town of, Calhoun County	540021	April 29, 1975, Emerg; March 18, 1991, Reg; June 18, 2010, Susp.	.....do	Do.
Calhoun County, Unincorporated Areas	540020	July 8, 1975, Emerg; March 18, 1991, Reg; June 18, 2010, Susp.	.....do	Do.
Region IV				
Georgia:				
Cumming, City of, Forsyth County	130236	July 23, 1975, Emerg; August 1, 1986, Reg; June 18, 2010, Susp.	.....do	Do.
Duluth, City of, Gwinnett County	130098	December 17, 1975, Emerg; June 1, 1981, Reg; June 18, 2010, Susp.	.....do	Do.
Forsyth County, Unincorporated Areas	130312	April 12, 1977, Emerg; July 4, 1989, Reg; June 18, 2010, Susp.	.....do	Do.
Gibson, City of, Glascock County	130091	May 7, 1976, Emerg; July 17, 1986, Reg; June 18, 2010, Susp.	.....do	Do.
Gwinnett County, Unincorporated Areas	130322	April 9, 1975, Emerg; June 15, 1981, Reg; June 18, 2010, Susp.	.....do	Do.
Jasper County, Unincorporated Areas	130519	January 24, 1995, Emerg; May 6, 1996, Reg; June 18, 2010, Susp.	.....do	Do.
Johns Creek, City of, Fulton County	130678	N/A, Emerg; August 18, 2009, Reg; June 18, 2010, Susp.	.....do	Do.
Monticello, City of, Jasper County	130510	October 3, 1994, Emerg; June 18, 2010, Reg; June 18, 2010, Susp.	.....do	Do.
Mississippi:				
Blue Mountain, Town of, Tippah County	280172	April 29, 1975, Emerg; July 3, 1986, Reg; June 18, 2010, Susp.	.....do	Do.
Magnolia, City of, Pike County	280297	December 21, 1978, Emerg; July 1, 1987, Reg; June 18, 2010, Susp.	.....do	Do.
McComb, City of, Pike County	280132	July 18, 1975, Emerg; August 1, 1979, Reg; June 18, 2010, Susp.	.....do	Do.
Pike County, Unincorporated Areas	280278	May 13, 1980, Emerg; September 15, 1989, Reg; June 18, 2010, Susp.	.....do	Do.
Ripley, City of, Tippah County	280173	August 6, 1975, Emerg; June 4, 1987, Reg; June 18, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Tippah County, Unincorporated Areas ..	280282	October 31, 2008, Emerg; June 18, 2010, Reg; June 18, 2010, Susp.	.....do	Do.
Walnut, Town of, Tippah County	280328	August 10, 2007, Emerg; November 1, 2007, Reg; June 18, 2010, Susp.	.....do	Do.
Tennessee: Hancock County, Unincorporated Areas	470226	March 15, 1995, Emerg; September 1, 2002, Reg; June 18, 2010, Susp.	.....do	Do.
Region V				
Illinois:				
Gladstone, Village of, Henderson County.	170279	October 25, 1974, Emerg; March 9, 1984, Reg; June 18, 2010, Susp.	.....do	Do.
Gulfport, Village of, Henderson County	170280	March 12, 1974, Emerg; October 15, 1985, Reg; June 18, 2010, Susp.	.....do	Do.
Henderson County, Unincorporated Areas.	170277	April 12, 1974, Emerg; March 4, 1986, Reg; June 18, 2010, Susp.	.....do	Do.
Lomax, Village of, Henderson County ..	170281	July 24, 1974, Emerg; April 3, 1984, Reg; June 18, 2010, Susp.	.....do	Do.
Oquawka, Village of, Henderson County.	170282	April 30, 1974, Emerg; June 1, 1983, Reg; June 18, 2010, Susp.	.....do	Do.
Ohio:				
London, City of, Madison County	390366	January 15, 1976, Emerg; July 2, 1987, Reg; June 18, 2010, Susp.	.....do	Do.
Madison County, Unincorporated Areas	390773	March 20, 1978, Emerg; February 6, 1991, Reg; June 18, 2010, Susp.	.....do	Do.
West Jefferson, Village of, Madison County.	390638	July 24, 1991, Emerg; June 18, 2010, Reg; June 18, 2010, Susp.	.....do	Do.
Girard, City of, Trumbull County	390536	August 27, 1975, Emerg; July 2, 1980, Reg; June 18, 2010, Susp.	.....do	Do.
Hubbard, City of, Trumbull County	390537	June 9, 1975, Emerg; August 15, 1978, Reg; June 18, 2010, Susp.	.....do	Do.
McDonald, Village of, Trumbull County	390538	July 7, 1975, Emerg; August 8, 1979, Reg; June 18, 2010, Susp.	.....do	Do.
Newton Falls, City of, Trumbull County	390539	March 23, 1973, Emerg; August 1, 1978, Reg; June 18, 2010, Susp.	.....do	Do.
Niles, City of, Trumbull County	390540	March 5, 1974, Emerg; June 1, 1978, Reg; June 18, 2010, Susp.	.....do	Do.
Orangeville, Village of, Trumbull County	390751	May 28, 1976, Emerg; September 4, 1987, Reg; June 18, 2010, Susp.	.....do	Do.
Trumbull County, Unincorporated Areas	390535	March 16, 1973, Emerg; September 29, 1978, Reg; June 18, 2010, Susp.	.....do	Do.
Warren, City of, Trumbull County	390541	September 29, 1972, Emerg; August 1, 1977, Reg; June 18, 2010, Susp.	.....do	Do.
Region VI				
Arkansas:				
Blytheville, City of, Mississippi County ..	050140	August 16, 1974, Emerg; September 21, 1982, Reg; June 18, 2010, Susp.	.....do	Do.
Dyess, City of, Mississippi County	050143	September 10, 1975, Emerg; January 17, 1986, Reg; June 18, 2010, Susp.	.....do	Do.
Joiner, City of, Mississippi County	050145	September 8, 1975, Emerg; September 21, 1982, Reg; June 18, 2010, Susp.	.....do	Do.
Keiser, City of, Mississippi County	050146	April 3, 1975, Emerg; September 21, 1982, Reg; June 18, 2010, Susp.	.....do	Do.
Leachville, City of, Mississippi County ..	050147	April 11, 1975, Emerg; June 25, 1976, Reg; June 18, 2010, Susp.	.....do	Do.
Luxora, City of, Mississippi County	050148	June 23, 1975, Emerg; February 1, 1987, Reg; June 18, 2010, Susp.	.....do	Do.
Manila, City of, Mississippi County	050149	June 13, 1975, Emerg; July 20, 1982, Reg; June 18, 2010, Susp.	.....do	Do.
Marie, Town of, Mississippi County	050150	July 15, 1975, Emerg; March 22, 1982, Reg; June 18, 2010, Susp.	.....do	Do.
Osceola, City of, Mississippi County	050151	June 5, 1974, Emerg; June 30, 1976, Reg; June 18, 2010, Susp.	.....do	Do.
Mississippi County, Unincorporated Areas.	050452	July 6, 1979, Emerg; November 1, 1985, Reg; June 18, 2010, Susp.	.....do	Do.
Wilson, City of, Mississippi County	050153	April 24, 1975, Emerg; June 25, 1976, Reg; June 18, 2010, Susp.	.....do	Do.
Oklahoma:				
Elmore City, City of, Garvin County	400374	December 19, 1977, Emerg; July 20, 1982, Reg; June 18, 2010, Susp.	.....do	Do.
Lindsay, City of, Garvin County	400245	February 26, 1975, Emerg; January 6, 1983, Reg; June 18, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Maysville, Town of, Garvin County	400402	February 27, 1978, Emerg; September 30, 1981, Reg; June 18, 2010, Susp.	.....do	Do.
Pauls Valley, City of, Garvin County	400246	December 9, 1976, Emerg; September 17, 1980, Reg; June 18, 2010, Susp.	.....do	Do.
Stratford, Town of, Garvin County	400416	January 26, 1978, Emerg; November 15, 1985, Reg; June 18, 2010, Susp.	.....do	Do.
Region VII				
Nebraska:				
Adams, Village of, Gage County	310089	November 7, 1975, Emerg; March 18, 1985, Reg; June 18, 2010, Susp.	.....do	Do.
Gage County, Unincorporated Areas	310088	July 27, 1984, Emerg; May 1, 1990, Reg; June 18, 2010, Susp.	.....do	Do.
Odell, Village of, Gage County	310094	August 26, 1975, Emerg; June 1, 1987, Reg; June 18, 2010, Susp.	.....do	Do.
Region VIII				
Wyoming:				
Cody, City of, Park County	560038	April 9, 1975, Emerg; February 2, 1984, Reg; June 18, 2010, Susp.	.....do	Do.
Meeteetse, Town of, Park County	560039	September 29, 1975, Emerg; October 1, 1986, Reg; June 18, 2010, Susp.	.....do	Do.
Park County, Unincorporated Areas	560085	March 24, 1983, Emerg; August 1, 1987, Reg; June 18, 2010, Susp.	.....do	Do.
Powell, City of, Park County	560040	July 23, 1975, Emerg; July 15, 1985, Reg; June 18, 2010, Susp.	.....do	Do.

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

Dated: May 28, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2010–13715 Filed 6–7–10; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 75, No. 109
Tuesday, June 8, 2010

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–FV–09–0047]

7 CFR Part 46

Perishable Agricultural Commodities Act: Impact of Post-Default Agreements on Trust Protection Eligibility

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) is proposing to amend the regulations under the Perishable Agricultural Commodities Act (PACA) in response to concerns raised by the industry that sellers may lose their status as trust creditors when they agree orally or in writing, after default on payment, to accept payments over time from financially troubled buyers. The amendment's purpose is to provide greater direction to the industry on maintaining trust protection after a buyer has made or is attempting to make partial payments.

Specifically, if there is a default in payment as defined in the reguations, the amendment would allow a seller, supplier, or agent who has met the eligibility requirements to enter into a written scheduled payment agreement for payment of the past due amount while maintaining its trust eligibility. The length of such an agreement for payment of the past due amount, while still maintaining eligibility for trust protection, could not extend beyond 180 days from the default date. In addition, the unpaid seller, supplier, or agent would be required to cease all collection of past due amounts under a written scheduled payment agreement if the buyer enters into bankruptcy or if the buyer is the respondent in a civil trust action. Any remaining unpaid amounts subject to the scheduled payment agreement would continue to qualify for trust protection.

DATES: Written or electronic comments received by August 9, 2010 will be considered prior to issuance of a final rule.

Additional Information or Comments: You may submit written or electronic comments to PACA Trust Post-Default Comments, AMS, F&V Programs, PACA Branch, 1400 Independence Avenue SW., Room 2095–S, Stop 0242, Washington, DC 20250–0242; *fax:* 202–720–8868; or *Internet: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Phyllis L. Hall or Josephine E. Jenkins, Trade Practices Section, 202–720–6873.

SUPPLEMENTARY INFORMATION:

Background of PACA and Trust Provisions

The Perishable Agricultural Commodities Act (PACA) was enacted in 1930 to promote fair trading in the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. It protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. The PACA also provides a forum to adjudicate or mediate commercial disputes. Licensees who violate the PACA may have their license suspended or revoked, and individuals determined to be responsibly connected to such licensees are restricted from employment or operating in the produce industry for a period of time.

Growing, harvesting, packing, and shipping perishables involve risk: Costs are high, capital is tied up in farmland and machinery, and returns are delayed until the crop is sold. Because of the highly perishable nature of the commodities and distance from selling markets, produce trading is fast moving and often informal. Transactions are consummated in a matter of minutes, frequently while the commodities are en route to their destination. Under such conditions, it is often difficult to check the credit rating of the buyer.

Congress examined the sufficiency of the PACA provisions fifty years after its inception and determined that prevalent financing practices in the perishable agricultural commodities industry were placing the industry in jeopardy. Particularly, Congress focused on the increase in the number of buyers who failed to pay, or were slow in paying their suppliers and the impact of such payment practices on small suppliers who could not withstand a significant loss or delay in receipt of monies owed. Congress was also troubled by the common practice of produce buyers granting liens on their inventories to their lenders, which covered all proceeds and receivables from the sales of perishable agricultural commodities, while the produce suppliers remained unpaid. This practice elevated the lenders to a secured creditor position in the case of the buyer's insolvency, while the sellers of perishable agricultural commodities remained unsecured creditors with little or no legal protection or means of recovery in a suit for damages.

Deeming this situation a "burden on commerce," Congress amended the PACA in 1984 to include a statutory trust provision, which provides increased credit security in the absence of prompt payment for perishable agricultural commodities. The 1984 amendment to the PACA states in relevant part:

> It is hereby found that a burden on commerce in perishable agricultural commodities is caused by financing arrangements under which commission merchants, dealers, or brokers, who have not made payment for perishable agricultural commodities purchased, contracted to be purchased, or otherwise handled by them on behalf of another person, encumber or give lenders a security interest in such commodities, or on inventories of food or other products derived from such commodities, and any receivables or proceeds from the sale of such commodities or products, and that such arrangements are contrary to the public interest. This subsection is intended to remedy such burden on commerce in perishable agricultural commodities and to protect the public interest.

(7 U.S.C. 499e(c)(1)).

Under the 1984 amendment, perishable agricultural commodities, inventories of food or other derivative products, and any receivables or proceeds from the sale of such commodities or products, are to be held in a non-segregated floating trust for the benefit of unpaid sellers. This trust is created by operation of law upon the purchase of such goods, and the produce buyer is the statutory trustee for the benefit of the produce seller. To preserve its trust benefits, the unpaid supplier, seller or agent must give the buyer written notice of intent to preserve its rights under the trust within

30 calendar days after payment was due. Alternatively, as provided in the 1995 amendments to the PACA, a PACA licensee may provide notice of intent to preserve its trust rights by including specific language as part of its ordinary and usual billing or invoice statements.

The trust is a non-segregated "floating trust" made up of all of a buyer's commodity-related assets, under which there may be a commingling of trust assets. There is no need to identify specific trust assets through each step of the accrual and disposal process. Since commingling is contemplated, all trust assets would be subject to the claims of unpaid sellers, suppliers and agents to the extent of the amount owed them. As each supplier gives ownership, possession, or control of perishable agricultural commodities to a buyer, and preserves its trust rights, that supplier becomes a participant in the trust. Section 5(c)(2) of the PACA states in relevant part:

> Perishable agricultural commodities received by a commission merchant, dealer, or broker in all transactions, and all inventories of food or other products derived from perishable agricultural commodities, and any receivables or proceeds from the sale of such commodities or products, shall be held by such commission merchant, dealer, or broker in trust for the benefit of all unpaid suppliers or sellers of such commodities or agents involved in the transaction, until full payment of the sums owing in connection with such transactions has been received by such unpaid suppliers, sellers, or agents.

(7 U.S.C. 499e(c)(2)). Thus, trust participants remain trust beneficiaries until they have been paid in full.

Under the statute, the District Courts of the United States are vested with jurisdiction to entertain actions by trust beneficiaries to enforce payment from the trust. Thus, in the event of business failure, produce creditors may enforce their rights by suing the buyer in federal district court. It is common in this type of trust enforcement action for unpaid sellers to seek a temporary restraining order (TRO) that freezes the bank accounts of a buyer until the trust creditors are paid. Many unpaid sellers have found this a very effective tool to recover payment for produce. Often, a trust enforcement action with a TRO will be the defining moment for the future of a debtor firm. As the TRO freezes the bank accounts of the debtor, the debtor must either pay the trust creditors or attempt to operate a business without access to its bank accounts. This aggressive course of action by unpaid sellers is generally pursued when the sellers are concerned that trust assets are being dissipated.

In the event of a bankruptcy by a produce buyer, that is, the produce "debtor," the debtor's trust assets are not property of the bankruptcy estate and are not available for distribution to secured lenders and other creditors until all valid PACA trust claims have been satisfied. The trust creditors can petition the court for the turnover of the debtor's trust-related assets or alternatively request that the court oversee the liquidation of the inventory and collection of the receivables and disburse the trust proceeds to qualified PACA trust creditors.

Because of the statutory trust provision, produce creditors, including sellers outside the United States, have a far greater chance of recovering money owed them when a buyer goes out of business. However, because attorney's fees are incurred in these kinds of suits it is not always practical to pursue small claims that remain unpaid. Nonetheless, as a result of the PACA trust provisions, unpaid sellers, including those outside the United States, have recovered hundreds of millions of dollars that most likely would not otherwise have been collected.

The PACA trust provisions protect not only growers, but also other firms trading in fruits and vegetables since each buyer in the marketing chain becomes a seller in its own turn and can preserve its own trust assets accordingly. Because each creditor that buys produce can preserve trust assets for the benefit of its own suppliers, any money recovered from a buyer that goes out of business are passed back through preceding sellers until ultimately the grower also realizes the financial benefits of the trust provisions. This is particularly important in the produce industry due to the highly perishable nature of the commodities as well as the many hands such commodities customarily pass through to the end customer.

To gain trust protection under the PACA, the law offers two approaches to unpaid sellers. One option allows PACA licensees to declare at the time of sale that the produce being sold is subject to the PACA trust, providing protection in the event that payment is late or the payment instrument is not honored. This option allows PACA licensees to protect their trust rights by including the following language on invoices or other billing statements:

> The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

(7 U.S.C. 499(c)(4)).

The second option for a PACA licensee to preserve its trust rights, and the sole method for all non-licensed sellers, requires the seller to provide a separate, independent notice to the buyer of its intent to preserve its trust benefits. The notice must include sufficient details to indentify each transaction and be received by the buyer within 30 days after payment becomes due. Since the 1995 amendment to the PACA, the notice is not required to be filed with USDA.

Under current 7 CFR 46.46(e)(2), only transactions with payment terms of 30 days from receipt and acceptance, or less, are eligible for trust protection. Section 46.46(e)(1) of the regulations (7 CFR 46.46(e)(1)) requires that any payment terms beyond "prompt" payment as defined by the regulations, usually 10 days after receipt and acceptance in a customary purchase and sale transaction, must be expressly agreed to before entering into the transaction and reduced to writing. A copy of the agreement must be retained in the files of each party and the payment due date must be disclosed on the invoice or billing statement.

Over the past few years, several federal courts have invalidated the trust rights of unpaid creditors because these creditors agreed in writing, and in some cases, by oral agreement, after default on payment, to accept payments over time from financially troubled buyers. In general, these courts have invalidated the seller's previously perfected trust rights because the agreements were deemed to extend payment terms beyond 30 days.[1]

Many within the industry and the USDA Fruit and Vegetable Industry Advisory Committee have urged the Secretary to amend the PACA regulations to address the impact of post-default agreements on eligibility for trust protection. They have voiced concern that the uncertainty created by court decisions and the silence of the

[1] *See, Paris Foods Corp.* v. *Foresite Foods, Inc.,* No. 1:05–cv–610–WSD, 2007 WL 568841 (N.D. Ga. Feb. 20, 2007); *Bocchi Americas Assoc.* v. *Commerce Fresh Mktg., Inc.,* No. Civ. A. H0402411, 2005 WL 3164240 (S.D. Tex. Nov. 28, 2005); *American Banana Co.* v. *Republic Nat. Bank of N.Y.,* 362 F.3d 33 (2nd Cir. 2004); *Patterson Frozen Foods, Inc.* v. *Crown Foods, Int'l,* 307 F.3d 666, 667 (7th Cir. 2002); *Greg Orchards Produce, Inc.* v. *P. Roncone J.,* 180 F.3d 888, 892 (7th Cir. 1999); *Idahoan Fresh* v. *Advantage Produce, Inc.,* 157 F.3d 197, 205 (3d Cir. 1998); *In re Lombardo Fruit and Produce Co.,* 12 F.3d 806, 809 (8th Cir. 1993); and *Hull* v. *Hauser's Foods, Inc.,* 924 F.2d 777, 781–82 (8th Cir. 1991).

PACA regulations on this matter introduce risk, cost, and unnecessary litigation to the marketing chain.

The court decisions at issue have held that any post-default agreement, whether oral or written, that extends the buyer's obligation to pay the seller's invoices beyond 30 days after receipt and acceptance of the produce abrogates the produce seller's PACA trust rights. These decisions have held that (1) when a seller enters into the post-default agreement, the agreement modifies any valid payment agreement entered into prior to the transaction and therefore voids the trust protection,[2] and (2) post-default agreements that allow for installment payments exceeding 30 days from receipt of produce violate the PACA prompt-pay provisions.[3]

It is our interpretation of the statute and regulations that post-default agreements are not an extension of the 30-day maximum time period for pre-transaction agreements that would result in a waiver of the seller's trust rights; post-default payment agreements are an attempt to collect a debt. The Secretary has long recognized a significant difference between the relative positions of buyers and sellers before a transaction, versus their positions after a buyer defaults on payment. The Secretary has observed that "produce sellers are not in an equal bargaining position with produce purchasers who are in possession of the produce seller's perishable agricultural commodities."[4] After a buyer has defaulted on payment, the seller is at the buyer's mercy. Any agreement reached after default is not an arm's length transaction. The trust is intended to provide protection to the unpaid seller whose bargaining position has changed for the worse after delivering its produce to a buyer. We do not believe that a seller's perfected trust rights should be lost because the seller enters into a payment arrangement, in an attempt to collect a debt, after the buyer has violated the PACA's prompt payment requirement.

When a buyer defaults on payment for produce, it has committed a violation of section 2(4) of the PACA (7 U.S.C. 499b(4)). The defaulting buyer's license is then subject to suspension or revocation, or the buyer may be assessed a civil penalty for its violations of the PACA. Allowing a seller who has perfected its trust rights to enter into a post-default payment agreement with the defaulting buyer does not negate the buyer's violations of the Act. The trust is a means to protect the seller's right to payment for produce, not to enforce the prompt payment provisions of the Act. The Secretary can still initiate an enforcement action against the buyer to seek the appropriate sanction for violation of the Act without regard to any post-default agreement entered into between the unpaid seller and the buyer in default.

Many of the court decisions at issue have been based on an interpretation of § 46.46(e) of the regulations (7 CFR 46.46(e)). Section 46.46(e)(1) (7 CFR 46.46(e)(1)) requires that parties who elect to use different times for payment must reduce their agreement to writing before entering into the transaction. Current § 46.46(e)(2) (7 CFR 46.46(e)(2)) states that the maximum time for payment for a shipment to which a seller can agree and still qualify for coverage under the trust is 30 days after receipt and acceptance of the commodities. It is our interpretation that § 46.46(e)(2), like (e)(1) of the regulations (7 CFR 46.46(e)(1) and(e)(2)), addresses pre-transaction agreements only.

This interpretation of our regulations is consistent with the Secretary's unwillingness to impute a waiver of trust rights as illustrated in the policies established by the Secretary and upheld by the courts in the context of the trust provisions of the Packers and Stockyards Act (7 U.S.C. 181 *et seq.*), after which the PACA trust provisions are largely modeled.[5] In the context of the PACA trust, the right to make a claim against the trust are vested in the seller, supplier, or agent who has met the eligibility requirements of paragraphs (e)(1) and (2) of § 46.46 (7 CFR 46.46(e)(1) and (2)). The seller, supplier, or agent remains a beneficiary of the PACA trust until the debt owed is paid in full. An agreement to pay the antecedent debt in installments is not considered payment in full. Thus, we do not believe that a post-default payment agreement should constitute a waiver of a seller's previously perfected trust rights.

Post-default agreements are often the result of a reasonable effort by an unpaid seller, supplier, or agent to recover at least some of the debt owed to it without incurring the risks and expense of protracted litigation. Such agreements should be viewed as a useful tool for recovery of unpaid debts, allowing for cure of a temporary payment delay as can occur in the produce industry due to the perishable nature of the product being bought and sold as well as the often fast-paced and short-term fluctuations in market price due to weather, pests, transportation, and seasonality of supply and demand.

While the potential benefits of post-default agreements are real, we believe such agreements should be subject to regulatory requirements. To ensure that the post-default payment arrangement does not extend beyond a reasonable period, the maximum length of an agreement to accept scheduled payments on the past due amount and maintain eligibility for trust protection could not extend beyond 180 days from the default date. We believe that one hundred eighty days is a reasonable time period during which a firm experiencing minor financial troubles can work out delinquent accounts with its suppliers. Such an arrangement lessens the financial problems that often beset an unpaid produce seller whose market, by its nature, precludes taking the normal steps to secure credit sales. If a seller who has met the requirements of paragraphs (e)(1) and (2) of § 46.46 (7 CFR 46.46)(e)(1) and (2)), is not allowed to enter into a post-default agreement and still maintain its trust protection, the seller is penalized. In such circumstances, the produce debtor is permitted to use the seller for financing and at the same time avoid the impact of the statutory trust. Post-default agreements that allow payments to be made within 180 days following the default on the original payment due date pose no significant risk to the produce industry, but they may allow buyers and sellers more flexibility. Post-default payment agreements can be a practical approach to getting outstanding debts paid without jeopardizing the seller's trust rights, thereby serving to protect the interests of the supplier, buyer, and the fruit and vegetable industry.

In order to maintain trust eligibility, the post-default payment agreement should be in writing. A written agreement, rather than a verbal agreement or course of dealing claim, would constitute a valid post-default agreement. Parties to a written agreement would have material evidence to prove the actual terms of the agreement should litigation become necessary.

When a produce debtor files bankruptcy or if a trust action is filed against the produce debtor, all unpaid sellers of produce should be treated equally. Therefore, an unpaid seller who has entered into a post-default payment agreement must stop accepting payments from the debtor once a

[2] *See American Banana Co.,* 362 F.3d at 33; *Patterson Frozen Foods,* 307 F.3d at 669.

[3] *American Banana Co.,* 362 F.3d at 46.

[4] *See In re: Scamcorp, Inc.,* 57 Agric. Dec. 527, 563 (1998).

[5] *See, e.g., In re Gotham Provision Co., Inc.,* 669 F.2d 1000, 1007 (5th Cir. 1982).

bankruptcy or trust action is filed. Any amount still due under the payment agreement would be subject to the trust.

Section 46.46(e)(1) and (2) of the regulations (7 CFR 46.46(e)(1) and (2)) speak only to the effect of a pre-transaction agreement on the ability of a seller, supplier, or agent to qualify for trust protection. Neither the statute nor current regulation address post-default agreements, nor do they specify any maximum payment terms for post-default agreements. The issuance of a regulation clarifying that post-default agreements do not waive trust rights is within the Secretary's delegated authority (7 U.S.C. 499o), and would be consistent with PACA's purpose and legislative history. Failure to do so may harm interstate commerce in produce that the PACA was enacted to protect. Therefore, we propose to amend PACA regulations as described below.

We propose to amend 7 CFR 46.46(e)(2) by adding the words "prior to the transaction". This change would clarify that the 30-day maximum time period for payment for a shipment to which a seller can agree and still qualify for coverage under the trust relates back to paragraph (e)(1) which refers to pre-transaction agreements.

We also propose to add a new paragraph (e)(3) to 7 CFR 46.46. The new paragraph would provide that in circumstances of a default in payment as defined in § 46.46(a)(3), a seller, supplier, or agent who has met the eligibility requirements of § 46.46 paragraphs (e)(1) and (2) could agree in writing to a schedule for payment of the past due amount and still remain eligible under the trust. The post-default payment agreement could not extend beyond 180 days from the default date. New paragraph (e)(3) would require a seller, supplier or agent who enters into a post-default payment agreement to stop accepting payments under the agreement if the buyer declares bankruptcy or if a temporary restraining order is issued by a district court in a trust action. The remaining outstanding debt would qualify for trust protection. Current 7 CFR 46.46(e)(3) and (4) would be redesignated as (e)(4) and (5).

Executive Orders 12866 and 12988

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget. This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) has defined small agricultural service firms (13 CFR 121.601) as those whose annual receipts are less than $7,000,000. There are approximately 14,400 firms licensed under the PACA, a majority of which could be classified as small entities.

The proposed regulations would clarify that a trust beneficiary who has perfected its trust rights does not forfeit those rights by entering into a post-default agreement to accept partial or installment payments on the amount due. This language would provide companies of all sizes with clear regulatory guidance on this matter, thereby reducing the time and expense associated with litigating matters involving post-default agreements and trust right preservation under the PACA. Therefore, we believe that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with OMB regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are covered by this proposed rule are currently approved under OMB number 0581–0031.

E-Government Act Compliance

AMS is committed to complying with the E-Government Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Forms are available on our PACA Web site at *http://www.ams.usda.gov/paca* and can be printed, completed, and faxed. Currently, forms are transmitted by fax machine and postal delivery.

List of Subjects in 7 CFR Part 46

Definitions, Accounts and records, Duties of licensees, Statutory trust.

For the reasons set forth in the preamble, AMS proposes to amend 7 CFR part 46 as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: 7 U.S.C. 499a–499t.

2. In § 46.46, paragraph (e)(2) is revised, paragraphs (e)(3) and (4) are redesignated as paragraphs (e)(4) and (5), and a new paragraph (e)(3) is added as follows:

§ 46.46 Statutory trust

* * * * *

(e) * * *

(2) The maximum time for payment for a shipment to which a seller, supplier, or agent can agree, prior to the transaction, and still be eligible for benefits under the trust is 30 days after receipt and acceptance of the commodities as defined in § 46.2(dd) and paragraph (a)(1) of this section.

(3) If there is a default in payment as defined in § 46.46(a)(3), the seller, supplier, or agent who has met the eligibility requirements of paragraphs (e)(1) and (2) of this section will not forfeit eligibility under the trust by agreeing in writing to a schedule for payment of the past due amount. The maximum time for payment of a past due amount to which a seller, supplier, or agent can agree, after a default, and still be eligible for benefits under the trust is 180 days from the default date, that is, the original payment due date of the transaction. The seller, supplier, or agent must cease all collections of past due amounts under a scheduled payment agreement if the buyer enters into bankruptcy or if the buyer is ordered to hold its inventory, accounts receivable, and proceeds intact until a determination of trust interest in a civil action. The remaining unpaid amount under the scheduled payment agreement will continue to qualify for trust protection.

* * * * *

Dated: June 2, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing.

[FR Doc. 2010–13634 Filed 6–7–10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2010-0022]

RIN 0579-AD14

Importation of Fresh Unshu Oranges from the Republic of Korea into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of citrus fruit to remove certain restrictions on the importation of Unshu oranges from the Republic of Korea that are no longer necessary. Specifically, we propose to remove requirements for the fruit to be grown in specified canker-free export areas and for joint inspection in the groves and packinghouses by the Government of the Republic of Korea and the Animal and Plant Health Inspection Service. We would also clarify that surface sterilization of the fruit must be conducted in accordance with 7 CFR part 305, and we would expand the area in the continental United States where Unshu oranges from the Republic of Korea may be distributed. Finally, we would require that each shipment be accompanied by a phytosanitary certificate containing an additional declaration stating that the fruit was given the required surface sterilization and inspected and found free of *Elsinoe australis*. These proposed changes would make the regulations concerning the importation of Unshu oranges from the Republic of Korea consistent with our domestic regulations concerning the interstate movement of citrus fruit from areas quarantined because of citrus canker.

DATES: We will consider all comments that we receive on or before August 9, 2010.

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

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0022*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2010-0022, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0022.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Meredith C. Jones, Regulatory Coordination Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737; (301) 734-7467.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a disease that affects citrus and is caused by the infectious bacterium *Xanthomonas citri* subsp. *citri*. Currently, the regulations in 7 CFR 319.28 (referred to below as the regulations) allow the importation of Unshu oranges (*Citrus reticulata* var. *unshu*) from certain areas in Japan and from Cheju Island, Republic of Korea (South Korea), into the United States under permit and after the specified safeguards of a preclearance program have been met to prevent the introduction of citrus canker.

Under the current regulations, Unshu oranges intended for export to the United States from the specified regions in Japan and South Korea must be grown and packed in isolated, canker-free export areas established by the national plant protection organization (NPPO) of the country of origin. The regulations also require the joint inspection of the fruit by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) and the NPPO of the country of origin in the groves prior to and during harvest, and in the packinghouses during packing operations. Surface sterilization of the fruit, as prescribed by the USDA, is required prior to packing. Because commercial citrus-producing areas in the United States have a higher density of citrus plantings than do other areas and unless adequate risk mitigation measures are in place may be more susceptible to the introduction of citrus diseases, Unshu oranges from Cheju Island, South Korea, cannot be imported under the existing regulations into American Samoa, Arizona, California, Florida, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands (referred to collectively in this document as commercial citrus-producing States).

Currently, Unshu oranges from South Korea are only being imported into Alaska. Importation of Unshu oranges from South Korea into other authorized areas of the United States was administratively suspended in 2002 due to an increased number of interceptions of fruit with symptoms of citrus canker during inspection at various packinghouses in South Korea. In 2005, however, the NPPO of South Korea requested that APHIS allow the importation of Unshu oranges into the State of Alaska until the pest risks associated with Unshu oranges from South Korea could be mitigated to a level sufficient to allow shipments to resume to the rest of the United States. In response to that request, APHIS prepared a pest risk analysis (PRA), and on October 25, 2007, we published in the **Federal Register** (72 FR 60537-60541, Docket No. APHIS-2006-0133) a final rule allowing Unshu oranges into Alaska, provided that the oranges were prepared for shipping in accordance with our requirements for culling, cleaning, and labeling and were accompanied by a phytosanitary certificate stating that the fruit was inspected and determined to be free of citrus canker and arrowhead scale.

The NPPO of the Republic of Korea has more recently submitted a request to APHIS to allow the importation of Unshu oranges from Cheju Island, Republic of Korea, into the continental United States. In response to that request, we have developed an updated PRA, which is based on the previous PRA for imports into Alaska and which incorporates new evidence found in the ensuing 2 years. The updated PRA can be viewed on the Internet on the Regulations.gov Web site or in our reading room.[1]

The updated PRA, "Importation of Unshu Orange Fruit, *Citrus reticulata* Blanco var. *unshu* Swingle, from Korea into the Continental United States" (December 2009), identifies two pests, *Xanthomonas citri* subsp. *citri* and *Elsinoe australis* (the causal agents of

[1] Instructions on accessing Regulations.gov and information on the location and hours of the reading room may be found at the beginning of this document under **ADDRESSES**. You may also request paper copies of the risk analysis by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**.

citrus canker and sweet orange scab, respectively), that are associated with Unshu oranges as quarantine pests. A quarantine pest is defined by the International Plant Protection Convention as "a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled."[2] *Elsinoe australis*, which we have considered to be a quarantine pest, had not been identified previously as such in relation to the importation of Unshu oranges from South Korea because it had not been known to be present in that country. It was detected in South Korea, however, in 2009. Conversely, arrowhead scale, *Unaspis yanonensis*, which we had identified as a quarantine pest in the earlier version of the PRA that we published in conjunction with the rulemaking allowing Unshu oranges from South Korea to be imported into Alaska, does not fall into that category in the updated PRA. A recent critical review of the scientific literature and our own operational data led us to conclude that, even assuming high quantities of imported fruit infested with armored scale species, such as arrowhead scale, the specific pathway represented by commercially produced fruit shipped without leaves, stems, or contaminants, in accordance with our general requirements for the importation of fruits and vegetables in § 319.56-3, poses an extremely low risk of introducing such pests to the U.S. citrus crop.

In our updated PRA, the two identified quarantine pests, *Xanthomonas citri* subsp. *citri* and *Elsinoe australis*, were rated as having a medium pest risk potential. Pests receiving a rating within the medium range may require specific phytosanitary measures in addition to standard port-of-entry inspection.

The PRA included a risk management document outlining the conditions under which Unshu oranges from Cheju Island, Republic of Korea, could safely be imported into the continental United States and Alaska. The conditions include surface treatment of the fruit in accordance with 7 CFR part 305 prior to packing, registration of the packinghouse in which the treatment is applied and the fruit is packed with the NPPO of South Korea, and certification that the fruit has been treated in accordance with the regulations and has been inspected and found to be free of sweet orange scab. Scientific evidence indicates that commercially packed and disinfected fresh citrus fruit is not an epidemiologically significant pathway for the spread of *Xanthomonas citri* subsp. *citri*. Therefore, Unshu oranges from South Korea meeting those conditions can be imported into the United States without posing an epidemiologically significant risk to the U.S. citrus crop of infection with citrus canker. Inspection by the NPPO of South Korea of Unshu oranges for symptoms of sweet orange scab prior to export is considered to offer adequate protection against introducing that disease to the U.S. citrus crop because the symptoms can be detected if present, and if the symptoms are not present, the Unshu oranges are unlikely to be a pathway for sweet orange scab.

We are therefore proposing to incorporate those requirements into the regulations in § 319.28 pertaining to the importation of Unshu oranges from South Korea. (As noted above, the existing regulations do require surface sterilization of the fruit as prescribed by the USDA. Because we have determined that the use of a post-harvest disinfectant in accordance with 7 CFR part 305 is the most effective mitigation for citrus canker, we are proposing to state explicitly that the treatment must be conducted in accordance with part 305.)[3] We are also proposing additional changes that would eliminate certain requirements associated with the importation of Unshu oranges from South Korea that we consider no longer to be necessary. Specifically, we would remove the requirements for the oranges to be grown in specified canker-free areas and for joint inspection of the fruit by the South Korean NPPO and APHIS prior to and during harvest and in the packinghouses during packing operations.

Some of the changes we are proposing, in addition to eliminating restrictions that are no longer necessary, would also help to harmonize the regulations with our domestic citrus canker regulations. In a final rule published in the **Federal Register** on October 22, 2009 (74 FR 54431-54445, Docket No. APHIS-2009-0023), we amended the conditions under which fruit may be moved interstate from an area quarantined for citrus canker by removing certain restrictions that we considered to be no longer necessary. That final rule removed a requirement for an APHIS inspector to be in the packinghouse and inspect fruit leaving an area quarantined for citrus canker, as well as a prohibition on the interstate movement of citrus fruit from quarantined areas to commercial citrus-producing States. Our proposed removal of the requirements for Unshu oranges exported to the United States to have been produced in specified canker-free areas and jointly inspected by the NPPO of South Korea and APHIS in the groves and packinghouses, and our proposed removal of the prohibition on the exportation of the fruit into commercial citrus-producing States in the continental United States would parallel those changes to the domestic regulations. Similarly, our proposed requirement that South Korean packinghouses be registered with the NPPO of South Korea would also contribute to harmonizing our import requirements with our domestic ones by paralleling a requirement in § 301.75-7 that owners or operators of packinghouses where packing of fruit regulated for citrus canker occurs enter into compliance agreements with APHIS.

Reorganization of the Regulations Pertaining to the Importation of Unshu Oranges

The requirements for the importation of Unshu oranges from Japan and South Korea are contained in § 319.28(b) and (c) of the current regulations. Paragraph (b) contains provisions applicable to imports from both countries, while the requirements governing the importation of Unshu oranges from South Korea into Alaska, codified in our October 2007 final rule, are found in paragraph (c). Because our PRA covered imports from South Korea only, we are not proposing to make any changes at this time to the requirements regarding the importation of Unshu oranges from Japan. The import requirements discussed in paragraph (b) that heretofore have applied to both countries would, under this proposed rule, remain in effect only for Japan. It is, therefore, necessary to reorganize paragraphs (b) and (c) of § 319.28 to separate the provisions for South Korea and Japan. Under this proposed rule, the requirements for the importation of Unshu oranges from Japan would continue to be contained in paragraph (b). The proposed requirements discussed above pertaining to the importation of Unshu oranges from South Korea would be located in paragraph (c). Since the importation of Unshu oranges into

[2] International Plant Protection Convention Glossary, (*https://www.ippc.int/index.php?id=1110483*), 2007.

[3] Part 305 contains requirements for administering approved treatments. As noted in § 305.2(b), approved treatment schedules are set out in the Plant Protection and Quarantine Treatment Manual, available at (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatment.shtml*). The approved citrus canker treatment schedule for imported citrus fruit is the same as that for domestic citrus fruit.

Alaska would be subject to the same conditions as fruit imported into other areas of the United States, the Alaska-specific requirements contained in current paragraph (c) would be removed.

Proposed paragraph (c)(1) would state that before packing, the oranges would have to be given a surface sterilization in accordance with part 305. Paragraph (c)(2) would contain the requirement for the packinghouse to be registered with the NPPO of the Republic of Korea. Paragraph (c)(3) would state that the oranges would have to be accompanied by a phytosanitary certificate issued by the NPPO of South Korea that would include an additional declaration stating that the fruit was subjected to the required sterilization and was inspected and found free of *Elsinoe australis*, the causal agent of sweet orange scab. Finally, paragraph (c)(4) would state that the Unshu oranges could be imported into any area of the United States except Hawaii and the U.S. territories listed in that paragraph. The PRA did not evaluate the risk of importing Unshu oranges from South Korea into Hawaii and the listed territories, so we would not remove the restrictions on such imports.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

This proposed rule would remove certain restrictions on the importation of Unshu oranges from South Korea that are no longer necessary and expand the area in the continental United States where Unshus from South Korea may be distributed.

The impact of Unshu orange imports from South Korea is expected to be minimal for U.S. domestic producers. The United States does not commercially produce Unshu oranges, and price differences suggest that they are not a close substitute for U.S.-grown mandarin varieties, such as tangerines. Effects of the proposed rule in terms of product displacement may be borne by Japanese exporters, since Japan is currently the other major supplier of Unshu oranges to the United States.

Even if all Unshu orange imports from South Korea were to directly replace a portion of U.S.-grown tangerine consumption, the effect on U.S. producers would be still insignificant. Under such a scenario, annual imports of Unshu oranges from South Korea of 2,000 metric tons (the upper limit of the projected range of imports, which would well surpass the peak import volume of 1,611 metric tons recorded in 2002) would displace only 0.6 percent of fresh tangerines produced by U.S. operations in 2008-2009. Even a small impact such as this for U.S. producers is highly unlikely.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow Unshu oranges to be imported into the United States from Cheju Island, Republic of Korea. If this proposed rule is adopted, State and local laws and regulations regarding Unshu oranges imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319–FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.28 is amended by revising paragraphs (b) and (c) to read as follows:

§ 319.28 Notice of quarantine.

* * * * *

(b) *Unshu oranges from Japan.* The prohibition does not apply to Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, Swingle [*Citrus unshiu* Marcovitch, Tanaka]), also known as Satsuma mandarin, grown in Japan and imported under permit into any area of the United States except for those areas specified in paragraph (b)(7) of this section: *Provided*, that each of the following safeguards is fully carried out:

(1) The Unshu oranges must be grown and packed in isolated, canker-free export areas established by the plant protection service of Japan. Only Unshu orange trees may be grown in these areas, which must be kept free of all citrus other than the propagative material of Unshu oranges. The export areas must be inspected and found free of citrus canker and prohibited plant material by qualified plant protection officers of both Japan and the United States. The export areas must be surrounded by 400-meter-wide buffer zones. The buffer zones must be kept free of all citrus other than the following 10 varieties: Buntan Hirado (*Citrus grandis*); Buntan Vietnam (*C. grandis*); Hassaku (*C. hassaku*); Hyuganatsu (*C. tamurana*); Kinkan (*Fortunella* spp. non *Fortunella hindsii*); Kiyomi tangor (hybrid); Orange Hyuga (*C. tamurana*); Ponkan (*C. reticulata*); Unshu (*C.* unshiu Marcovitch, Tanaka [*Citrus reticulata* Blanco var. *unshu*, Swingle]); and Yuzu (*C. junos*). The buffer zones must be inspected and found free of citrus canker and prohibited plant material by qualified plant protection officers of both Japan and the United States.

(2) In Unshu orange export areas and buffer zones on Kyushu Island, Japan, trapping for the citrus fruit fly (*Bactrocera tsuneonis*) must be conducted as prescribed by the Japanese Government's Ministry of Agriculture, Forestry, and Fisheries and the U.S. Department of Agriculture. If fruit flies are detected, then shipping will be suspended from the export area until negative trapping shows the problem has been resolved.

(3) Inspection of the Unshu oranges shall be performed jointly by plant protection officers of Japan and the United States in the groves prior to and during harvest, and in the packinghouses during packing operations.

(4) Before packing, such oranges shall be given a surface sterilization as prescribed by the U.S. Department of Agriculture.

(5) To be eligible for importation into Arizona, California, Florida, Hawaii, Louisiana, or Texas, each shipment of oranges grown on Honshu Island or Shikoku Island, Japan, must be fumigated with methyl bromide in accordance with part 305 of this chapter after harvest and prior to exportation to the United States. Fumigation will not be required for shipments of oranges grown on Honshu Island or Shikoku Island, Japan, that are to be imported into States other than Arizona, California, Florida, Hawaii, Louisiana, or Texas.

(6) The identity of the fruit shall be maintained in the following manner:

(i) The individual boxes in which the oranges are shipped must be stamped or printed with a statement specifying the States into which the Unshu oranges may be imported, and from which they are prohibited removal under a Federal plant quarantine.

(ii) Each shipment of oranges handled in accordance with these procedures shall be accompanied by a certificate of the plant protection service of Japan certifying that the fruit is apparently free of citrus canker disease.

(7) The Unshu oranges may be imported into the United States only through a port of entry identified in § 319.37-14 that is located in an area of the United States into which their importation is authorized. The following importation restrictions apply:

(i) Unshu oranges from Honshu Island or Shikoku Island, Japan, that have been fumigated in accordance with part 305 of this chapter may be imported into any area of the United States except American Samoa, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(ii) Unshu oranges from Honshu Island or Shikoku Island, Japan, and from Kyushu Island, Japan (Prefectures of Fukuoka, Kumanmoto, Nagasaki, and Saga only), that have not been fumigated in accordance with part 305 of this chapter may be imported into any area of the United States except American Samoa, Arizona, California, Florida, Hawaii, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the U.S. Virgin Islands.

(c) *Unshu oranges from the Republic of Korea.* The prohibition does not apply to Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, Swingle [*Citrus unshiu* Marcovitch, Tanaka]), also known as Satsuma mandarin, grown on Cheju Island, Republic of Korea, and imported under permit into any area of the United States except for those specified in paragraph (c)(4) of this section, *Provided*, that each of the following safeguards is fully carried out:

(1) Before packing, such oranges shall be given a surface sterilization in accordance with part 305 of this chapter.

(2) The packinghouse in which the surface sterilization treatment is applied and the fruit is packed must be registered with the national plant protection organization of the Republic of Korea.

(3) The Unshu oranges must be accompanied by a phytosanitary certificate issued by the national plant protection organization of the Republic of Korea, which includes an additional declaration stating that the fruit was given a surface sterilization in accordance with 7 CFR part 305 and was inspected and found free of *Elsinoe australis*.

(4) The Unshu oranges may be imported into any area of the United States except American Samoa, Hawaii, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

* * * * *

Done in Washington, DC, this 2nd day of June 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–13718 Filed 6–7–10: 6:37 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1755

Specifications and Drawings for Construction Direct Buried Plant

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Rural Utilities Service (RUS) proposes to amend its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction, by revising RUS Bulletin 1753F–150, Specifications and Drawings for Construction of Direct Buried Plant (Form 515a). The revised specification will include new construction units for Fiber-to-the-Home, remove redundant or outdated requirements, and simplify the specification format.

DATES: Written comments must be received by RUS or be postmarked no later than August 9, 2010.

ADDRESSES: Submit comments by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower "Search Regulations and Federal Actions" box, select "Rural Utilities Service" from the agency drop-down menu, then click on "Submit." In the Docket ID column, select RUS–2010–Telecom-0003 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

Postal Mail/Commercial Delivery: Please send your comment addressed to Michele Brooks, Director, Program Development and Regulatory Analysis, USDA–Rural Utilities Service, 1400 Independence Avenue, STOP 1522, Room 5159, Washington, DC 20250–1522. Please state that your comment refers to Docket No. RUS–2010–Telecom-0003.

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

FOR FURTHER INFORMATION CONTACT: Norberto Esteves, Chair, Technical Standards Committee "A" (Telecommunications), Advanced Services Division, Telecommunications Program, USDA–Rural Utilities Service, STOP 1550, Washington, DC 20250–1550. Telephone: (202) 720–0699; Fax: (202) 205–2924; e-mail: *norberto.esteves@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is exempted from the Office of Management and Budget (OMB) review for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. USDA Rural Development has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this proposed rule will be preempted; no retroactive effect will be given to the rule, and, in accordance

with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

USDA Rural Development has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The standard USDA Rural Development telecommunications loan documents contain provisions on procurement of products and construction of telecommunications facilities purchased with loan funds. This ensures that the telecommunications systems financed with loan funds are adequate to serve the purposes for which they are to be constructed and that loan funds are adequately secured. UDSA Rural Development borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct cost associated with complying with UDSA Rural Development regulations and requirements.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this proposed rule are cleared under control numbers 0572–0059 and 0572–0132 pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this proposed rule does not have sufficient federalism implications requiring the preparation the preparation of a Federalism Assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Program under No. 10.851, Rural Telephone Loans and Loan Guarantees and No. 10.857, Rural Broadband Access Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402. Telephone: (202) 512–1800.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034), advising that USDA Rural Development Utilities Programs loans and loan guarantees are excluded from the scope of Executive Order 12372.

Unfunded Mandates

This proposed rule contains no Federal Mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. Chapter 25)) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act Certification

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

Background

RUS issues contracts, standards and specification for construction of telecommunications facilities financed with RUS loan funds. RUS is proposing to revise the specifications for buried plant construction contained in RUS Bulletin 1753F–150 (RUS Form 515a).

The current outside plant specifications are used by borrowers to secure the services of a contractor for the construction of telecommunications facilities. Because of Fiber-to-the-Home construction and advancements made in construction installation methods and materials, the present specifications have become outdated. To allow borrowers and contractors to take advantage of these improved construction installation methods and materials, the current specification will be revised.

The proposed bulletin is available from the Agency. Interested parties may obtain copies from Norberto Esteves, Chair, Technical Standards Committee "A" (Telecommunications), Advanced Services Division, Telecommunications Program, USDA–Rural Utilities Service, Room 2849, South Building, Washington, DC 20250–1550. Telephone: (202) 720–0699.

List of Subjects in 7 CFR Part 1753

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, RUS proposes to amend chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS POLICIES ON SPECIFICATIONS, ACCEPTABLE MATERIALS, AND STANDARD CONTRACT FORMS

1. The authority citation for part 1755 continues to read as follow:

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

2. In § 1755.97, the table is amended by revising the issue date of RUS Bulletin 1753F–150 to read as follows:

§ 1755.97 Incorporation by reference of telecommunications standards and specifications.

* * * * *

RUS bulletin No.	Specification No.	Date last issued	Title of standard or specification
*	*	*	*
1753F–150	Form 515a	[Effective date of final rule]	Specifications and Drawings for Construction of Direct Buried Plant.
*	*	*	*

Dated: May 18, 2010.

Jessica Zufolo,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2010–12830 Filed 6–7–10; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0329; Directorate Identifier 2010–CE–016–AD]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With Rotax Aircraft Engines 912 A Series Engines

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

Due to high fuel pressure, caused by exceeding pressure in front of the mechanical fuel pump (*e.g.* due to an electrical fuel pump), in limited cases a deviation in the fuel supply could occur. This can result in exceeding of the fuel pressure and might cause engine malfunction and/or massive fuel leakage.

We are proposing this AD to prevent the pump from causing excessive fuel pressure, which could result in engine malfunction or a massive fuel leak. These conditions could cause loss of control of the airplane or a fire.

DATES: We must receive comments on this proposed AD by July 23, 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 W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; e-mail: *sarjapur.nagarajan@faa.gov.*

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–2010–0329; Directorate Identifier 2010–CE–016–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2007–0060R1–E, dated April 20, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Due to high fuel pressure, caused by exceeding pressure in front of the mechanical fuel pump (*e.g.* due to an electrical fuel pump), in limited cases a deviation in the fuel supply could occur. This can result in exceeding of the fuel pressure and might cause engine malfunction and/or massive fuel leakage.

Non-compliance with these instructions could result in engine damages, personal injuries or death.

The MCAI requires replacing the affected fuel pumps with a different part number fuel pump.

The MCAI applies to all versions of Bombardier-Rotax GmbH 912 A, 912 F, and 912 S series engines. Versions of the 912 F series and 912 S series engines are type certificated in the United States. However, the Model 912 A series engine installed in various aircraft does not have an engine type certificate; instead, the engine is part of the aircraft type design. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Rotax Aircraft Engines has issued Service Bulletin SB–912–053, dated April 13, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed 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

We estimate that this proposed AD will affect 60 products of U.S. registry. We also estimate that it would take about .5 work-hour per product to

comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $650 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $41,550, or $692.50 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:

Various Aircraft: Docket No. FAA–2010–0329; Directorate Identifier 2010–CE–016–AD.

Comments Due Date

(a) We must receive comments by July 23, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all serial numbers of the following aircraft, equipped with a Rotax Aircraft Engines 912 A series engine with fuel pumps, part numbers (P/Ns) 892230, 892232, 892540 (standard version) or P/Ns 892235, 892236, 892545 (version including flexible fuel line) installed, and certificated in any category:

Type certificate holder	Aircraft model	Engine model
Aeromot-Industria Mecanico Metalurgica ltda.	AMT–200	912 A2.
Diamond Aircraft Industries	HK 36 R "SUPER DIMONA"	912 A.
Diamond Aircraft Industries GmbH	HK 36 TS	912 A3
	HK 36 TC	912 A3.
Diamond Aircraft Industries Inc.	DA20–A1	912 A3.
HOAC–Austria	DV 20 KATANA	912 A3.
Iniziative Industriali Italiane S.p.A.	Sky Arrow 650 TC	912 A2.
SCHEIBE–Flugzeugbau GmbH	SF 25C	912 A2 or 912 A3.

Subject

(d) Air Transport Association of America (ATA) Code 73: Engine Fuel and Control.

Reason

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

Due to high fuel pressure, caused by exceeding pressure in front of the mechanical fuel pump (*e.g.* due to an electrical fuel pump), in limited cases a deviation in the fuel supply could occur. This can result in exceeding of the fuel pressure and might cause engine malfunction and/or massive fuel leakage.

Non-compliance with these instructions could result in engine damages, personal injuries or death.

We are issuing this AD to prevent the pump from causing excessive fuel pressure, which could result in engine malfunction or a massive fuel leak. These conditions could cause loss of control of the airplane or a fire. The MCAI requires replacing the affected fuel pumps with a different part number fuel pump.

Actions and Compliance

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

(1) Within the next 25 hours time-in-service after the effective date of this AD, replace fuel pump P/N 892230, 892232, 892540, 892235, 892236, or 892545 with an FAA-approved fuel pump that does not have one of the P/Ns referenced above following Rotax Aircraft Engines Service Bulletin SB–912–053, dated April 13, 2007.

(2) As of the effective date of this AD do not install fuel pump P/N 892230, 892232, 892540, 892235, 892236, or 892545, on any airplane.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI requires replacing an affected fuel pump with fuel pump P/N 892542 or 892546. This AD requires replacement of an affected fuel pump with an FAA-approved fuel pump that does not have one of the P/Ns referenced in paragraph (f)(1) of this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; e-mail: *sarjapur.nagarajan@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate

principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA AD No.: 2007–0060R1–E, dated April 20, 2007; and Rotax Aircraft Engines Service Bulletin SB–912–053, dated April 13, 2007, for related information. Contact BRP-Powertrain GMBH & Co KG, Welser Strasse 32, A–4623 Gunskirchen, Austria; phone: (+43) (0) 7246 601–0; fax: (+43) (0) 7246 6370; Internet: *http://www.rotax.com,* for a copy of this service information.

Issued in Kansas City, Missouri, on May 26, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–13170 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0453; Airspace Docket No. 10–AAL–14]

Proposed Revocation of Colored Federal Airway G–4; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Colored Federal Airway Green 4 (G–4) from the National Airspace System (NAS) in Alaska. The FAA is proposing this action in preparation of the eventual decommissioning from the NAS of the Wood River (BTS) Non-directional Beacon (NDB) near the town of Dillingham, Alaska.

DATES: Comments must be received on or before July 23, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2010–0453 and Airspace Docket No. 10–AAL–14 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0453 and Airspace Docket No. 10–AAL–14) and be submitted in triplicate to the Docket Management Facility (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–0453 and Airspace Docket No. 10–AAL–14." The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by removing Colored Federal airway G–4 associated with the planned BTS NDB decommissioning near Dillingham, AK. The BTS NDB has been non-operational for over two years.

Colored Federal Airways are published in paragraph 6009 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway listed in this document will be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would remove a colored Federal airway in Alaska.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6009(a)—Green Federal Airways.

* * * * *

G–4 [Removed]

Issued in Washington, DC, May 27, 2010.

Kenneth McElroy,

Acting Manager, Airspace and Rules Group.

[FR Doc. 2010–13609 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234, 244, 250, 253, 259, and 399

[Docket No. DOT–OST–2010–0140]

RIN No. 2105–AD92

Enhancing Airline Passenger Protections

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Department of Transportation is proposing to improve the air travel environment for consumers by: increasing the number of carriers that are required to adopt tarmac delay contingency plans and the airports at which they must adhere to the plan's terms; increasing the number of carriers that are required to report tarmac delay information to the Department; expanding the group of carriers that are required to adopt, follow, and audit customer service plans and establishing minimum standards for the subjects all carriers must cover in such plans; requiring carriers to include their contingency plans and customer service plans in their contracts of carriage; increasing the number of carriers that must respond to consumer complaints; enhancing protections afforded passengers in oversales situations, including increasing the maximum denied boarding compensation airlines must pay to passengers bumped from flights; strengthening, codifying and clarifying the Department's enforcement policies concerning air transportation price advertising practices; requiring carriers to notify consumers of optional fees related to air transportation and of increases in baggage fees; prohibiting post-purchase price increases; requiring carriers to provide passengers timely notice of flight status changes such as delays and cancellations; and prohibiting carriers from imposing unfair contract of carriage choice-of-forum provisions. The Department is proposing to take this action to strengthen the rights of air travelers in the event of oversales, flight cancellations and long delays, and to ensure that passengers have accurate and adequate information to make informed decisions when selecting flights. In addition, the Department is considering several measures, including banning the serving of peanuts on commercial airlines, to provide greater access to air travel for the significant number of individuals with peanut allergies.

DATES: Comments should be filed by August 9, 2010. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2010–0140 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 Ave., SE., Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., 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 and docket number DOT–OST–2010–XXXX or the Regulatory Identification Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, a business, a labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Daeleen Chesley or Blane A. Workie, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), *daeleen.chesley@dot.gov* or *blane.workie@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Pilot Project on Open Government and the Rulemaking Process

On January 21st, 2009, President Obama issued a *Memorandum on*

Transparency and Open Government in which he described how "public engagement enhances the Government's effectiveness and improves the quality of its decisions" and how "knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge." To support the President's open government initiative, DOT plans to continue its partnership with the Cornell eRulemaking Initiative (CeRI) in a pilot project, Regulation Room, to discover the best ways of using Web 2.0 and social networking technologies to: (1) Alert the public, including those who sometimes may not be aware of rulemaking proposals, such as individuals, public interest groups, small businesses, and local government entities, that rulemaking is occurring in areas of interest to them; (2) increase public understanding of each proposed rule and the rulemaking process; and (3) help the public formulate more effective individual and collaborative input to DOT. We anticipate, over the course of several rulemaking initiatives, that CeRI will use different Web technologies and approaches to enhance public understanding and participation, work with DOT to evaluate the advantages and disadvantages of these techniques, and report their findings and conclusions on the most effective use of social networking technologies in this area.

DOT and the Obama Administration are striving to increase effective public involvement in the rulemaking process and strongly encourage all parties interested in this rulemaking to visit the Regulation Room Web site, *http://www.regulationroom.org,* to learn about the rule and the rulemaking process, to discuss the issues in the rule with other persons and groups, and to participate in drafting comments that will be submitted to DOT. A Summary of the discussion that occurs on the Regulation Room site and participants will have the chance to review a draft and suggest changes before the Summary is submitted. Participants who want to further develop ideas contained in the Summary, or raise additional points, will have the opportunity to collaboratively draft joint comments that will be also be submitted to the rulemaking docket before the comment period closes.

Note that Regulation Room is not an official DOT Web site, and so participating in discussion on that site is not the same as commenting in the rulemaking docket. The Summary of discussion and any joint comments prepared collaboratively on the site will become comments in the docket when they are submitted to DOT by CeRI. At any time during the comment period, anyone using Regulation Room can also submit individual views to the rulemaking docket through the federal rulemaking portal Regulations.gov, or by any of the other methods identified at the beginning of this Notice. For questions about this project, please contact Brett Jortland in the DOT Office of General Counsel at 202–421–9216 or *brett.jortland@dot.gov.*

Summary of Preliminary Regulatory Analysis

The preliminary regulatory analysis suggests that the benefits of the proposed requirements exceed its costs, even without considering non-quantifiable benefits. This analysis, outlined in the table below, finds that the expected net present value of the rule for 10 years at a 7% discount rate is estimated to be $61.6 million. At a 3% discount rate, the expected net present value of the rule is estimated to be $75.7 million.

	Present value (millions)
Total Quantified Benefits:	
10 Years, 7% discounting	$87.6
10 Years, 3% discounting	104.2
Total Quantified Costs:	
10 Years, 7% discounting	26.0
10 Years, 3% discounting	28.5
Net Benefits:	
10 Years, 7% discounting	61.6
10 Years, 3% discounting	75.7

A comparison of the estimated benefits and costs for each of the 11 proposed requirements is provided in the Regulatory Analysis and Notices section, along with information on additional benefits and costs for which quantitative estimates could not be developed.

Background

On December 8, 2008, the Department published a Notice of Proposed Rulemaking (NPRM) on enhancing airline passenger protections. *See* 73 FR 74586 (December 8, 2008). After reviewing and considering the comments on the NPRM, on December 30, 2009, the Department published a final rule in which the Department required certain U.S. air carriers to adopt contingency plans for lengthy tarmac delays; respond to consumer problems; post flight delay information on their Web sites; and adopt, follow, and audit customer service plans. The rule also defined chronically delayed flights and deemed them to be an "unfair and deceptive" practice. That rule took effect on April 29, 2010. *See* 74 FR 68983 (December 30, 2009).

In the preamble to the final rule, the Department noted that it planned to review additional ways to further enhance protections afforded airline passengers and listed a number of subject areas that it was considering addressing in a future rulemaking. The areas specifically mentioned as being under consideration were as follows: (1) DOT review and approval of contingency plans for lengthy tarmac delays ; (2) reporting of tarmac delay data; (3) standards for customer service plans; (4) notification to passengers of flight status changes; (5) inflation adjustment for denied boarding compensation; (6) alternative transportation for passengers on canceled flights; (7) opt-out provisions where certain optional services are pre-selected for consumers at an additional cost (*e.g.,* travel insurance, seat selection); (8) contract of carriage venue designation provisions; (9) baggage fees disclosure; (10) full fare advertising; and (11) responses to complaints about charter service. This NPRM addresses most of those issues, as well as other matters that we believe are necessary to ensure fair treatment of passengers. We have described each proposal in this NPRM in detail below and invite all interested persons to comment.

Notice of Proposed Rulemaking

1. Tarmac Delay Contingency Plans

The Department's final rule entitled "Enhancing Airline Passenger Protections," which was published in the **Federal Register** on December 30, 2009 (74 FR 68983), requires, among other things, that U.S. carriers adopt tarmac delay contingency plans that include, at a minimum, the following: (1) An assurance that, for domestic flights, the U.S. carrier will not permit an aircraft at a medium or large hub airport to remain on the tarmac for more than three hours unless the pilot-in-command determines there is a safety-related or security-related impediment to deplaning passengers, or Air Traffic Control advises the pilot-in-command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations; (2) for international flights that depart from or arrive at a U.S. airport, an assurance that the U.S. carrier will not permit an aircraft to remain on the tarmac for more than a set number of hours, as determined by the carrier in its plan, before allowing passengers to deplane, unless the pilot-in-command determines there is a safety-related or security-related reason precluding the aircraft from doing so, or Air Traffic Control advises the pilot-in-command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations; (3) for all flights, an assurance that the U.S. carrier will provide adequate food and potable water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security requirements preclude such service; (4) for all flights, an assurance of operable lavatory facilities, as well as adequate medical attention if needed, while the aircraft remains on the tarmac; (5) an assurance of sufficient resources to implement the plan; and (6) an assurance that the plan has been coordinated with airport authorities at all medium and large hub airports that the U.S. carrier serves, including medium and large hub diversion airports. The final rule also requires U.S. carriers to retain for two years the following information on any tarmac delay that lasts at least three hours: the length of the delay, the specific cause of the delay, and the steps taken to minimize hardships for passengers (including providing food and water, maintaining lavatories, and providing medical assistance); whether the flight ultimately took off (in the case of a departure delay or diversion) or returned to the gate; and an explanation for any tarmac delay that exceeded three hours, including why the aircraft did not return to the gate by the three-hour mark.

This NPRM proposes to strengthen the protections for consumers by making substantive changes in four areas: Requiring foreign air carriers to adopt tarmac delay contingency plans, increasing the number of airports at which carriers must adhere to their plans to include U.S. small and non-hub airports, requiring carriers to coordinate their tarmac delay contingency plans with all U.S. airports they serve, and requiring carriers to communicate with passengers during tarmac delays. More specifically, the NPRM proposes to require any foreign air carrier that operates scheduled passenger or public charter service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more passenger seats to adopt a tarmac delay contingency plan that includes minimum assurances identical to those currently required of U.S. carriers for the latter's international flights. As proposed, it would apply to all of a foreign carrier's flights to and from the U.S., including those involving aircraft with fewer than 30 seats if a carrier operates any aircraft originally designed to have a passenger capacity of 30 or more seats to or from the U.S. The NPRM also proposes to require that U.S. and foreign air carriers coordinate their contingency plans with all airports they serve (small and non-hub airports as well as the medium and large hub airports covered by the existing rule) and with the Transportation Security Administration (TSA) and U.S. Customs and Border Protection (CBP) for any U.S. airport that the carrier regularly uses for its international flights, including diversion airports.

Under the proposed rule, the tarmac delay contingency plans would cover operations at each U.S. large hub airport, medium hub airport, small hub airport and non-hub U.S. airport. Further, the NPRM proposes to require that U.S. and foreign air carriers update passengers every 30 minutes during a tarmac delay regarding the status of their flight and the reasons for the tarmac delay. The regulation would specify that the Department would consider failure to comply with any of the assurances that are required by this rule to be contained in a carrier's tarmac delay contingency plan to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 and subject to enforcement action.

We are proposing these regulations because the Department believes that it is important to ensure that passengers on all international flights to and from the United States are afforded protection from unreasonably lengthy tarmac delays. As is the case under the existing rule for international flights of covered U.S. carriers, at this time, we intend to allow foreign carriers to develop and implement a contingency plan for lengthy tarmac delays that has more flexible requirements than those that apply to domestic flights with regard to the time limit to deplane passengers. Also, as in our initial rulemaking to enhance airline passenger protections, this limit will allow exceptions for considerations of safety, security and for instances in which Air Traffic Control advises the pilot-in-command that returning to the gate or permitting passengers to disembark elsewhere would significantly disrupt airport operations. It is worth noting that there are ongoing questions as to whether mandating a specific time frame for deplaning passengers on international flights is in the best interest of the public; a number of arguments have been presented for not imposing such a limit. Most international flights operate less frequently than most domestic flights, potentially resulting in much greater harm to consumers if carriers cancel these international flights (*e.g.,* passengers are less likely to be accommodated on an alternate flight in a reasonable period of time). We ask interested persons to comment on whether any final rule that we may adopt should include a uniform standard for the time interval after which U.S. or foreign air carriers would be required to allow passengers on international flights to deplane. Commenters who support the adoption of a uniform standard should propose specific amounts of time and state why they believe these intervals to be appropriate.

We also seek comment on the cost burdens and benefits should the requirement to have a contingency plan be narrowed or expanded. For example, while we are proposing here to include foreign carriers that operate aircraft originally designed to have a passenger capacity of 30 or more seats to and from the U.S., we invite interested persons to comment on whether, in the event that we adopt a rule requiring foreign carriers to have contingency plans, we should limit its applicability to foreign air carriers that operate large aircraft to and from the U.S.—*i.e.,* aircraft originally designed to have a maximum passenger capacity of more than 60

seats. We also seek comment on whether we should expand coverage of the requirement to adopt tarmac delay contingency plans so that the obligation to adopt such a plan and adhere to its terms is not only the responsibility of the operating carrier but also the carrier under whose code the service is marketed if different. In addition, should coverage be further expanded to require U.S. airports to adopt tarmac delay contingency plans? Proponents of these or other alternative proposals should provide arguments and evidence in support of their position, as should opponents.

In the initial rulemaking to enhance airline passenger protections, we decided to implement a rule requiring certain U.S. carriers to coordinate their contingency plans with large-hub and medium-hub airports, as well as diversion airports that the carrier serves. Those airports are the only ones covered by the current rule. We are proposing to extend this requirement to small and non-hub airports and to require all covered carriers (U.S. and foreign) to coordinate their plans with each U.S. large hub airport, medium hub airport, small hub airport and non-hub U.S. airport that they serve as well as TSA and CBP. The Department believes that the same issues and discomfort to passengers during an extended tarmac delay are likely to occur regardless of airport size or layout. We also strongly believe that it is essential that airlines involve airports and appropriate Federal agencies in developing their plans to enable them to effectively meet the needs of passengers. As such, we are proposing to extend this rule to require covered carriers to coordinate their plans with each U.S. large hub airport, medium hub airport, small hub airport and non-hub U.S. airport to which they regularly operate scheduled passenger or public charter service.

As recommended by the Tarmac Delay Task Force, we are also proposing to require carriers to include CBP and TSA in their coordination efforts for any U.S. diversion airport which they regularly use. We believe this proposal is necessary, as it has come to the Department's attention on more than one occasion passengers on international flights were held on diverted aircraft for extended periods of time because there was no means to process those passengers and allow them access to terminal facilities. The Department of Homeland Security has advised this Department that, subject to coordination with CBP regional directors, passengers on diverted international flights may be permitted into closed terminal areas without CBP screening. We invite interested persons to comment on this proposal. What costs and benefits would result from this requirement? Is it workable to include small and non-hub airports served by a carrier? Should the rule be expanded to include other commercial U.S. airports (*i.e.,* those with less than 10,000 annual enplanements)? We are soliciting comments from airlines, airports and other industry entities on whether there are any special operational concerns affecting such airports.

The Department has also given consideration to passengers' frustration with lack of communication by carrier personnel about the reasons a flight is experiencing a long tarmac delay. It does not seem unreasonable or unduly burdensome to require carriers to address this issue and verbally inform passengers as to the flight's operational status on a regular basis during a lengthy tarmac delay. As such, the Department is proposing a rule requiring carriers to announce to passengers on covered flights every 30 minutes the reasons for the delay, and/or the operational status of the flight. We do not anticipate that a carrier's flight crews will know every nuance of the reason for the delay, but we do expect them to inform passengers of the reasons of which they are aware and to make reasonable attempts to acquire information about the reason(s) for that delay. We also invite comment on whether carriers should be required to announce that passengers may deplane from an aircraft that is at the gate or other disembarkation area with the door open. The Department's Office of Aviation Enforcement and Proceedings has previously explained that a tarmac delay begins when passengers no longer have an option to get off of the aircraft, which usually occurs when the doors of the aircraft are closed, and encouraged carriers to announce to passengers on flights that remain at the gate with the doors open that the passengers are allowed off the aircraft if that is the case. However, such an announcement is not explicitly required in the existing rule. We seek comment on the benefit to consumers of mandating such announcements. Commenters, including carriers and carrier associations, should also address any costs and/or operational concerns related to implementing a rule requiring such announcements.

2. Tarmac Delay Data

We are proposing to require all carriers that must comply with 14 CFR 259.4, which requires carriers to adopt contingency plans for lengthy tarmac delays, file tarmac delay data with the Department to the extent they are not already required to file such data pursuant to 14 CFR part 234. Incidents of lengthy tarmac delays have captured much public attention in recent years and have been the focus of considerable Department attention as well. On October 1, 2008, the Department's Bureau of Transportation Statistics (BTS) began collecting more detailed tarmac delay information from all U.S. carriers that file the "On-Time Flight Performance Report" (BTS Form 234) under 14 CFR part 234, "reporting carriers". The data do not, however, provide a complete picture of tarmac delays, as the reporting carriers only submit data concerning their scheduled domestic flights as a function of their being required to report on-time performance data. These reporting carriers currently constitute the 16 largest U.S. carriers by scheduled-service passenger revenue, plus two carriers that voluntarily file the report. In addition, smaller U.S. carriers which are subject to the Department's contingency plan rule that was effective April 29, 2010, do not currently submit any tarmac delay data to the Department and foreign air carriers which we are proposing in this NPRM adopt tarmac delay contingency plans also do not submit tarmac delay data to the Department.

While a single incident of tarmac delay may be attributed to one or more causes, such as air traffic congestion, weather related delays, mechanical problems, and/or flight dispatching logistic failures, we believe that an initial and essential step toward finding solutions for the tarmac delay problem, whether by government regulations and/or through voluntary actions by the airlines, and monitoring the effect on consumers of lengthy tarmac delays, is to obtain more complete data on these incidents. Therefore, we are tentatively of the opinion that we should expand the pool of carriers that must file information with the Department regarding tarmac delays to U.S. carriers and foreign carriers that operate any aircraft originally designed with a passenger capacity of 30 or more passenger seats with respect to their operations at U.S. airports. The more complete picture of lengthy tarmac delays afforded by these new data will help establish a vital platform for the Department's future rulemaking and policy decision-making, for FAA airport and air traffic control infrastructure and technology modification and improvement, and for system operating improvements and reform by the airline

industry. Furthermore, the result of such analysis will provide the Department, the industry, and the public more precise data with which to compare tarmac delay incidents by carrier, by airport, and by specific time frame.

This rule as proposed would apply to all U.S. carriers that are covered by the Department's existing rule requiring tarmac delay contingency plans, as well as foreign carriers that we are proposing, in this NPRM, be required to adopt tarmac delay contingency plans (see proposed changes to 14 CFR 259.4). Thus, this proposal would cover tarmac delays at U.S. airports by all U.S. certificated and commuter carriers that operate any aircraft originally designed to have a passenger capacity of 30 or more seats. It also would cover tarmac delays at U.S. airports by all foreign carriers that operate passenger service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats. We seek comment on whether we should limit the requirement to file tarmac delay data to U.S. and foreign air carriers that operate large aircraft to and from the U.S.—*i.e.,* aircraft originally designed to have a maximum passenger capacity of more than 60 seats. Commenters should explain why they favor such a limitation and suggest alternate approaches to capturing tarmac delay data.

We note that using just one qualifying aircraft (*i.e.,* originally designed to have a passenger capacity of 30 or more passenger seats) will cause all of a U.S. carrier's flights to be covered by this rule. The same is true of a foreign carrier's flights that originate or terminate at a U.S. airport. For example, if a foreign carrier operates any aircraft to or from the U.S. that was originally designed to have a passenger capacity of 30 or more seats, all of its flight taking off or landing at a U.S. airport, regardless of size of aircraft and seating capacity, will be subject to the reporting requirements of the proposed rule.

We are mindful of the costs associated with submitting data to the Department, especially in light of the relatively limited resources of smaller carriers and the relatively fewer flights to and from the U.S. by foreign carriers and we do not intend with this proposal to impose a comprehensive on-time reporting scheme, as exists for the largest U.S. carriers now covered by Part 234. With this concern in mind, using the Part 234 requirements as a model, we have narrowed the data fields we propose to be reported to those we believe are necessary for us to extract necessary tarmac delay information. In addition, we propose to require these tarmac delay data to be reported each month only with respect to tarmac delays of 3 hours or more.

We recognize that carriers subject to our new contingency plan rule that went into effect April 29, 2010, are required to retain for two years certain information regarding tarmac delays of 3 hours or more. We note that the reporting requirement proposed in this notice is separate and distinct from that information retention requirement, with a different purpose. Where that rule is focused on carrier compliance with consumer protection-related requirements and requires only that carriers retain the information for a limited period of time, we propose here that carriers report monthly a set of data regarding tarmac delays that will provide the Department more complete information on lengthy tarmac delays throughout the air transportation system in the U.S. The Department plans to publish a summary of this information in its Air Travel Consumer Report, a monthly publication product of the Department of Transportation's Office of Aviation Enforcement and Proceedings that is designed to assist consumers with information on the quality of services provided by airlines. We welcome suggestions from the public and the industry on whether there are other means to further reduce the carriers' burden yet still effectively achieve the goal of this proposal.

3. Customer Service Plans

Under the final rule published on December 30, 2009, U.S. carriers are required to adopt customer service plans for their scheduled flights that address, at a minimum, the following service areas: (1) Offering the lowest fare available; (2) notifying consumers of known delays, cancellations, and diversions; (3) delivering baggage on time; (4) allowing reservations to be held or cancelled without penalty for a defined amount of time; (5) providing prompt ticket refunds; (6) properly accommodating disabled and special-needs passengers, including during tarmac delays; (7) meeting customers' essential needs during lengthy on-board delays; (8) handling "bumped" passengers in the case of oversales with fairness and consistency; (9) disclosing travel itinerary, cancellation policies, frequent flyer rules, and aircraft configuration; (10) ensuring good customer service from code-share partners; (11) ensuring responsiveness to customer complaints; and (12) identifying the services they provide to mitigate passenger inconveniences resulting from flight cancellations and misconnections. The rule also requires U.S. carriers to audit their plan annually and make the results of their audits available for the Department's review upon request.

This NPRM proposes to increase the protections afforded consumers in that recent final rule by requiring foreign air carriers to adopt, follow, and audit customer service plans and establishing minimum standards for what must be included in the customer service plans of all covered carriers (U.S. and foreign). We are proposing to cover foreign air carriers operating scheduled passenger service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more passenger seats. The rule would apply to all flights to and from the U.S. of those carriers, including flights involving aircraft with fewer than 30 seats if a carrier operates any aircraft with 30 or more passenger seats to and from the U.S. We ask interested persons to comment on whether the proposed requirement for foreign air carriers to adopt, follow and audit customer service plan should be narrowed in some fashion—*e.g.,* should never apply to aircraft with fewer than 30 seats?

Each foreign carrier's plan would have to address the same subjects currently required of U.S. carriers in the Department's rule to enhance airline passenger protections. We are also proposing to require that foreign air carriers make the results of their audits of their customer service plans available for the Department's review upon request for two years following the date any audit is completed. A carrier's failure to adopt a customer service plan for its scheduled service, adhere to its plan's terms, audit its own adherence to its plan annually or make the results of its audits available for the Department's review upon request would be considered an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 and subject to enforcement action.

A substantial number of air travelers fly to and from the United States on flights operated by foreign carriers, whether through a code-share arrangement or by directly arranging for that transportation. By requiring foreign carriers to adopt plans, audit their own compliance, and make the results of their audits available for us to review, we intend to afford consumers better protection on nearly all flights to and from the United States, not just those of the U.S. carriers to which the rule is currently applicable. The Department is soliciting comment on the costs and benefits associated with this requirement. We would like foreign carriers to comment on whether similar

plans already exist, and if so, how they currently implement such plans.

The Department also proposes to require covered carriers' customer service plans meet minimum standards to ensure that the carriers' (U.S. and foreign) plans are specific and enforceable. The Department is concerned that many carriers' customer service plans are not specific enough for a consumer to have realistic expectations of the types of services a carrier will provide under its plan, or that some carriers may not be living up to their customer service commitments. Based on a review of existing customer service plans, the Department found that some carriers' plans do contain specifics regarding the type of services a consumer can expect (*e.g.,* returning baggage by a specified time after the flight or holding reservations without charge for a specific period of time), while others carriers' plans are vaguely written making it difficult for a consumer to know how a carrier will address those subjects or whether a carrier has fulfilled its promises. As such, the Department believes establishing minimum standards for the plans will result in consumers being better informed and protected. As always carriers are free to set higher standards than those mandated by the Department. We also note that all of the subjects for which we are proposing to require a standard are already required to be included in the customer service plans for U.S. carriers (*e.g.,* oversales/denied boarding compensation, refunds), which should minimize the burden on these carriers to comply with the proposed new requirement to establish standards for those subjects. In addition, when determining what minimum standards to apply to these plans, the Department reviewed customer service plans as currently implemented by a number of carriers, and chose the services already provided by some carriers that appear to be "best practices."

We seek comment on both the costs and benefits of requiring carriers to adopt these minimum standards. The minimum standards that we are proposing are as follows: (1) Offering the lowest fare available on the carrier's Web site, at the ticket counter, or when a customer calls the carrier's reservation center to inquire about a fare or to make a reservation; (2) notifying consumers in the boarding gate area, on board aircraft, and via a carrier's telephone reservation system and its Web site of known delays, cancellations, and diversions; (3) delivering baggage on time, including making every reasonable effort to return mishandled baggage within twenty-four hours and compensating passengers for reasonable expenses that result due to delay in delivery; (4) allowing reservations to be held at the quoted fare without payment, or cancelled without penalty, for at least twenty-four hours after the reservation is made; (5) where ticket refunds are due, providing prompt refunds for credit card purchases as required by 14 CFR 374.3 and 12 CFR part 226, and for cash and check purchases within 20 days after receiving a complete refund request; (6) properly accommodating passengers with disabilities as required by 14 CFR part 382 and for other special-needs passengers as set forth in the carrier's policies and procedures, including during lengthy tarmac delays; (7) meeting customers' essential needs during lengthy tarmac delays as required by 14 CFR 259.4 and as provided for in each covered carrier's contingency plan; (8) handling "bumped" passengers with fairness and consistency in the case of oversales as required by 14 CFR part 250 and as described in each carrier's policies and procedures for determining boarding priority; (9) disclosing cancellation policies, frequent flyer rules, aircraft configuration, and lavatory availability on the selling carrier's Web site, and upon request, from the selling carrier's telephone reservations staff; (10) notifying consumers in a timely manner of changes in their travel itineraries; (11) ensuring good customer service from code-share partners operating a flight, including making reasonable efforts to ensure that its code-share partner(s) have comparable customer service plans or provide comparable customer service levels, or have adopted the identified carrier's customer service plan; (12) ensuring responsiveness to customer complaints as required by 14 CFR 259.7; and (13) identifying the services it provides to mitigate passenger inconveniences resulting from flight cancellations and misconnections.

With regard to delivering baggage on time, we solicit comment on whether we should also include as standards (1) that carriers reimburse passengers the fee charged to transport a bag if that bag is lost or not timely delivered, as well as (2) the time when a bag should be considered not to have been timely delivered (*e.g.,* delivered on same or earlier flight than the passenger, delivered within 2 hours of the passenger's arrival). With regard to providing prompt refunds, we seek comment on whether we should also include as a standard that carriers refund ticketed passengers, including those with non-refundable tickets, for flights that are canceled or significantly delayed if the passenger chooses not to travel as a result of the travel disruption. The Department's Aviation Enforcement Office has issued notices in the past advising airlines that it would be an unfair and deceptive practice in violation of 49 USC 41712 for a carrier to apply its non-refundability provision in the event of a significant change in scheduled departure or arrival time, whether it be due to carrier action or a matter out of the carrier's control, including "acts of god." We request comment on the methodology for defining a significant delay in the event such a standard is adopted. Should the Department establish a bright line rule that any delay of 3 hours or more is a significant delay? Should the determination of whether a flight has been significantly delayed be based on the duration of the flight (*e.g.,* is 3 hours a significant delay on flights of two hours or less and 4 hours a significant delay on flights of more than two hours)?

With respect to notifying passengers on board aircraft of delays, we seek comment on how often updates should be provided and whether we should require that passengers be advised when they may deplane from aircraft during lengthy tarmac delays. For example, we have received complaints from passengers that their aircraft has returned to the gate less than three hours after departure for emergency or mechanical reasons but they were not advised that they could deplane. Carriers may feel the 3-hour tarmac delay limit has been tolled by such a gate return, but passengers feel they were not truly afforded the opportunity to deplane within the meaning of this rule.

As for the customer service commitment to provide prompt refunds where ticket refunds are due, we invite comment on whether it is necessary to include as a standard the requirement that when a flight is cancelled carriers must refund not only the ticket price but also any optional fees charged to a passenger for that flight (*e.g.,* baggage fees, "service charges" for use of frequent flyer miles when the flight is canceled by the carrier). Irrespective of whether such a standard is included in a carrier's customer service commitment, the Department would view a carrier's failure to provide a prompt refund to a passenger of the ticket price and related optional fees when a flight is canceled to be an unfair and deceptive practice. We request comment as to whether it is workable to set minimum standards for any of the subjects contained in the customer

service plans and invite those that oppose the notion of the Department setting minimum standards for customer service plans as unduly burdensome to provide evidence of the costs that they anticipate. We further invite comment or suggestions on the type of standards that should be set.

Although the subjects we are proposing that foreign air carriers address in their customer service plans are identical to those U.S. carriers already are required to include in their customer service plans, we request comment on whether any of these subjects would be inappropriate if applied to a foreign air carrier. Why or why not? Moreover, we seek comment on whether the Department should require that all airlines address any other subject in their customer service plans. For example, should mandatory disclosure to passengers and other interested parties of past delays or cancellations of particular flights before ticket purchase be a new subject area covered in customer service plans? If so, what should be the minimum timeliness/cancellation standard? In this regard, there is already a requirement for reporting carriers (*i.e.,* the largest U.S. carriers) to post flight delay data on their Web sites and for their reservation agents to disclose to customers, upon request, the on-time performance code of a flight. Should more direct and mandatory disclosure be required, *e.g.,* a required warning before the final purchase decision is made regarding chronically late or routinely canceled flights? We also seek comment on the appropriate minimum timeliness/cancellation standard for U.S. carriers and foreign air carriers that do not report on time performance data to DOT if we were to adopt a requirement that airlines address notification to consumers of past delays or cancellation in their customer service plans.

4. Contracts of Carriage

The Department is proposing to adopt a rule requiring carriers (U.S. and foreign) to include their contingency plans and customer service plans in their contracts of carriage. We first proposed this requirement in the notice of proposed rulemaking on enhancing airline passenger protections which was published in the **Federal Register** on December 8, 2008. Ultimately, the Department decided not to require such incorporation at that time and instead strongly encouraged carriers to voluntarily incorporate the terms of their tarmac delay contingency plans in their contracts of carriage, as most major carriers had already done with respect to their customer service plans. The Department did require that each U.S. carrier with a Web site post its entire contract of carriage on its Web site in easily accessible form, including all updates to its contract of carriage. The Department also indicated that it would address this issue in a future rulemaking and take into account, among other things, whether the voluntary incorporation of contingency plan terms had resulted in sufficient protections for air travelers.

The Department continues to believe that the airlines' incorporation of their contingency plans into their contracts of carriage is an important means of providing notice to consumers of their rights, since that information will then be contained in a readily available source. Carriers' contracts of carriage are generally posted online and must, by Department rule, be available at airports. Better informed consumers will further improve the Department's enforcement program as consumers are more likely to know of and report incidents where airlines do not adhere to their plans. Better consumer information will also create added incentive for carriers to adhere to their plans. Further, by placing the contingency plan terms in the U.S. selling carrier's contract of carriage both that carrier and its foreign code share partner carrier are responsible in an enforcement context for compliance, which we view as a beneficial aspect of this proposal. We also continue to be confident that we have the authority to require such incorporation based on our broad authority under 49 U.S.C. 41712 to prohibit unfair and deceptive practices, and under 49 U.S.C. 41702 to ensure safe and adequate transportation, which clearly encompasses the regulation of contingency plans.

In the December 30, 2009, final rule to enhance airline passenger protections, we stated that we intended to closely monitor carriers' responses to our efforts in this regard and that we would not hesitate to revisit our decision in another rulemaking. As it appears that many carriers are choosing not to place their contingency plans and/or customer service plans in their contracts of carriage, or have little incentive to do so, and because we believe the incorporation of airline contingency plans in contracts of carriage to be in the public interest, we are again proposing the implementation of this requirement.

As stated previously, the Department recognizes that many passengers travel to and from the U.S. on flights operated by foreign carriers, and they should have adequate passenger protections on those flights. As such, we propose to include foreign carriers in the requirement for airlines to place their contingency plans and customer service plans in their contracts of carriage. The Department is seeking comment on whether the incorporation of the contingency plans and customer service plans in the contract of carriage gives consumers adequate notice of what might happen in the event of a long delay on the tarmac and/or of passengers' rights under carriers' customer service plans. As in the past, commenters should also address whether and to what extent requiring the incorporation of contingency plans in carriers' contracts of carriage might weaken existing plans: That is, would the requirement encourage carriers to exclude certain key terms from their plans in order to avoid compromising their flexibility to deal with circumstances that can be both complex and unpredictable? We are also soliciting comment on the proposal to extend this provision to foreign carriers.

5. Response to Consumer Problems

The recently issued final rule on enhancing airline passenger protections requires U.S. carriers that operate scheduled passenger service using any aircraft originally designed to have a passenger capacity of 30 or more seats to designate an employee to monitor the effects on passengers of flight delays, flight cancellations, and lengthy tarmac delays and to have input into decisions such as which flights are cancelled and which are subject to the longest delays. It also requires U.S. carriers to make available the mailing address and e-mail or Web address of the designated department in the airline with which to file a complaint about its scheduled service and to acknowledge receipt of each complaint regarding its scheduled service to the complainant within 30 days of receiving it and to send a substantive response to each complainant within 60 days of receiving it. A complaint is defined as a specific written expression of dissatisfaction concerning a difficulty or problem which the person experienced when using or attempting to use an airline's service.

This proposal would require a foreign air carrier that operates scheduled passenger service to and from the United States using any aircraft originally designed to have a passenger capacity of 30 or more seats to do the same for its flights to and from the U.S. We are proposing to extend these provisions to foreign carriers as the Department believes passengers should also be afforded adequate consumer protection when issues arise with delays

or cancellations on flights to and from the U.S. operated by a foreign carrier, and should also have an avenue to file a complaint with a foreign carrier and to expect a timely and substantive response to that complaint. We invite interested persons to comment on this proposal. What costs and/or operational concerns would it impose on foreign carriers and what are the benefits to consumers? In particular, we are soliciting comments on any operational difficulties U.S. and foreign airlines may face in responding to consumer complaints received through social networking mediums such as Facebook or Twitter. Do airlines currently communicate to customers and prospective customers through social networking mediums?

6. Oversales

Part 250 establishes the minimum standards for the treatment of airline passengers holding confirmed reservations on certain U.S. and foreign carriers who are involuntarily denied boarding ("bumped") from flights that are oversold. In adopting the original oversales rule in the 1960s, the Civil Aeronautics Board (CAB), the Department's predecessor in aviation consumer matters, recognized the inherent unfairness to passengers if carriers were allowed to sell more confirmed seats than were available. To balance the inconvenience and financial loss to passengers against the potential benefits brought about by a controlled overbooking system, *i.e.,* achieving higher load factors, avoiding the losses caused by last-minute cancellations and no-shows, enabling more passengers to obtain a reservation on the flight of their choice, and ultimately reducing fares, the CAB prescribed a two-part oversales system: Soliciting volunteers first, then involuntarily "bumping" passengers if there are not enough volunteers, with a minimum standard for denied boarding compensation (DBC). This system has been in effect for almost half a century and we believe that its basic structure remains sound.

In this NPRM, we propose to expand the rule's applicability and add, modify and clarify certain elements of the rule as part of our continuing efforts to improve and perfect the system. Specifically, we are proposing to make five changes to Part 250: (1) Increase the minimum DBC limits to take account of the increase in the Consumer Price Index (CPI) since 1978; (2) implement an automatic inflation adjuster for minimum DBC limits; (3) clarify that DBC must be offered to "zero fare ticket" holders who are involuntarily bumped; (4) require that a carrier verbally offer cash/check DBC if the carrier verbally offers a travel voucher as DBC to passengers who are involuntarily bumped; and (5) require that a carrier inform passengers solicited to volunteer for denied boarding about its principal boarding priority rules applicable to the specific flight and all material restrictions on the use of that transportation.

The last time the Department revised the minimum DBC amounts was in a proceeding that began in 2007 and concluded in 2008. Prior to that date, the DBC limits had not been revised since 1978. In that latest proceeding, because inflation had eroded the value of the $200 and $400 limits that were established in 1978, we considered various methods for calculating an increase in the minimum DBC limits (*i.e.,* increasing the limits on denied boarding compensation based on the consumer price index (CPI) or on the increase in fare yields, doubling the current limits, eliminating the limits so there would be no cap on denied boarding compensation payments). We settled on a rule under which an eligible passenger who encounters a delay of over one hour due to the involuntary denied boarding is entitled to compensation equal to either 100% of the passenger's one-way fare up to $400, or 200% of the fare up to $800, depending on the length of the delay caused by the involuntary denied boarding. Since May 2008 when the new rule was issued, despite these higher DBC amounts, we have seen an increase in involuntary denied boardings. Load factors are also increasing, making it less likely that "bumped" passengers are being conveniently accommodated on other flights. We are therefore concerned about whether the current rule adequately encourages carriers to seek volunteers to give up their seats and whether the minimum DBC amount adequately compensates those passengers that are involuntarily "bumped" from their flights.

Accordingly, we are proposing to revise the minimum DBC amounts to more accurately reflect inflation's effect on those amounts since 1978, the last year those amounts were raised before the most recent rule. We propose to do so by using the Consumer Price Index for All Urban Consumers (CPI–U), rounded to the nearest $25, with the base of $200/$400 for the maximum DBC amounts in the year 1978. This would bring the maximum DBC amounts for involuntarily oversold passengers to $650/$1,300 as of January 1, 2010. In addition, we propose to add a provision to Part 250 that would provide for periodic adjustments to the minimum DBC limits using the CPI–U, similar to that applied to minimum baggage liability limits pursuant to 14 CFR part 254. We believe these amendments will set up the most efficient method to ensure that the DBC minimum limits, and the monetary incentive for carriers to reduce involuntary denied boardings, remain current. Since the periodic adjustments would be the product of a published mathematical formula, there would be no need to engage in a notice and comment rulemaking proceeding for each future adjustment.

We seek comments on whether the proposed increase in DBC minimum limits is called for and whether any such increase based on the CPI–U calculation is a reasonable basis for updating those limits or whether some other amounts would be more appropriate to adequately compensate passengers for the inconvenience and financial loss brought about by involuntary denied boarding. If not, by how much should the amounts be increased, if at all? We also ask for comment on whether we should completely eliminate minimum compensation limits and simply require that carriers base DBC to be paid to involuntarily bumped passengers on 100% or 200% of a passenger's fare, without limit, and/or whether the 100% and 200% rates need to be increased in line with the proposed increase in the $400/$800 compensation limits proposed above, perhaps to 200% and 400% of the passenger's fare, or higher. This would account for the fact that the actual cost for flying is likely to have increased while what is commonly referred to as the "fare" may not have increased as a result of the carriers' current practice of unbundling fares, *i.e.,* charging extra for once-free amenities, *e.g.,* checked baggage, food, preferred seats, etc.

We are also proposing to clarify that Part 250 applies to passengers who hold "zero fare tickets," *e.g.,* passengers who "purchased" air transportation with frequent flyer mileage or airline travel vouchers, passengers who travel on so-called "free" companion tickets, or passengers who hold a "consolidator" ticket that does not display a monetary price. For the most part, these ticket holders have "paid" only government taxes and fees and, perhaps, carrier-imposed administrative fees for ticketing. In this regard, we propose to amend the definition of "confirmed reserved space" to specify that zero fare ticket holders have the same rights and eligibility for DBC as any other passenger who used cash, check or

credit card to purchase his or her airfare. Passengers with zero-fare tickets earned those tickets in some fashion, *e.g.* by exceeding a particular frequent-flyer threshold, agreeing to accept a travel voucher as settlement of a consumer claim or complaint, etc.

When these passengers are involuntarily denied boarding, they, like passengers who paid fully in money for the tickets, suffer inconvenience and/or financial losses. We propose that the basis for determining the amount of DBC due a passenger holding a zero fare ticket who is involuntarily bumped, *i.e.,* the "passenger's fare," be the fare of the lowest priced ticket available (paid by cash, check, or credit card) for a comparable class of ticket on the same flight. For example, if an involuntarily bumped passenger used frequent flyer miles to obtain a confirmed, non-refundable roundtrip coach ticket having no restrictions, the basis for calculating the DBC amount due to that passenger would be the lowest fare that was available for a confirmed, roundtrip coach ticket on the same flight. Under this proposal, a carrier would be required to provide the same form of DBC to zero-fare passengers as to other passengers denied boarding involuntarily, *i.e.* cash or check, or a travel voucher of the passenger's choice under the conditions described in existing section 250.5(b) if the passenger agrees. We seek comment not only on whether zero fare ticket holders should receive DBC under part 250, but also on whether the cash method described above for calculating DBC to be paid such zero fare ticket holders is reasonable and would truly capture these passengers' losses due to being bumped involuntarily to the same extent as for cash/check/credit ticket holders. This proposal is consistent with guidance DOT has given to carriers in the past.

A possible alternative to the above proposed method of compensation would be to allow carriers to compensate zero fare ticket holders using the same "currency" in which the tickets were obtained. For instance, under this alternative an involuntarily bumped passenger who used frequent flyer miles to purchase a ticket would be eligible to be compensated with mileage, the currency used to obtain that flight. Under the current rule, this would amount to 100% or 200% of the amount of mileage that was used to purchase the ticket, plus a cash amount if appropriate to account for any taxes, fees and administrative costs paid to obtain the ticket. Similarly, involuntarily bumped passengers who used a voucher to purchase a ticket, in whole or in part, would be eligible to be compensated with a voucher worth 100% or 200% of the value of their original voucher, and an appropriate cash payment if a portion of the ticket was paid for in that manner. We also seek comment on any other alternative method of calculating DBC for zero fare ticket holders that would best quantify the financial loss and inconvenience to those passengers. How should the rule quantify the value of the remaining travel portion (either to the next stopover, or if none, to the final destination) if the DBC were to be paid with frequent flyer miles?

Another area that we believe needs further improvement is the disclosure provisions in our current oversales rule. These provisions were established because passengers deserve to know about the possibility, however remote, of an oversale occurring and because only a well-informed passenger can make a proper choice when faced with the option of volunteering to be bumped from a flight. We propose in this proceeding to reinforce required disclosures to ensure that passengers will be aware of their rights when making decisions regarding whether to volunteer for denied boarding and/or whether to accept a travel voucher in lieu of cash or a check as DBC if they are bumped involuntarily.

The existing required disclosures can be found in sections 250.2b 250.9 and 250.11. Section 250.2b(b) sets forth conditions and requirements that carriers must comply with when soliciting volunteers on an oversold flight. Specifically, it requires that carriers inform each passenger who is solicited to volunteer to be bumped whether he or she is in danger of being involuntarily denied boarding and the compensation to which they would be entitled in that event. In addition, section 250.9 specifies the written explanation of DBC and boarding priorities that must be provided to passengers involuntarily oversold, which statement also must be provided to any person who requests it at any location a carrier sells tickets and at its boarding gates. Section 250.11 requires that carriers provide at each station they or their agents sell tickets a prescribed notice advising persons of their basic rights in an oversale situation and that they are entitled to detailed information upon request.

Despite these required disclosures, we are concerned that passengers may not be aware of their rights when making decisions regarding whether to volunteer for denied boarding and/or accept a travel voucher because of the manner in which carriers offer free or reduced air transportation. Agents often verbally advise passengers of the offer of a travel voucher and its amount. Although in the case of involuntarily bumped passengers, this offer must be accompanied by the written notice of the passenger's right to insist on DBC by cash or check, there currently is no express requirement that this notice be given verbally. We are concerned that these passengers who are verbally offered a travel voucher may not have time to read the written notice and are not in fact verbally told by an agent that they are entitled to compensation by cash or check. Likewise, they may not be adequately informed of any conditions or limitations placed on the vouchers they are receiving. Accordingly, we are proposing that in any case in which a carrier verbally offers an involuntarily bumped passenger free or reduced-rate air transportation as an alternative to cash DBC, it also must at the same time verbally advise that passenger of his or her right to insist on compensation by cash or check and the actual amount of such compensation that would be due and of any conditions or restrictions applicable to the vouchers. This proposed requirement would not, if adopted, alter the carriers' responsibility to provide the written DBC notice required by section 250.9, nor would it require carriers in all instances to provide verbal advice to passengers. But as a practical matter, verbal exchanges between carrier agents and passengers in oversale situations are the quickest and easiest form of communication and consumers are entitled to a fair presentation of their options during such situations. Therefore, if a carrier chooses to offer a passenger DBC in a form other than cash or check and to do so verbally, under this proposal it must also verbally advise the passenger about the cash/check option.

Furthermore, we are proposing to prohibit carriers from offering or providing to volunteers solicited to be bumped, or to passengers involuntarily bumped, free or reduced-rate air transportation other than on an unrestricted basis, unless the carrier provides direct verbal notice to such passengers of any restrictions on such free or reduced rate air transportation. While the written notice required to be provided passengers under section 250.9 suggests that carriers must disclose material restrictions in any free or reduced rate compensation offered, the requirement is not specifically reflected in any section of the rule itself, a shortcoming that we believe should be remedied. We ask for comment on our

proposals here as well as on whether there are any other forms of notice that might better inform passengers being requested to volunteer to be bumped, or those involuntarily bumped, of their rights and carriers' obligations.

The current disclosure rule does not define how the carriers should describe to passengers who are solicited to volunteer to be bumped the likelihood of being involuntarily denied boarding. In this NPRM, we propose to specifically require that carriers must inform the solicited passengers about their principal boarding priority rules applicable to the specific flight. Hence, the passengers can apply the boarding priority rules to their situations and more accurately estimate the likelihood of their being involuntarily denied boarding. By "principal boarding priority rules" we are referring to procedures such as bumping passengers involuntarily based on their fare, on when they checked in, or on whether they held seat assignments. Carriers need not recite specialized priorities such as those for unaccompanied minors or passengers with disabilities except where those priorities apply to a particular passenger. This information is significant if a passenger is willing to give up his or her confirmed reserved space but could not determine whether to accept the volunteer compensation offer or to wait until he or she would be involuntarily bumped. For instance, if the carrier informs the passengers that it will use the check-in time as its principal boarding priority criterion, a passenger willing to give up his or her seat on the flight in exchange for a sufficiently large cash compensation amount may choose to reject the volunteer compensation offer if he or she checked in at the last minute, knowing that the chance of being denied boarding involuntarily is high and that being involuntarily bumped would require a higher amount of compensation in cash from the carrier.

Also material to the solicited passengers as decision makers is the availability of "comparable air transportation" provided to passengers who are involuntary denied boarding. Under the current DBC structure, if the passengers can reach their next stopover or, if none, their final destination within one hour of the planned arrival time of the original flight, the passengers are not required to be provided DBC. If the delay for a domestic flight is more than one hour but less than two hours (four hours for an international flight), the DBC rate is 100% of the passenger's one-way fare. For delays that exceed this two/four hour timeframe, the DBC rate is 200% of the passenger's one-way fare. Thus for a passenger who is considering rejecting the volunteer offer in hopes of receiving involuntary DBC, it is material to know how likely it is, if involuntarily denied boarding, that the passenger's delay would exceed the one/two/four hour(s) limits. We seek comments on whether we should require this disclosure to every passenger the carrier solicits to volunteer and if so, what form, *e.g.,* verbal or written, the disclosure should take.

We are also considering expanding the applicability of the oversales rule to the operations of U.S. certificated and commuter carriers and foreign carriers using aircraft originally designed for 19 or more seats. Currently, Part 250 applies to all U.S. certificated and commuter air carriers and foreign carriers with respect to specified scheduled flight segments using an aircraft originally designed to have a passenger capacity of 30 or more seats. We have concerns that many carriers use code-share partners for their connecting services to smaller points, some of whom operate aircraft with 19–29 seats. Such flight segments are not covered by part 250, but are associated with the identity of a large carrier and many, if not most, are "fee for service" flights under the total control of the large carrier, which controls booking. Should we allow those flights to be oversold at all? If we do, should Part 250 be applicable in its entirety?

7. Full Fare Advertising

The Department is proposing to amend its rule on price advertising (14 CFR 399.84). The Department adopted this rule in 1984, pursuant to 49 U.S.C. 41712 (formerly section 411 of the Federal Aviation Act), which empowers the Department to prohibit unfair and deceptive practices and unfair methods of competition in air transportation and its sale. The rule states that the Department considers any advertisement that states a price for air transportation that is not the total price to be paid by the consumer to be an unfair and deceptive practice in violation of 49 U.S.C. 41712. However, the Department's enforcement policy regarding this rule has permitted certain government-imposed charges to be stated separately from this total price. Under this policy, taxes and fees that are collected by a carrier on a per-person basis, are imposed by a government entity, and are not *ad valorem* in nature are allowed to be excluded from an advertised fare. The existence, nature, and amount of these additional taxes and fees must be clearly indicated where the airfare first appears in the ad, so that the consumer can easily calculate the total price to be paid. The Department has consistently prohibited sellers of air transportation from breaking out any other fee, including fuel surcharges, service fees, and taxes imposed on an *ad valorem* basis. This policy has been articulated in a number of industry letters and guidance documents; *see http://airconsumer.dot.gov/rules/guidance.htm*.

The Department is considering changing its enforcement policy concerning this rule to enforce the "full price advertising" provision of the rule as it is written and, consistent with longstanding Department enforcement policy, to clarify that the rule applies to ticket agents. This change in enforcement policy would also include a requirement that all advertisers include all mandatory fees in the advertised price. Given technological innovations and new methods of communication, carriers and ticket agents are finding new and creative ways to advertise airfares, some of which circumvent the spirit if not the letter of the full-price advertising rule and Department enforcement policy. Consumers now receive airfare solicitations through print advertisements, radio advertisements, internet advertisements, and solicitations sent directly to consumers via e-mail newsletters, social networking Web sites, text messages, and applications designed for many different kinds of cell phones. The ease and speed of information sharing also allows airfare information to be presented to consumers in many different forms. Even in cases where those forms of advertising comply in a technical sense with our enforcement policy with regard to the full-price advertising rule, we are concerned that in many cases consumers are not easily able to determine the total cost of air transportation services or are deceived regarding the true price. Accordingly, we believe consumers would be better served if we enforce our existing full-price rule as written and prohibit the practice of advertising fares that exclude any mandatory fees or surcharges, regardless of the source. In proposing this change in policy, we do not intend to foreclose carriers and ticket agents from advising the public in their fare solicitations about government taxes and fees, or other mandatory carrier- or ticket agent-imposed charges applicable to their airfares. However, we no longer see a useful purpose in presenting what purportedly are "fares" to consumers that do not include numerous required

charges and, in our view only act to confuse or deceive consumers regarding the true full price and to make price comparisons difficult or improbable. Our objective is to ensure that consumers are not be deceived or confused about the total fare they must pay, which we believe can best be ensured by requiring that consumers be able to see clearly the entire price of the air transportation being advertised whenever a price is displayed rather than having to wade through a myriad of footnotes and/or hyperlinks regarding government taxes and fees and make the full-price calculation themselves to try to establish which among many displayed "fares" is the real fare or wait until the purchase screen to see the total fare.

The Department's statutory authority under 49 U.S.C. 41712 to prohibit unfair and deceptive practices and unfair methods of competition applies not only to air carriers but also to "ticket agents" which includes those persons other than a carrier "that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation." 49 U.S.C. 40102(a)(40). Although the Department's full-price advertising rule applies on its face to direct and indirect air carriers as well as "an agent of either," it has been the longstanding policy of the Department to consider ticket agents as defined in title 49 to be subject to that rule. The Department believes it appropriate to specifically name "ticket agents" as being covered by the rule in order to ensure there is no confusion about their inclusion under the deceptive practice prohibitions of the rule.

Air transportation is unlike any other industry in that the Department has the sole authority to regulate airlines' fare advertisements by prohibiting practices that are unfair or deceptive. Congress modeled section 41712 on section 5 of the Federal Trade Commission (FTC) Act, 15 U.S.C.A. 45, but by its own terms, that statute cannot be enforced by FTC against "air carriers and foreign air carriers," 15 U.S.C. 45(a)(2). The States are preempted from regulating in this area (49 U.S.C. 41713, *see Morales* v. *Trans World Airlines,* 504 U.S. 374, 112 S.Ct.2031, 119 L.Ed.2d 157 (1992)). Thus, unlike advertising in other industries, where either the States or the FTC, or both, can take action against abusive practices, if we do not exercise our authority, consumers and competitors have no governmental recourse against advertising that is unfair or deceptive. Further, we do not believe that 49 U.S.C. 41712 gives rise to a private right of action; *see Love* v. *Delta Air Lines,* 310 F.3d 1347 (11th Cir.2002), *Boswell* v. *Skywest Airlines,* Inc., 361 F.3d 1263 (10th Cir. 2004); *see also Alexander* v. *Sandoval* 532 U.S. 275, 286, 121 S.Ct. 1511, 149 L.Ed.2d 517 (2001).

The Department invites comments on its proposal to change its enforcement policy under section 399.84 from one of permitting limited exceptions to disclosing the full price in all advertising of air transportation and air tours to requiring disclosure of the full price to be paid by a consumer whenever a price is displayed, and its proposal to specify in the rule that it applies to "ticket agents." Specific questions on which the Department invites comments regarding this policy shift include how sellers of air transportation foresee this affecting the methods they use to advertise fares, how consumers view the proposed change, and the potential cost in changing the current advertising structures that carriers and ticket agents have in place to ensure compliance with the current policy of the Department.

Additionally, the Department is considering adding two new paragraphs to the price advertising rule. We propose adding paragraph (b) which would codify the Department's current enforcement policy on each-way airfare advertising. Currently, the Department allows sellers of air transportation to advertise an each-way price that is contingent on a roundtrip ticket purchase, so long as the roundtrip purchase requirement is clearly and conspicuously disclosed in a location that is prominent and proximate to the advertised fare amount. This proposal would codify existing enforcement policy and would also preclude carriers from referring to such fares as "one-way" fares, which they are not. The Department invites interested persons to comment on adding this paragraph on each-way airfare advertising policy to the price advertising rule. The Department also invites comment on whether a rule similar to that proposed for each-way fare advertising disclosure should be applied to air/hotel packages that advertise a single price, but are sold at that price only on a double occupancy basis, *i.e.,* where two people must purchase the package in order to obtain the advertised price.

The second provision the Department proposes to add to the price advertising rule in section 399.84 would prohibit so-called "opt-out" provisions in price advertising. The Department has noticed a trend lately in the air transportation industry to add fees for ancillary services and products to the total price of air transportation, which charges the consumer is deemed to have accepted unless he or she affirmatively opts out of the service and related charges. For example, carriers may allow a consumer to select a preferred seat or receive priority boarding status if he or she pays a predetermined fee. In some cases the optional services and accompanying charges for those services is pre-selected and added to the total fare without the consumer affirmatively choosing those optional services or fees. This often is accomplished on a Web site through use of a small box that is pre-checked and must be "unchecked" by a consumer in order to avoid the charge. This can be deceptive depending on the layout of the webpage and instructions accompanying the service and charge. What can be even more problematic is that opt-out provisions are sometimes included on the same webpage as opt-in provisions, in which case it is much less likely that consumers will notice the opt-out nature of certain optional services that carry additional charges. The Department proposes adding a paragraph (c) to section 399.84 to prohibit such opt-out procedures.

Proposed paragraph (c) would provide that if a carrier offers optional services, the consumer must affirmatively opt in to accept and purchase that product or service before the price for that service can be added to the total airfare to be paid. No longer will carriers or ticket agents be allowed to require that a consumer opt out of purchasing such products or services in order to avoid being charged for them. The proposed rule, as part of the current full-price advertising rule, would also apply to carriers and ticket agents that advertise tours which include air transportation. Examples of such opt-out procedures the Department has seen in recent years include fees for travel insurance, rental cars, transfers between airports and hotels, priority boarding, premium seats, and extra legroom. Oftentimes the consumer does not realize that the ancillary services are included in the total price of the ticket due to the deceptive nature of such opt-out provisions. The Department asks interested persons to comment on adding the proposed subsection (c) to the existing price advertising rule. The Department would like to hear from both sellers of air transportation and consumers about the costs and benefits of prohibiting opt-out features.

8. Baggage and Other Fees and Related Code-Share Issues

With the increasing industry-wide trend to "unbundle" fares by charging fees for individual services provided in connection with air transportation, the

Department has decided that there is a need to enhance protections for air travelers by establishing rules to ensure adequate notice of such fees for optional services to consumers. When booking air travel, consumers are not always made aware of the extra charges that a carrier may impose on them for additional services. Such charges may include services that traditionally have been included in the ticket price, such as the carriage of one or two checked bags, obtaining seat assignments in advance, in-flight entertainment, and in-flight food and beverage service. In fact, the Airline Tariff Publishing Company (ATPCO), which collects schedule and fare information from airlines for use in computerized reservation systems, has developed a list containing scores of ancillary charges in various categories. Due to what the Department feels is sometimes a lack of clear and adequate disclosure, consumers are not always able to determine the full price of their travel (the ticket price plus the price of additional fees for optional services) prior to purchase.

We also seek comment on the costs and benefits of requiring that two prices be provided in certain airfare advertising—the full fare, including all mandatory charges, as well as that full fare plus the cost of baggage charges that traditionally have been included in the price of the ticket, if these prices differ. We would regard charges for one personal item (*e.g.,* a purse or laptop computer), one carry-on bag, and one or two checked bags as baggage charges that traditionally have been included in the price of a ticket. Should such a requirement for a second price, if adopted, be limited to the full fare plus the cost of baggage charges? Should the Department require carriers to include in the second price all services that traditionally have been included in the price of the ticket such as obtaining seat assignments in advance? Why or why not? In the alternative, the Department is considering requiring sellers of air transportation to display on their Web sites information regarding a full price including optional fees selected by the passenger when a prospective passenger conducts a query for a particular itinerary. In other words, passengers would be able to conduct queries for their specific needs (*e.g.,* airfare and 2 checked bags; air fare, 1 checked bag, and extra legroom). The benefit of this approach is that consumers would be able to more easily compare airfares and charges for their own particular itinerary and options. We invite comment on this approach, including its feasibility, as well as its costs to airlines and ticket agents.

The Department believes that effective disclosure of the optional nature of services and their costs would prevent carriers from imposing hidden fees on consumers and allow consumers to make better informed decisions when purchasing air travel. In 2008, the Department's Aviation Enforcement Office issued guidance concerning the disclosure of baggage fees to the public. *See, e.g., Notice of the Assistant General Counsel for Aviation Enforcement and Proceedings,* "Guidance on Disclosure of Policies and Charges Associated with Checked Baggage," May 13, 2008, *http://airconsumer.dot.gov/rules/guidance.htm.* We propose to codify this guidance and also cover in the rule notice of charges for services other than checked baggage.

More specifically, the Department is proposing to adopt three provisions in a proposed new 14 CFR 399.85. Proposed section 399.85(a) would require carriers that maintain a Web site accessible to the general public to prominently disclose on the homepage of such Web site any increase in the fee for passenger baggage or any change in the free baggage allowance for checked or carry-on bags (*e.g.,* size, weight, number). This could be done, for example, through direct, prominent notice or through a conspicuous notice of the existence of such fees in a hyperlink that takes the reader directly to an explanation of the carrier's baggage policies and charges. The proposed rule would require this notice to remain on the homepage of the carrier's Web site for at least three months after the change is made. The Department invites interested persons to comment on this proposal, including whether the time period for displaying such changes on the homepage should be greater or less than three months. The Department also asks for comment on the best options for displaying such information to the public if it were to adopt a notice requirement.

Proposed section 399.85(b) would require carriers that issue e-ticket confirmations to passengers to include information regarding their free baggage allowance and/or the applicable fee for a carry-on bag or the first and second checked bag on the e-ticket confirmation. By providing this information to consumers on the e-ticket confirmation—the document that confirms a passenger's travel on the carrier—passengers will be informed well before the flight date and arrival at the airport of the applicable baggage rules and charges. The Department believes that including this information on the e-ticket confirmation will permit passengers to avoid unexpected baggage charges to the extent possible and also save time at the airport for both passengers and carrier personnel because the passengers will be better informed about the baggage allowance and any charges to be incurred.

Proposed section 399.85(c) would require carriers that have a Web site accessible to the general public to disclose all fees for optional services to consumers through a prominent link on their homepage that leads directly to a listing of those fees. Optional services include but are not limited to the cost of a carry-on bag, checking baggage, advance seat assignments, in-flight food and beverage service, in-flight entertainment, blankets, pillows, or other comfort items, and fees for seat upgrades. The Department feels that having all of the fees for optional services in one place for consumers to review will help ensure that consumers do not encounter such charges unexpectedly and that they can more easily compare these charges among competing carriers. Additionally, disclosure as proposed will result in this important cost information being presented in a clear and concise form and reduce the prospect of delays at the airport and in-flight that can occur when the consumer is unaware of charges for optional services. The Department invites comments regarding the proposal to have full, complete disclosure of all fees for optional services on one Web page, accessible to the consumer through a prominent hyperlink. In particular, we solicit comment on whether we should limit the requirement to disclose fees to "significant" fees for optional services, including comment on the definition of "significant fee" and whether it should be defined as a particular dollar amount. The Department seeks comment on the alternatives to the proposed link to the information on a carrier's homepage, such as disclosure of these optional fees on e-ticket confirmations or elsewhere.

The Department is also considering requiring that carriers make all the information that must be made directly available to consumers via proposed section 399.85 available to global distribution systems (GDS's) in which they participate in an up-to-date fashion and useful format. This would ensure that the information is readily available to both Internet and "brick and mortar" travel agencies and ticket agents so that it can be passed on to the many consumers who use their services to compare air transportation offers and make purchases. We invite comments on this proposal, including the present

ability of carriers to meet this requirement, the potential costs of the requirement, including costs of developing new software or systems to deliver such information to GDS's, if necessary, and the benefits of this requirement.

The proposed section 399.85 would apply to all U.S. and foreign air carriers that have Web sites accessible to the general public in the United States through which tickets are sold, as well as to their agents. The Department invites comment on alternative proposals, including limiting the applicability of the proposed section 399.85 to all flights operated by U.S. carriers, U.S. and foreign carriers that operate any aircraft with sixty (60) or more seats, or U.S. and foreign carriers that operate any aircraft with thirty (30) or more seats. In addition, we invite comment on whether the rule should apply to all ticket agents, as defined in 49 U.S.C. § 40102, which includes not just agents of carriers, but also others who, as a principal, "sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation." Under proposed section 399.85, the Department would consider the failure of a carrier to give consumers appropriate notice about baggage fees and other optional fees to be an unfair and deceptive practice in violation of 49 U.S.C. 41712.

The Department is also seeking comment on the need for a special rule relating to the disclosure of fees and related restrictions in connection with code-share service. It has come to the Department's attention that many carriers operating flights under a code-share agreement impose different fees and restrictions than those of the carrier under whose identity the service is marketed, notwithstanding the fact that as a condition for approval of international code-share services, the Department has as a matter of policy required that "the carrier selling such transportation (*i.e.,* the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in the contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected." *See, Notice of the Assistant General Counsel for Aviation Enforcement and Proceedings,* "Guidance on Airline Baggage Liability and Responsibilities of Code-Share Partners Involving International Itineraries," *http://airconsumer.dot.gov/rules,* March 26, 2009. For example, they may have different free baggage allowances and different charges for extra pieces and overweight bags, some may not allow unaccompanied minors while others do (perhaps subject to varying charges and various age restrictions), and some may not provide in-flight medical oxygen while others do (subject to different charges). We believe that, at a minimum, prospective customers for these code-share flights should be made aware of any significant differences between the ancillary services and fees of the carrier under whose identity their service was marketed and those of the carrier operating their flights. Comments are invited on whether such disclosure by ticketing/marketing carriers should be required through reservation agents, Web sites, or e-ticket confirmations or through each of those mechanisms. Further comment is invited on whether there are any ancillary services that should not be allowed to vary among code-share partners, *e.g.,* the free baggage allowance or baggage fees. For example, Department policy provides that for passengers whose ultimate ticketed origin or destination is a U.S. point, the baggage rules that apply at the beginning of the itinerary apply throughout the itinerary, and the ticketing carrier's rules take precedence. *See, e.g., Order 2009–9–20, Dockets OST–2008–0367 and 0370,* "Agreements adopted by the Tariff Coordinating Conference of the International Air Transport Association relating to passenger baggage matters," September 30, 2009. Information on the cost of these proposals is invited.

9. Post-Purchase Price Increases

The Department is proposing a new section in 14 CFR part 399 that would prohibit post-purchase price increases in air transportation or air tours by carriers and ticket agents. The seller of air transportation would be prohibited from raising the price after the consumer completes the purchase. Currently, the Department allows post-purchase price increases as long as any term that permits a carrier to increase the price after purchase is included in the conditions of carriage and the consumer receives direct notice of that provision on or with the ticket. *See* 14 CFR 253.7. The Department has found that some sellers of air transportation are abusing this rule by burying provisions purporting to permit them to raise the price in the contract of carriage or conditions of travel and merely providing the consumer a hyperlink to the contract of carriage or conditions of travel. The consumer is unaware of the potential for such increase until well after the purchase is made. Although we have not seen carriers resort to this problematic practice, we have often found this to be the case in the sale of tour packages that include air transportation, where an air tour operator will increase the price of an air tour before travel, ostensibly in order to pass along fuel surcharges or an increase in the price of a seat. Consumers are not made aware of the potential for a price increase at the time of purchase, and therefore are deceived when the increase is imposed and the seller uses the terms of the contract of carriage to justify an additional collection. Moreover, most airlines and tour operators will advertise and sell tickets or packages at a stated price nearly a year in advance of scheduled travel. We are tentatively of the opinion that it is patently unfair for a carrier or tour operator to advertise and sell air transportation at a particular price long before travel, with the caveat that they reserve the right to change the advertised price at any time before travel, and in any amount. The Department feels it is time to ban the practice of post-purchase price increases.

The Department invites interested parties to comment on this proposal and on several alternatives. As indicated above, the Department's primary proposal is an outright ban on post-purchase price increases. One alternative the Department is considering would be to allow post-purchase price increases, but only as long as the seller of air transportation conspicuously discloses to the consumer the potential for such an increase and the maximum amount of the increase, and the consumer affirmatively agrees to the potential for such an increase prior to purchasing the ticket. Another alternative would be to allow post-purchase price increases, with full and adequate disclosure, that the consumer agrees to in advance of purchasing a ticket, but to prohibit price increases within thirty or sixty days of the first flight in a consumer's itinerary.

10. Flight Status Changes

We are proposing to require that certificated air carriers that account for at least 1 percent of domestic scheduled passenger revenues (reporting carriers) promptly notify passengers in the boarding gate area of changes to their domestic scheduled flights resulting from delays or cancellations, promptly update all domestic scheduled flight information under their control at airports regarding changes to the status of particular flights as a result of delays or cancellations and promptly update flight status details available on their Web sites and through their telephone reservation systems. "Domestic scheduled flight" for this purpose means

a flight segment. For example, on a direct flight from Chicago to London with a stop in New York, the Chicago-New York segment would be covered by this requirement. The Department tentatively believes that the cost of requiring smaller carriers to provide this information outweighs the benefits to consumers in general in light of the fact that the operations of the reporting carriers account for nearly 90 percent of all domestic passenger enplanements. We ask for comment on whether the regulation should cover a greater number of carriers and operations, including operations of smaller U.S. carriers and/or international operations of U.S. and foreign carriers.

What would be the cost or benefit of expanding coverage to those additional carriers?

It is important to passengers as well as persons dropping passengers off for outbound flights or meeting passengers on incoming flights to be kept informed on a timely basis of delays and/or cancellations affecting their flights in order to avoid unnecessary waits at, or pointless trips to, an airport. Passengers also need flight status updates as soon as they become available in order to make decisions about alternate travel plans. Carriers recognize the importance of timely and accurate flight information, as evidenced by the fact that many of the largest U.S. carriers promise through their customer service plans to provide passengers all known information about delays and cancellations as soon as they become aware of the issue. Failures by carriers to provide timely or accurate flight status information not only inconvenience passengers and other members of the public but also can result in additional expenses to those persons.

Our proposals here are intended to provide additional measures to ensure that passengers and the general public know about flight delays and cancellations within a reasonable time so that they can, if possible, take steps to protect themselves and avoid unnecessary loss of time and expense. We are therefore proposing that carriers promptly notify passengers holding tickets or reservations on one of their flights as well as other interested parties about changes to a flight's status, *i.e.,* delays and cancellations, which affect the planned operation of the flight by at least 30 minutes. Additional notifications would be required if any such delayed flight was further delayed by 30 minutes or more. By "promptly" we mean that a carrier must provide the required notification regarding the status of a flight as soon as possible but no later than 30 minutes after the carrier becomes aware or should have become aware of a change in the status of the flight due to a delay or cancellation. This requirement would apply to all the domestic scheduled flight segments that a reporting carrier "markets." For example, for a code-share flight this proposed notification requirement would be the responsibility of the carrier whose code is used, whether or not it is operated under a fee-for-service arrangement.

We note that many covered carriers already voluntarily provide flight status details via the proposed methods proposed in this notice (*i.e.,* announcement in boarding area, Web sites, telephone reservation systems, airport display boards). In addition, most of the largest carriers generally make efforts to notify passengers of changes to the status of their flights by permitting passengers to subscribe to flight status update services via various widely-used media, including computer-generated telephone/voicemail, text messages, and e-mails. This proposal to promptly notify passengers and other interested parties of changes to flights as a result of delays or cancellations would not impose upon carriers a requirement to offer passengers the opportunity to subscribe to such a service but would require carriers to the extent that they use this or other methods of communication to ensure that the flight status changes are promptly updated.

We seek comments on whether it is preferable to require carriers to provide prompt notification of flight status changes and leave it up to the carriers to determine how that notification is provided, or prescribe particular means by which carriers must communicate or must make available flight status updates. We ask for comment on the four proposed means of notification: an announcement in the boarding area, carriers' Web sites, carriers' telephone reservation systems, and airport displays under carriers' control. Commenters should support their opinions with as much detail as possible regarding the practicality, costs, and benefits of any standard they support or oppose. We also seek comment about the cost and benefit of flight status update services. It goes without saying that the quicker that changes to a flight's status can be provided to passengers, the more useful the information is likely to be. In addition to seeking comment on the need, in general, for this proposed notification requirement, we specifically ask for comment on whether the standard we propose—"30 minutes after the carrier becomes aware or should have become aware of a change in the status of a flight"—is a reasonable notification standard to apply in requiring carriers to pass along updates to passengers and to the public. Does it provide consumers sufficient lead time in most cases to act to protect themselves? If not, why not, and could carriers be expected to meet a more stringent standard? Is the more stringent standard a reasonable standard for carriers to meet and, if not, why not?

In addition, we are proposing that notification be provided regarding any changes that affect the planned operation of a flight by at least 30 minutes. While shorter flight delays occur more frequently, we believe they are less likely to significantly disrupt expectations or travel plans. We ask for comment on whether this 30-minute standard is appropriate. Do consumers in most instances require notice of flight delays that are less than 30 minutes? Would changing the standard of delays to less than 30 minutes impose unreasonable burdens or costs on carriers that outweigh any benefits to the public? According to data from the Department's Bureau of Transportation Statistics (BTS), in calendar year 2009, approximately 10% of departure delays and 11% of arrival delays were over 30 minutes. The majority of scheduled domestic passenger flights depart or arrive 1 to 14 minutes after their scheduled departure and arrival times, respectively.

We note that the requirement to promptly update all domestic scheduled flight information under a carrier's control at airports would cover all communication methods that are under the control of a carrier at an airport. For example, flight information provided via electronic or other display boards at airport counters and departure gates would be covered. We are not proposing at this time that carriers establish new types of flight information outlets but this requirement, if made final, would apply to every type of outlet a carrier elects to use to provide flight information to the public at airports. With respect to flight status information outlets at an airport that are not under a carrier's control, *e.g.,* flight arrival and departure displays that are under the control of an airport authority, a carrier's responsibility is limited to providing the updated flight information to the airport authority within the required 30 minutes.

11. Choice-of-Forum Provisions

The Department is proposing to amend 14 CFR part 253, the Part that concerns notice of contract of carriage

terms, by adding a new section to codify the policy of the Department's Aviation Enforcement Office that choice-of-forum provisions are unfair and deceptive when used to limit a passenger's legal forum to a particular inconvenient venue. Choice-of-forum provisions purport to designate the court or jurisdiction where any lawsuit against the carrier concerning the purchased air transportation must be brought *See, e.g., Notice of the Assistant General Counsel for Aviation Enforcement and Proceedings, "'Choice of Forum' Contract Provisions," http://airconsumer.dot.gov/rules/19960715.htm* (July 15, 1996). It is the Department's view that for air transportation sold in the U.S., it would be an unfair or deceptive practice for the seller to attempt to prevent a passenger from seeking legal redress in any court of competent jurisdiction, including a court within the jurisdiction of the passenger's residence, provided that the carrier does business within that jurisdiction. Consumers should not be forced to litigate in a jurisdiction that could be thousands of miles from their United States residence. The Department believes that such narrow choice-of-forum provisions would operate as a limitation on the right of a consumer to bring legitimate and viable suits. We invite interested persons to comment on this proposal and on the use of such choice-of-forum provisions in contracts of carriage.

12. Peanut Allergies

The Department is considering several different measures to provide greater access to air travel for individuals with severe peanut allergies in light of the significant number of children diagnosed with peanut allergies, some of whom do not fly because of health concerns related to peanut service on aircraft. The Air Carrier Access Act (ACAA) prohibits discrimination by U.S. and foreign air carriers against individuals with disabilities. The Department of Transportation defines an individual with a disability in 14 CFR part 382 (Part 382), the regulation implementing the ACAA. An individual with a disability is any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Generally, a person with an allergy is not an individual with a disability. However, if a person's allergy is sufficiently severe to substantially limit a major life activity, then that person meets the definition of an individual with a disability. Part 382 states that major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Airline passengers with severe allergies to peanuts have a qualifying disability as defined in part 382.

Part 382 requires airlines to change or make an exception to an otherwise general policy or practice to make sure that a passenger with a disability can take the trip for which he or she is ticketed unless the change would cause an undue burden on the airline or a fundamental alteration in its services. The Department has in the past told airlines that, based on this requirement, they must make reasonable accommodations for air travelers who are allergic to peanuts. Specifically, in August 1998 the Department's Aviation Enforcement Office sent an industry letter providing guidance on this issue. That letter suggested that, if given advance notice, providing a peanut-free buffer zone in the immediate area of a passenger with a medically-documented severe allergy to peanuts would be a reasonable accommodation for the passenger's disability, and would not constitute an undue burden on the airline.

After the issuance of the guidance letter, the Department was directed by Congress to cease issuing guidance on this subject or face a cutoff of funding for its Aviation Enforcement Office. *See,* for example, section 346 of Public Law 106–69, (October 9, 1999)—"DOT and Related Agencies Appropriations Act, 2000," which stated that none of the funds made available under that Act could be used to require or suggest that airlines provide peanut-free buffer zones or otherwise restrict the distribution of peanuts. This congressional prohibition was to remain in effect "until 90 days after submission to the Congress of a peer-reviewed scientific study that determined that there are severe reactions by passengers to peanuts as a result of contact with very small airborne peanut particles of the kind that passengers might encounter in an aircraft." This specific congressional ban on our involvement in this issue has not appeared recently in any legislation. At this time, we are considering the following alternatives to provide greater access to air travel for individuals with severe peanut allergies: (1) Banning the serving of peanuts and all peanut products by both U.S. and foreign carriers on flights covered by DOT's disability rule; (2) banning the serving of peanuts and all peanut products on all such flights where a passenger with a peanut allergy is on board and has requested a peanut-free flight in advance; or (3) requiring a peanut-free buffer zone in the immediate area of a passenger with a medically-documented severe allergy to peanuts if passenger has requested a peanut-free flight in advance. We seek comment on these approaches as well as the question of whether it would be preferable to maintain the current practice of not prescribing carrier practices concerning the serving of peanuts. We are particularly interested in hearing views on how peanuts and peanut products brought on board aircraft by passengers should be handled. How likely is it that a passenger with allergies to peanuts will have severe adverse health reactions by being exposed to the airborne transmission of peanut particles in an aircraft cabin (as opposed to ingesting peanuts orally)? Will taking certain specific steps to prepare for a flight (*e.g.,* carrying an epinephrine auto-injector in order to immediately and aggressively treat an anaphylactic reaction) sufficiently protect individuals with severe peanut allergies? Who should be responsible for ensuring an epinephrine auto-injector is available on a flight—the passenger with a severe peanut allergy or the carrier? Is there recent scientific or anecdotal evidence of serious in-flight medical events related to the airborne transmission of peanut particles? Should any food item that contains peanuts be included within the definition of peanut products (*e.g.,* peanut butter crackers, products containing peanut oil)? Is there a way of limiting this definition?

13. Effective Date

We propose that any final rule that we adopt take effect 180 days after its publication in the **Federal Register**. We believe this would allow sufficient time for carriers to comply with the various proposed requirements. We invite comments on whether 180 days is the appropriate interval for completing these changes.

Regulatory Analyses And Notices

A. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This action has been determined to be significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. It has been reviewed by the Office of Management and Budget under that Order. The Regulatory Evaluation finds that the benefits of the proposal appear to exceed its costs, even without considering non-quantifiable benefits. The total present value of passenger

benefits from the proposed requirements over a 10 year period at a 7% discount rate is $87.59 million and the total present value of costs incurred by carriers and other sellers of air transportation over a 10 year period at a 7% discount rate is $25.98 million. The net present value of the rule for 10 years at a 7% discount rate is $61.61 million.

Below, we have included a table outlining the projected costs and benefits of this rulemaking. We invite comment on the quantification of costs and benefits for each provision, as well as the methodology used to develop our cost and benefit estimates. We also seek comment on how unquantified costs and benefits could be measured. More detail on the estimates within this table can be found in the preliminary Regulatory Impact Analysis associated with this proposed rule.

COMPARISON OF REQUIREMENT-SPECIFIC BENEFITS AND COSTS, 2010–2020

[Discounted at 7%/year to 2010 $ millions]

Requirement 1: Expand tarmac delay contingency plan requirements to smaller airports and require that foreign carriers have a tarmac delay contingency plan.	**Total**
Estimated Quantified Benefits	$1.99
Estimated Quantified Costs	$3.24
Net Benefits	**−$1.25**
Unquantified Benefits:	
• Improved Management of Flight Delays	
• Decreased Anxiety with Regard to Flying	
• Reduced Stress among Delayed Passengers and Crew	
• Improved Overall Carrier Operations	
• Improved Customer Good Will Towards Carriers	
Unquantified Costs:	
• Increased Flight Cancellations	
• Increased Passenger Anxiety Associated with Potential Flight Cancellations	
Requirement 2: Expand carriers' reporting tarmac delay info to DOT and require reporting by foreign carriers.	**Total**
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	$2.31
Net Benefits	**not estimated**
Unquantified Benefits:	
• Increased Efficiency of US DOT Oversight and Enforcement Office Operations	
• Improved Planning by Passengers	
• Improved Management of Flight Delays	
• Improved Market Competition	
Requirement 3: Establish of minimum standards for carriers' customer service plans and extend the customer service plan requirements to cover foreign carriers.	**Total**
Estimated Quantified Benefits	$6.25
Estimated Quantified Costs	$8.58
Net Benefits	**−$2.33**
Unquantified Benefits:	
• Decreased Confusion and Uncertainty Regarding Department's Requirements	
• Value of Improved Customer Service Based on Self-Auditing of Adherence to Customer Service Plans for Foreign Carriers	
• Improved Customer Good Will Towards Carriers	
Requirement 4: Require incorporation of tarmac delay contingency plans and customer service plans into carrier contracts of carriage.	**Total**
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	not estimated
Net Benefits	**not estimated**
Unquantified Benefits:	
• Decreased Occurrence of Customer Complaints	
• Improved Resolution of Customer Complaints	
Requirement 5: Extend requirements for carriers to respond to consumer complaints to cover foreign carriers.	**Total**
Estimated Quantified Benefits	$0.00
Estimated Quantified Costs	$1.82
Net Benefits	**−$1.82**
Unquantified Benefits:	

COMPARISON OF REQUIREMENT-SPECIFIC BENEFITS AND COSTS, 2010–2020—Continued

[Discounted at 7%/year to 2010 $ millions]

• Decreased Occurrence of Conduct that Would Produce Complaints • Improved Resolution of Customer Complaints • Decreased Anger Toward Carriers During Resolution of Complaints	
Requirement 6: Changes in denied boarding compensation (involuntary bumping) policy: increase minimum compensation, add inflation adjustment, greater passenger information about policies.	**Total**
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	$0.66
Net Benefits	**not estimated**
Unquantified Benefits: • Decrease in Confusion Regarding Denied Boarding Compensation Provisions • More Accurate Compensation for those Denied Boarding • Decreased Resentment among Some Passengers Regarding Different Compensation Received	
Requirement 7: Require that carriers include taxes and fees in advertising ("full-fare advertising") and prohibit use of sales provisions that require purchasers to opt out of add-ons such as trip insurance.	**Total**
Estimated Quantified Benefits	$73.50
Estimated Quantified Costs	$6.86
Net Benefits	**$66.64**
Unquantified Benefits: • Travelers Less Likely to Mistakenly Purchase Unwanted Services and Amenities • Improved Market Competition • Improved Customer Good Will Towards Carriers	
Requirement 8: Require carriers to disclose baggage and other optional fees on their Web sites.	**Total**
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	$2.51
Net Benefits	**not estimated**
Unquantified Benefits: • Decrease in Time at Check-in • Avoidance of Unfair Surprise • Improved Customer Good Will Towards Carriers • Improved Market Competition	
Requirement 9: Ban the practice of post-purchase price increases.	**Total**
Estimated Quantified Benefits	$5.83
Estimated Quantified Costs	not estimated
Net Benefits	**not estimated**
Unquantified Benefits: • Improved Customer Good Will Towards Carriers • Avoidance of Unfair Surprise *Unquantified Costs:* • Inability to Increase Prices Based on Unanticipated or Changed Circumstances	
Requirement 10: Require prompt passenger notification of flight status changes (cancellations, delays, etc.) at the boarding gate area, on Web site and on telephone reservation systems.	**Total**
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	not estimated
Net Benefits	**not estimated**
Unquantified Benefits: • Reduced Passenger Anxiety • Greater Comfort and Certainty from Knowing that Information Will Be Available In Timely Manner *Unquantified Costs:* • Expense of Providing Notification	
Requirement 11: Permit consumers to file suit wherever a carrier does business.	**Total**
Estimated Quantified Benefits	not estimated
Estimated Quantified Costs	not estimated
Net Benefits	**not estimated**
Unquantified Benefits:	

COMPARISON OF REQUIREMENT-SPECIFIC BENEFITS AND COSTS, 2010–2020—Continued

[Discounted at 7%/year to 2010 $ millions]

• Greater compliance with DOT regulations • Improved Customer Good Will Towards Carriers *Unquantified Costs:* • Need to Defend Suit in Location of Consumer's Choice	
Requirements 1–11: TOTAL	**Total**
Estimated Quantified Benefits	$87.6
Estimated Quantified Costs	$26.0
Net Benefits	**$61.6**

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. The regulatory initiatives discussed in this NPRM would have some impact on some small entities, as discussed in the Initial Regulatory Flexibility Analysis.

The Initial Regulatory Flexibility Analysis determined that no more than 12 independently-owned small U.S. carriers operating at least one aircraft with 30 or more passenger seats but none with more than 60 passenger seats would have to comply with the proposed requirements relating to denied boarding compensation and lengthy tarmac delays. These 12 U.S. carriers and an additional 35 small U.S. carriers that only operate aircraft with fewer than 30 seats would potentially have to comply with the requirements pertaining to full fare advertising (requirement to display full fares on Web sites and in print advertising and prohibition on opt-out provisions), disclosure of baggage and other fees, and prohibition on post-purchase price increases. The compliance costs associated with the full fare advertising requirements are estimated at $6,000 or less per carrier. The estimated unit costs for complying with the other requirements are nominal.

The proposed initiatives may have a more substantial impact on small foreign carriers that provide scheduled service on flights to and from the U.S. using only aircraft with 60 or less passenger seats. There is only one small foreign carrier that operates service to and from the U.S. using aircraft with more than 29 but fewer than 61 seats. It would be required to comply with the proposed requirements described above for U.S. carriers of this size-class, as well as requirements relating to tarmac delay contingency plans, customer service plans, and customer problems/complaints (these requirements were instituted for covered U.S. carriers in a previous proceeding). Each of these sets of requirements may entail compliance costs of $3,000 or more per-carrier, but only the requirement to develop and implement a compliant tarmac delay contingency plan is likely to involve single-year cost in excess of $10,000 per carrier. There are also two small foreign carriers that operate service to and from the U.S. exclusively with aircraft that have fewer than 19 seats; these two carriers would potentially have to comply with the requirements pertaining to full fares advertising (requirement to display full fares on Web sites and in print advertising and prohibition on opt-out provisions), disclosure of baggage and other fees, and prohibition on post-purchase price increases. The per-carrier compliance costs for these two small foreign carriers are expected to be similar to those for U.S. carriers of the same size-class.

It may also be necessary for some small travel agencies and tour operators to revise air travel prices displayed in Web site and print media advertising to comply with the proposed requirements relating to full fare advertising of air fares. Costs for small firms to revise Web sites and update print media advertising are estimated at no more than $3,000 each on a per-firm basis. Finally, a limited number of personnel at some small airports will incur time costs of a few hours on average to interact with carriers that are required to coordinate tarmac contingency plans with airport authorities. We invite comment to facilitate our assessment of the potential impact of these initiatives on small entities.

C. Executive Order 13132 (Federalism)

This Notice of Proposed Rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This notice does not propose any provision that: (1) Has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13084

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Because none of the options on which we are seeking comment would significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

E. Paperwork Reduction Act

This NPRM proposes three new collections of information that would require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 49 U.S.C. 3501 *et seq.*). Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing notice of the proposed collection of information and a 60-day comment period, and must otherwise consult with members of the public and affected agencies concerning the proposed collection.

The first collection of information proposed here is a requirement that foreign air carriers that operate scheduled passenger service to or from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats retain for two years the following information about any ground delay that lasts at least three hours: the length of the delay, the precise cause of the delay, the actions taken to minimize

hardships for passengers, whether the flight ultimately took off (in the case of a departure delay or diversion) or returned to the gate; and an explanation for any tarmac delay that exceeded 3 hours. The Department plans to use the information to investigate instances of long delays on the ground and to identify any trends and patterns that may develop.

The second information collection is a requirement that any foreign air carrier that operates scheduled passenger service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats adopt a customer service plan, audit its adherence to the plan annually, and retain the results of each audit for two years. The Department plans to review the audits to monitor carriers' compliance with their plans and take enforcement action when appropriate.

The third is a requirement that U.S. carriers and foreign carriers that operate any aircraft originally designed to have a passenger capacity of 30 or more seats report monthly tarmac delay data to the Department with respect to their operations at a U.S. airport for any tarmac delay exceeding three hours or more, including diverted flights and cancelled flights. This requirement would apply to reporting carriers under 14 CFR part 234 only with respect to their public charter service and international service. Reporting carriers already submit tarmac delay data to the Department for their domestic scheduled passenger service. The Department plans to use this information to obtain more precise data to compare tarmac delay incidents by carrier, by airport, and by specific time frame, for use in making future policy decisions and developing rulemakings.

For each of these information collections, the title, a description of the respondents, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below:

1. Requirement to retain for two years information about any ground delay that lasts at least three hours.

Respondents: Foreign air carriers that operate passenger service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats.

Estimated Annual Burden on Respondents: 0 to 1 hour per respondent.

Estimated Total Annual Burden: 15 hours and 25 minutes for all respondents.

Frequency: One information set to submit per three hour plus tarmac delay for each respondent .

2. Requirement that carrier retain for two years the results of its annual self-audit of its compliance with its Customer Service Plan.

Respondents: Foreign air carriers that operate scheduled passenger service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats.

Estimated Annual Burden on Respondents: 15 minutes per year for each respondent.

Estimated Total Annual Burden: A maximum of 22 hours for all respondents.

Frequency: One information set to retain per year for each respondent.

3. Requirement that carrier report certain tarmac delay data to the Department on a monthly basis.

Respondents: U.S. carriers that operate passenger service using any aircraft with 30 or more seats, and foreign air carriers that operate passenger service to and from the United States using any aircraft originally designed to have a passenger capacity of 30 or more seats.

Estimated Annual Burden on Respondents: 5 to 160 hours per respondent in the first year (average of 40 hours) and no more than 3 hours in subsequent years per respondent.

Estimated Total Annual Burden: 5,200 hours in the first year and no more than 390 hours in subsequent years for all respondents.

Frequency: One information set to submit per month for each respondent.

The Department invites interested persons to submit comments on any aspect of each of these three information collections, including the following: (1) The necessity and utility of the information collection, (2) the accuracy of the estimate of the burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of collection without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized or included, or both, in the request for OMB approval of these information collections.

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this NPRM.

List of Subjects

14 CFR Parts 234, 250, and 259

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

14 CFR Part 244

Air carriers, Consumer protection, and Tarmac delay data.

14 CFR Part 253

Air carriers, Consumer protection, and Contract of carriage.

14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small businesses.

Issued June 2, 2010 in Washington, DC.

Ray LaHood,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend title 14 CFR Chapter II as follows:

PART 234—[AMENDED]

1. The authority citation for 14 CFR part 234 continues to read as follows:

Authority: 49 U.S.C. 329 and chapters 401 and 417.

2. Section 234.11 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

§ 234.11 Disclosure to consumers.

* * * * *

(d) For each scheduled domestic flight segment, including domestic segments of a code-share flight operated by another carrier, a reporting carrier shall promptly provide to passengers who are ticketed or hold reservations, and to other interested persons information about a change in the status of a flight, defined for this purpose as cancellation of a flight or a delay of 30 minutes or more in the planned operation of a flight, including additional delays of 30 minutes or more to flights for which notification has already been provided. This information must at a minimum be provided in the boarding gate area, via a carrier's telephone reservation system and on the homepage of a carrier's Web site.

(1) With respect to any carrier that permits passengers to subscribe to flight status notification services, the reporting carrier shall deliver such notification to such passengers, by whatever means is available to the carrier and of the passenger's choice, within 30 minutes after the carrier becomes aware or should have become aware of a change in the status of a flight.

(2) The reporting carrier shall incorporate such notification service commitment into its Customer Service Plan as specified in section 259.5 of this chapter.

(e) Each reporting carrier shall update all flight status displays and other sources of flight information that are under the carrier's control at airports with information on each flight delay of 30 minutes or more or flight cancellation, within 30 minutes after the carrier becomes aware or should have become aware of a change in the status of a flight.

3. A new part 244 is added to read as follows:

PART 244—REPORTING TARMAC DELAY DATA

Sec.
244.1 Definitions.
244.2 Applicability.
244.3 Reporting of tarmac delay data.

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, and 41712.

§ 244.1 Definitions.

For the purposes of this part:

Arrival time is the instant when the pilot sets the aircraft parking brake after arriving at the airport gate or passenger unloading area. If the parking brake is not set, record the time for the opening of the passenger door. Also, carriers using a Docking Guidance System (DGS) may record the official "gate-arrival time" when the aircraft is stopped at the appropriate parking mark.

Cancelled flight means a flight operation that was not operated, but was listed in an air carrier or a foreign air carrier's computer reservation system within seven calendar days of the scheduled departure.

Certificated air carrier means a U.S. air carrier holding a certificate issued under 49 U.S.C. 41102 to conduct passenger service or holding an exemption to conduct passenger operation under 49 U.S.C. 40109.

Commuter air carrier means a U.S. commuter air carrier as described in 14 CFR 298.3(b) that is authorized to carry passengers on at least five round trips per week on at least one route between two or more points according to a published flight schedule using small aircraft.

Covered carrier means a certificated carrier, a commuter carrier, or a foreign air carrier operating to and from or within the United States, conducting scheduled passenger service or public charter service with at least one aircraft originally designed to have a passenger capacity of 30 or more seats.

Diverted flight means a flight which is operated from the scheduled origin point to a point other than the scheduled destination point in the carrier's published schedule.

Foreign air carrier means a carrier that is not a citizen of the United States as defined in 49 U.S.C. 40102(a) that holds a foreign air carrier permit issued under 49 U.S.C. 41302 or an exemption issued under 49 U.S.C. 40109 authorizing direct foreign air transportation.

Gate departure time is the instant when the pilot releases the aircraft parking brake after passengers have been boarded and aircraft doors have been closed. In cases where the flight returned to the departure gate before wheels-off time and departed a second time, the reportable gate departure time is the last gate departure time before wheels-off time. In cases of an air return, the reportable gate departure time is the last gate departure time before the gate return. If passengers were boarded without the parking brake being set, the reportable gate departure time is the time that the passenger door was closed. Also, the official "gate-departure time" may be based on aircraft movement for carriers using a Docking Guidance System (DGS). For example, one DGS records gate departure time when the aircraft moves more than 1 meter from the appropriate parking mark within 15 seconds. Fifteen seconds is then subtracted from the recorded time to obtain the appropriate out time.

Gate return means that the aircraft leaves the boarding gate only to return to a gate for the purpose of allowing passengers to disembark from the aircraft.

Tarmac delay means the holding of an aircraft on the ground either before taking off or after landing with no opportunity for its passengers to deplane.

§ 244.2 Applicability.

(a) This part applies to U.S. certificated air carriers, U.S. commuter air carriers and foreign air carriers that operate passenger service to a U.S. airport with an aircraft originally designed to have a passenger capacity of 30 or more seats. Carriers must report all passenger operations that experience a tarmac time of 3 hours or more at a U.S. airport.

(b) If a U.S. or a foreign air carrier has no 3-hour tarmac times in a given month, it still must submit a monthly report stating there were no 3-hour tarmac times.

(c) U.S. carriers that submit Part 234 Airline Service Quality Performance Report must only submit 3-hour tarmac information for public charter flights and international passengers flights as the domestic scheduled passenger flight information is already being collected in part 234 of this chapter.

§ 244.3 Reporting of tarmac delay data.

(a) Each covered carrier shall file BTS Form 244 "Tarmac Delay Report" with the Office of Airline Information of the Department's Bureau of Transportation and Statistics on a monthly basis, setting forth the information for each of its flights that experienced a tarmac delay of three hours or more, including diverted flights and cancelled flights on which the passengers were boarded and then deplaned before the cancellation. The reports are due within 15 days of the end of each month and shall be made in the form and manner set forth in accounting and reporting directives issued by the Director, Office of Airline Statistics, and shall contain the following information:

(1) Carrier code.
(2) Flight number.
(3) Departure airport (three letter code).
(4) Arrival airport (three letter code).
(5) Date of flight operation (year/month/day).
(6) Gate departure time (actual) in local time.
(7) Gate arrival time (actual) in local time.
(8) Wheels-off time (actual) in local time.
(9) Wheels-on time (actual) in local time.
(10) Aircraft tail number.
(11) Total ground time away from gate for all gate return/fly return at origin airports including cancelled flights.
(12) Longest time away from gate for gate return or canceled flight.
(13) Three letter code of airport where diverted flight.
(14) Wheels-on time at diverted airport.
(15) Total time away from gate at diverted airport.
(16) Longest time away from gate at diverted airport.
(17) Wheels-off time at diverted airport.

(b) The same information required by paragraph (a)(13) through (a)(17) of this section must be provided for each subsequent diverted airport landing.

PART 250—[AMENDED]

4. The authority citation for 14 CFR part 250 continues to read as follows:

Authority: 49 U.S.C. chapters 401, 411, 413 and 417.

5. Section 250.1 is amended by removing the definition of "sum of the values of the remaining flight coupons" and adding a definition of "confirmed reserved space" to read as follows:

§ 250.1 Definitions.

* * * * *

Confirmed reserved space means space on a specific date on a specific flight and class of service of a carrier which has been requested by a passenger, including a passenger with a "zero fare ticket" (e.g., consolidator ticket that does not show a fare amount on the ticket, frequent-flyer award ticket, or ticket obtained using a travel voucher), and which the carrier or its agent has verified, by appropriate notation on the ticket or in any other manner provided therefore by the carrier, as being reserved for the accommodation of the passenger.

* * * * *

6. Section 250.2b is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 250.2b Carriers to request volunteers for denied boarding.

* * * * *

(b) Every carrier shall advise each passenger solicited to volunteer for denied boarding, no later than the time the carrier solicits that passenger to volunteer, whether he or she is in danger of being involuntarily denied boarding (in doing so, the carrier must fully disclose the boarding priority rules that the carrier will apply for that specific flight), and the compensation the carrier is obligated to pay if the passenger is involuntarily denied boarding. If an insufficient number of volunteers come forward, the carrier may deny boarding to other passengers in accordance with its boarding priority rules.

(c) If a carrier offers free or reduced rate air transportation as compensation to volunteers, the carrier must disclose all material restrictions on the use of that transportation before the passenger decides whether to give up his or her confirmed reserved space on that flight in exchange for the free or reduced rate transportation.

7. Section 250.5 is revised to read as follows:

§ 250.5 Amount of denied boarding compensation for passengers denied boarding involuntarily.

(a) Subject to the exceptions provided in § 250.6, a carrier to whom this part applies as described in § 250.2 shall pay compensation to passengers denied boarding involuntarily from an oversold flight at the rate of 200 percent of the fare (including any surcharges and air transportation taxes) to the passenger's next stopover, or if none, to the passenger's final destination, with a maximum of $1,300. However, the compensation shall be one-half the amount described above, with a $650 maximum, if the carrier arranges for comparable air transportation [see § 250.1], or other transportation used by the passenger that, at the time either such arrangement is made, is planned to arrive at the airport of the passenger's next stopover, or if none, the airport of the passenger's final destination, not later than 2 hours after the time the direct or connecting flight from which the passenger was denied boarding is planned to arrive in the case of interstate air transportation, or 4 hours after such time in the case of foreign air transportation.

(b) Carriers may offer free or reduced rate air transportation in lieu of the cash due under paragraph (a) of this section, if:

(1) The value of the transportation benefit offered is equal to or greater than the cash payment otherwise required;

(2) The carrier fully informs the passenger of the amount of cash compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash payment; and

(3) The carrier fully discloses all material restrictions on the use of such free or reduced rate transportation before the passenger decides to give up cash payment in exchange for such transportation.

(c) For the purpose of calculating the denied boarding compensation for a passenger with a "zero fare ticket", the requirements in paragraph (a), (b), and (c) of this section apply. The fare paid by these passengers for purpose of this calculation shall be the lowest cash, check, or credit card payment charged for a comparable class of ticket on the same flight.

(d) The Department of Transportation will review the maximum denied boarding compensation amounts prescribed in this part every two years. The Department will use the Consumer Price Index for All Urban Consumers (CPI–U) as of July of each review year to calculate the revised maximum compensation amounts. The Department will use the following formula:

Current Denied Boarding Compensation multiplied by (a/b) rounded to the nearest $25 where:

a = July CPI–U of year of current adjustment

b = the CPI–U figure in July 2010 when the inflation adjustment provision was added to Part 250.

8. Section 250.9 is amended by revising the section heading and paragraph (c) to read as follows:

§ 250.9 Written explanation of denied boarding compensation and boarding priorities, and verbal notification of denied boarding compensation.

* * * * *

(c) In addition to furnishing passengers with the carrier's written statement as specified in paragraphs (a) and (b) of this section, if the carrier orally advises involuntarily bumped passengers that they are entitled to receive free or discounted transportation as denied boarding compensation, the carrier must also orally advise the passengers of any restrictions or conditions applicable to the free or discounted transportation and that they are entitled to choose cash or check compensation instead.

PART 253—[AMENDED]

9. The authority citation for 14 CFR part 253 continues to read as follows:

Authority: 49 U.S.C. 40113; 49 U.S.C. Chapters 401, 415 and 417.

10. Section 253.7 is revised to read as follows:

§ 253.7 Direct notice of certain terms.

A passenger shall not be bound by any terms restricting refunds of the ticket price or imposing monetary penalties on passengers unless the passenger receives conspicuous written notice of the salient features of those terms on or with the ticket.

11. Section 253.9 is revised to read as follows:

§ 253.9 Notice of contract of carriage choice-of-forum provisions.

The Department considers any contract of carriage provision containing a choice-of-forum clause that attempts to preclude a passenger from bringing a consumer-related claim against a carrier in any court of competent jurisdiction, including a court within the jurisdiction of the passenger's residence in the United States, provided that the carrier does business within that jurisdiction, to be an unfair and deceptive practice prohibited by 49 U.S.C. 41712.

PART 259—[AMENDED]

12. The authority citation for 14 CFR part 259 continues to read as follows:

Authority: 49 U.S.C. 40101(a)(4), 40101(a)(9), 40113(a), 41702, and 41712.

13. Section 259.2 is revised to read as follows:

§ 259.2 Applicability.

This rule applies to all the flights of a certificated or commuter air carrier if the carrier operates scheduled passenger service or public charter service using any aircraft originally designed to have

a passenger capacity of 30 or more seats, and to all the flights to and from the U.S. of a foreign carrier if the carrier operates scheduled passenger service or public charter service to and from the U.S. using any aircraft originally designed to have a passenger capacity of 30 or more seats, with the exception that § 259.5 and § 259.7 do not apply to charter service.

14. Section 259.3 is revised to read as follows:

§ 259.3. Definitions.

For the purposes of this part:

Certificated air carrier means a U.S. air carrier that holds a certificate issued under 49 U.S.C. 41102 to operate passenger service or an exemption from 49 U.S.C. 41102.

Commuter air carrier means a U.S. air carrier as established by 14 CFR 298.3(b) that is authorized to carry passengers on at least five round trips per week on at least one route between two or more points according to a published flight schedule using small aircraft.

Covered carrier means a certificated carrier, a commuter carrier, or a foreign air carrier operating to and from or within the United States, conducting scheduled passenger service or public charter service with at least one aircraft originally designed to have a passenger capacity of 30 or more seats.

Foreign air carrier means a carrier that is not a citizen of the United States as defined in 49 U.S.C. 40102(a) that holds a foreign air carrier permit issued under 49 U.S.C. 41302 or an exemption issued under 49 U.S.C. 40109 authorizing direct foreign air transportation.

Large hub airport means an airport that accounts for at least 1.00 percent of the total enplanements in the United States.

Medium hub airport means an airport accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States.

Non-hub airport means an airport with 10,000 or more annual enplanements but less than 0.05 percent of the country's annual passenger boardings.

Small hub airport means an airport accounting for at least 0.05 percent but less than 0.25 percent of the total enplanements in the United States.

Tarmac delay means the holding of an aircraft on the ground either before taking off or after landing with no opportunity for its passengers to deplane.

15. Section 259.4 is revised to read as follows:

§ 259.4 Contingency plan for lengthy tarmac delays.

(a) *Adoption of Plan.* Each covered carrier shall adopt a Contingency Plan for Lengthy Tarmac Delays for its scheduled and public charter flights at each large U.S. hub airport, medium hub airport, small hub airport and non-hub airport at which it operates such air service and shall adhere to its plan's terms.

(b) *Contents of Plan.* Each Contingency Plan for Lengthy Tarmac Delays shall include, at a minimum, the following:

(1) For domestic flights, assurance that the covered U.S. air carrier will not permit an aircraft to remain on the tarmac for more than three hours before allowing passengers to deplane unless:

(i) The pilot-in-command determines there is a safety-related or security-related reason (*e.g.* weather, a directive from an appropriate government agency) why the aircraft cannot leave its position on the tarmac to deplane passengers; or

(ii) Air traffic control advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations.

(2) For international flights operated by covered carriers that depart from or arrive at a U.S. airport, assurance that the carrier will not permit an aircraft to remain on the tarmac at a U.S. airport for more than a set number of hours as determined by the carrier and set out in its contingency plan, before allowing passengers to deplane, unless:

(i) The pilot-in-command determines there is a safety-related or security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers; or

(ii) Air traffic control advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations.

(3) For all flights, assurance that the carrier will provide adequate food and potable water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security considerations preclude such service;

(4) For all flights, assurance of operable lavatory facilities, as well as adequate medical attention if needed, while the aircraft remains on the tarmac;

(5) For all flights, assurance that the passengers on the delayed flight will receive notifications regarding the status of the tarmac delay every 30 minutes while the plane is delayed, including the reasons for the tarmac delay;

(6) Assurance of sufficient resources to implement the plan; and

(7) Assurance that the plan has been coordinated with airport authorities at each U.S. large hub airport, medium hub airport, small hub airport and non-hub airport that the carrier serves, as well as its regular U.S. diversion airports;

(8) Assurance that the plan has been coordinated with U.S. Customs and Border Protection (CBP) at each large U.S. hub airport, medium hub airport, small hub airport and non-hub airport that is regularly used for that carrier's international flights, including diversion airports; and

(9) Assurance that the plan has been coordinated with the Transportation Security Administration (TSA) at each large U.S. hub airport, medium hub airport, small hub airport and non-hub airport that the carrier serves, including diversion airports.

(c) *Amendment of plan.* At any time, a carrier may amend its Contingency Plan for Lengthy Tarmac Delays to decrease the time for aircraft to remain on the tarmac for domestic flights covered in paragraph (b)(1) of this section, for aircraft to remain on the tarmac for international flights covered in paragraph (b)(2) of this section, and for the trigger point for food and water covered in paragraph (b)(3) of this section. A carrier may also amend its plan to increase these intervals (up to the limits in this rule), in which case the amended plan shall apply only to those flights that are first offered for sale after the plan's amendment.

(d) *Retention of records.* Each carrier that is required to adopt a Contingency Plan for Lengthy Tarmac Delays shall retain for two years the following information about any tarmac delay that lasts at least three hours:

(1) The length of the delay;

(2) The precise cause of the delay;

(3) The actions taken to minimize hardships for passengers, including the provision of food and water, the maintenance and servicing of lavatories, and medical assistance;

(4) Whether the flight ultimately took off (in the case of a departure delay or diversion) or returned to the gate; and

(5) An explanation for any tarmac delay that exceeded 3 hours (*i.e.,* why the aircraft did not return to the gate by the 3-hour mark).

(e) *Unfair and deceptive practice.* A carrier's failure to comply with the assurances required by this rule and as contained in its Contingency Plan for

Lengthy Tarmac Delays will be considered an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 that is subject to enforcement action by the Department.

16. Section 259.5 is revised to read as follows:

§ 259.5 Customer Service Plan.

(a) *Adoption of Plan.* Each covered carrier shall adopt a Customer Service Plan applicable to its scheduled flights and shall adhere to this plan's terms.

(b) *Contents of Plan.* Each Customer Service Plan shall address the following subjects and comply with the minimum standards set forth:

(1) Offering the lowest fare available on the carrier's Web site, at the ticket counter, or when a customer calls the carrier's reservation center to inquire about a fare or to make a reservation;

(2) Notifying consumers in the boarding gate area, on board aircraft and via a carrier's telephone reservation system and its Web site of known delays, cancellations, and diversions;

(3) Delivering baggage on time, including making every reasonable effort to return mishandled baggage within twenty-four hours and compensating passengers for reasonable expenses that result due to delay in delivery;

(4) Allowing reservations to be held at the quoted fare without payment, or cancelled without penalty, for at least twenty-four hours after the reservation is made;

(5) Where ticket refunds are due, providing prompt refunds for credit card purchases as required by § 374.3 of this chapter and 12 CFR part 226, and for cash and check purchases within 20 days after receiving a complete refund request;

(6) Properly accommodating passengers with disabilities as required by Part 382 of this chapter and for other special-needs passengers as set forth in the carrier's policies and procedures, including during lengthy tarmac delays;

(7) Meeting customers' essential needs during lengthy tarmac delays as required by § 259.4 of this chapter and as provided for in each covered carrier's contingency plan;

(8) Handling "bumped" passengers with fairness and consistency in the case of oversales as required by Part 250 of this chapter and as described in each carrier's policies and procedures for determining boarding priority;

(9) Disclosing cancellation policies, frequent flyer rules, aircraft configuration, and lavatory availability on the selling carrier's Web site, and upon request, from the selling carrier's telephone reservations staff;

(10) Notifying consumers in a timely manner of changes in their travel itineraries;

(11) Ensuring good customer service from code-share partners, including making reasonable efforts to ensure that its code-share partner(s) have comparable customer service plans or provide comparable customer service levels, or have adopted the identified carrier's customer service plan;

(12) Ensuring responsiveness to customer complaints as required by section 259.7 of this chapter; and

(13) Identifying the services it provides to mitigate passenger inconveniences resulting from flight cancellations and misconnections.

(c) *Self-auditing of Plan and retention of records.* Each carrier that is required to adopt a Customer Service Plan shall audit its own adherence to its plan annually. Carriers shall make the results of their audits available for the Department's review upon request for two years following the date any audit is completed.

17. Section 259.6 is revised to read as follows:

§ 259.6 Contract of carriage.

(a) Each U.S. and foreign air carrier that is required to adopt a contingency plan for lengthy tarmac delays shall incorporate this plan into its contract of carriage.

(b) Each U.S. and foreign air carrier that is required to adopt a customer service plan shall incorporate this plan in its contract of carriage.

(c) Each U.S. and foreign air carrier that has a Web site shall post its entire contract of carriage on its Web site in easily accessible form, including all updates to its contract of carriage.

18. Section 259.7 is revised to read as follows:

§ 259.7 Response to consumer problems.

(a) *Designated advocates for passengers' interests.* Each covered carrier shall designate for its scheduled flights an employee who shall be responsible for monitoring the effects of flight delays, flight cancellations, and lengthy tarmac delays on passengers. This employee shall have input into decisions on which flights to cancel and which will be delayed the longest.

(b) *Informing consumers how to complain.* Each covered carrier shall make available the mailing address and e-mail or web address of the designated department in the airline with which to file a complaint about its scheduled service. This information shall be provided on the carrier's Web site (if any), on all e-ticket confirmations and, upon request, at each ticket counter and boarding gate staffed by the carrier or a contractor of the carrier.

(c) *Response to complaints.* Each covered carrier shall acknowledge receipt of each complaint regarding its scheduled service to the complainant within 30 days of receiving it and shall send a substantive response to each complainant within 60 days of receiving the complaint. A complaint is a specific written expression of dissatisfaction concerning a difficulty or problem which the person experienced when using or attempting to use an airline's services.

PART 399—[AMENDED]

19. The authority citation for 14 CFR part 399 continues to read as follows:

Authority: 49 U.S.C. 40101 *et seq.*

20. Section 399.84 is revised to read as follows:

§ 399.84 Price advertising and opt-out provisions.

(a) The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (*e.g.,* a combination of air transportation and ground accommodations), or a tour component (*e.g.,* a hotel stay) that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component. Although separate charges included within the total price (*e.g.,* taxes or a fuel surcharge) may be stated in fine print or through links or "pop ups" on Web sites, fares that exclude any required charges may not be displayed in advertising or solicitations.

(b) The Department considers any advertising by the entities listed in paragraph (a) of this section of an each-way airfare that is available only when purchased for round-trip travel to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless such airfare is advertised as "each way" and in such a way so that the disclosure of the round trip purchase requirement is clearly and conspicuously noted in the advertisement and is stated prominently and proximately to the each-way fare amount. Each-way fares may not be referred to as "one-way" fares.

(c) When offering a ticket for purchase by a consumer, for passenger air transportation or for an air tour or air tour component, a direct air carrier, indirect air carrier, an agent of either, or

a ticket agent, may not include "opt-out" provisions for additional optional services in connection with air transportation, an air tour, or air tour component that will automatically be added to the purchase if the consumer takes no other action. The consumer must affirmatively "opt in" (*i.e.,* agree) to such a fee for the services before that fee is added to the total price for the air transportation-related purchase. The Department considers the use of "opt-out" provisions to be an unfair and deceptive practice in violation of 49 U.S.C. 41712.

21. A new § 399.85 is added to read as follows:

§ 399.85 Notice of baggage fees and other fees.

(a) If a U.S. or foreign air carrier has a Web site accessible for ticket purchases by the general public, the carrier must promptly and prominently disclose any increase in its fee for carry-on or checked baggage and any change in the checked baggage allowance for a passenger on the homepage of the carrier's Web site. Such notice must remain on the homepage for at least three months after the change becomes effective.

(b) On all e-ticket confirmations for air transportation within, to or from the United States, including the summary page at the completion of an online purchase and a post-purchase e-mail confirmation, a U.S. or foreign air carrier must include information regarding the free passenger's baggage allowance and/or the applicable fee for a carry-on bag and the first and second checked bag.

(c) If a U.S. or foreign air carrier has a Web site where it advertises or sells air transportation, on its Web site the carrier must disclose information on fees for optional services that are charged to a passenger purchasing air transportation. Such disclosure must be clear, with a conspicuous link from the air carrier's homepage to the fee disclosure. For purposes of this section, the term "optional services" is defined as any service the airline provides beyond the provision of passenger air transportation. Such fees include, but are not limited to, charges for checked or carry-on baggage, advance seat selection, in-flight beverages, snacks and meals, and seat upgrades.

(d) The Department considers the failure to give the appropriate notice described in paragraphs (a), (b), and (c) of this section to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

22. A new § 399.87 is added to read as follows:

§ 399.87 Prohibition on post-purchase price increase.

It is an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 for any seller of scheduled air transportation, or of a tour or tour component that includes scheduled air transportation to increase the price of that air transportation to a consumer, including but not limited to increase in the price of the seat, increase in the price for the carriage of passenger baggage, or increase in an applicable fuel surcharge, after the air transportation has been purchased by the consumer.

[FR Doc. 2010–13572 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 100602237–0237–01]

Import Administration IA ACCESS Pilot Program

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Public notice and request for comments.

SUMMARY: The Department of Commerce (the Department) is creating a pilot program to test an electronic filing system in certain antidumping (AD) and countervailing duty (CVD) proceedings. In addition, the Department is requesting comments from parties on this pilot program.

DATES: *Effective Date:* The pilot program will be in effect from July 1, 2010, through September 30, 2010.

Comments Due Date: Comments on the Department's conduct of the pilot program for electronic filing should be submitted either electronically or manually no later than 30 days after the publication of this notice in the **Federal Register**.

ADDRESSES: Written comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.Regulations.gov.* All comments must be submitted into Docket Number ITA–2010–XXXX. All comments should refer to RIN 0625–AA84.
- *Mail or Hand Delivery/Courier:* Please submit the original and two copies of comments to the Secretary of Commerce, Attn: Evangeline Keenan, Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, Constitution Avenue and 14th Street, NW., Washington, DC 20230.
- *E-mail:* Comments may be submitted electronically via e-mail to *webmaster-support@ita.doc.gov.* Please reference "IA ACCESS Pilot Comments" in the subject line of the e-mail.

FOR FURTHER INFORMATION CONTACT: Evangeline Keenan, Acting APO/Dockets Unit Director, Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, Constitution Avenue and 14th Street, NW., Washington, DC 20230; *telephone:* (202) 482–9157.

SUPPLEMENTARY INFORMATION:

Background

The Department is undertaking a review of its regulations in AD and CVD proceedings governing the submission of information to the Department, currently 19 CFR part 351, subpart C, with a view to the adoption of rules and procedures that will implement an electronic filing system, which will be entitled Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). The Department's current rules on the submission of information in AD and CVD proceedings, at 19 CFR 351.303(c)(1), require that parties submit six paper copies of each submission to the Department. In developing IA ACCESS, the Department seeks to expand the public's access to the Department's AD and CVD proceedings by making all publicly filed documents available on the internet and to facilitate the electronic submission of documents to the Department in AD and CVD proceedings by allowing interested parties to file documents electronically. The Department envisions that such a system will create efficiencies in both the process and costs associated with filing and maintaining documents pertaining to AD and CVD proceedings.

The pilot program will implement IA ACCESS on a small scale to allow the Department to evaluate and gain experience with operating an electronic filing system. Implementation of the full electronic filing system will be accomplished through a later rulemaking that will amend the Department's regulations; the Department also intends to provide more detailed procedures for IA ACCESS in a document separate from the regulations, which the Department intends to publish on its Web site prior to issuing regulations creating IA ACCESS. IA ACCESS will be implemented in three separate phases, or releases, with each phase

implementing an additional feature of IA ACCESS. These phases will allow (1) The electronic submission of documents, (2) the electronic release of public documents, and (3) the electronic release of business proprietary documents to authorized applicants. Each phase will be preceded by a pilot program designed to test and evaluate the functionality of that release.

IA ACCESS Pilot Program on Electronic Filing

The Department is creating an IA ACCESS pilot program for electronic submission of documents to enable it to evaluate and gain experience with operating an electronic filing system before amending its existing regulations. The pilot program will test the functionality of submitting documents electronically in IA ACCESS. This pilot program will run from July 1, 2010, through September 30, 2010, and will be in effect for interested parties participating in the AD and CVD proceedings enumerated below. In order to utilize the IA ACCESS pilot program, parties will need access to an internet connection and will be required to follow the instructions on using the system enumerated in the "IA ACCESS Pilot User Guide," which the Department will publish on its Web site at *http://www.trade.gov/ia* prior to the start of the pilot. The Department will also waive the filing requirements in 19 CFR 351.303(c)(1) for parties participating in the pilot. In place of these requirements, where parties have filed a document electronically through IA ACCESS, parties need only submit one signed original and one copy of a public document or one signed original and two public versions of a business proprietary document. Except for this modification to the filing requirements in 19 CFR 351.303(c)(1), all other filing requirements under the Department's regulations will remain in effect under the pilot program. This pilot program only concerns the electronic submission of documents, and pilot programs for other releases (*i.e.,* the electronic release of public and business proprietary documents) will be conducted at a later date. Parties to AD and CVD proceedings not enumerated below must continue to follow the Department's current regulations governing the submission of information to the Department.

The IA ACCESS pilot program will be in effect for interested parties participating in the following proceedings:

AD Proceedings

A–201–822: Stainless Steel Sheet and Strip in Coils from Mexico—Administrative Review 07/01/08–06/30/09;

A–201–836: Light-Walled Rectangular Pipe and Tube from Mexico—Administrative Review 01/30/08–7/31/09;

A–351–828: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil—Administrative Review 03/01/08–02/28/09;

A–351–828: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil—Administrative Review 03/01/09–02/28/10;

A–357–812: Honey from Argentina—Administrative Review 12/01/08–11/30/09;

A–421–811: Carboxymethylcellulose from the Netherlands—Administrative Review 07/01/08–06/30/09;

A–570–836: Glycine from the People's Republic of China—Administrative Review 03/01/09–02/28/10;

A–570–916: Laminated Woven Sacks from the People's Republic of China—Administrative Review 01/31/08–07/31/09;

A–570–922: Raw Flexible Magnets from the People's Republic of China—New Shipper Review (Jingzhou Meihou Flexible Magnet Company, Ltd.) 09/01/09–02/28/10;

A–570–924: Polyethylene Terephthalate (Pet) Film from the People's Republic of China—Administrative Review 11/06/08–10/31/09;

A–570–964: Seamless Refined Copper Pipe and Tube from the People's Republic of China—Investigation;

A–588–857: Welded Large Diameter Line Pipe from Japan—Administrative Review 12/01/08–11/30/09;

CVD Proceedings

C–570–968: Aluminum Extrusions from the People's Republic of China—Investigation;

C–580–818: Corrosion-Resistant Steel Flat Products from the Republic of Korea—Administrative Review 01/01/2008–12/31/2008.

The Department will contact the parties to these proceedings individually concerning their participation in the pilot prior to the program's commencement. Participants should be prepared to provide feedback and suggestions for the improvement of IA ACCESS after completion of the pilot program.

Request for Comments

The Department also requests public comments on the Department's proposed conduct of the IA ACCESS pilot program described above. Comments must be filed no later than 30 days after the publication of this notice in the **Federal Register**. Comments may be submitted either electronically or in paper form to the address specified above. The Department will consider all comments received before the close of the comment period in developing and implementing the IA ACCESS pilot program. Comments received after the end of the comment period may be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Such comments will be returned to the persons submitting the comments and will not be considered by the Department. All comments responding to this notice will be a matter of public record and will be available for inspection and copying at Import Administration's Central Records Unit, Room 1117, on the Federal eRulemaking Portal at www.Regulations.gov, and in Portable Document Format (PDF) on the Department's Web site at *http://www.trade.gov/ia/.* Comments submitted electronically need not also be submitted in hard copy.

Persons wishing to submit written comments in hard copy should file one signed original and two copies of each set of comments to the address specified above. Persons wishing to comment electronically should submit comments to the Federal eRulemaking Portal at *http://www.Regulations.gov* as specified above or via e-mail to *webmaster-support@ita.doc.gov.* Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address: *webmaster-support@ita.doc.gov.*

Dated: May 28, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–13733 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

[Docket No. MMS–2009–MRM–0005]

RIN 1010–AD36

Debt Collection and Administrative Offset for Monies Due the Federal Government

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS is proposing to promulgate regulations establishing procedures to implement the provisions governing collection of delinquent royalties, rentals, bonuses, and other amounts due under leases and other agreements for the production of oil, natural gas, coal, geothermal energy, other minerals, and renewable energy from Federal lands onshore, Indian tribal and allotted lands, and the Outer Continental Shelf. The proposed regulations would include provisions for administrative offset and would clarify and codify the provisions of the Debt Collection Act of 1982 (DCA) and the Debt Collection Improvement Act of 1996 (DCIA).

DATES: Comments must be submitted on or before August 9, 2010.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD36 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter MMS-2009-MRM-0005, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. The MMS will post all comments.
- Mail comments to Hyla Hurst, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 61013B, Denver, Colorado 80225.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: For comments or questions on procedural issues, contact Hyla Hurst, Regulatory Specialist, Minerals Revenue Management (MRM), MMS, telephone (303) 231–3495. For questions on technical issues, contact Sarah Inderbitzin, Office of Enforcement, MRM, MMS, telephone (303) 231–3748.

SUPPLEMENTARY INFORMATION:

I. Background

The MMS is responsible for the collection, accounting, and disbursement of billions of dollars per year in bonus, rental, royalty, and other revenues derived from leases and other agreements for the production of oil, natural gas, coal, geothermal energy, other minerals, and renewable energy from Federal lands onshore, Indian tribal and allotted lands, and the Outer Continental Shelf (OCS). The MMS also is responsible for enforcement of royalty and other payment obligations under applicable statutes, regulations, leases, agreements, and contracts.

The MMS undertakes current debt collection activities under the DCA (Pub. L. 97–365), as amended by the DCIA (Pub. L. 104–134), (codified at 31 U.S.C. 3711, 3716–18, and 3720A). The DCIA was enacted primarily to increase collection of nontax debts owed to the Federal Government. Among other provisions, the DCIA centralized the administrative collection of most delinquent nontax debt at the U.S. Department of the Treasury's Financial Management Service to increase the efficiency of collection efforts. Government agencies are now required to transfer nontax debt that has been delinquent for 180 days or less to Treasury for further collection action, including administrative offset.

This proposed rule is intended to implement statutory provisions of the DCA and DCIA, and to adopt the Government-wide debt collection standards promulgated by the Departments of the Treasury and Justice, known as the Federal Claims Collection Standards (FCCS) (31 CFR parts 900–904). This proposed rule would supplement the FCCS by prescribing procedures necessary and appropriate for MMS operations. The DCIA grants MMS discretionary authority in many aspects of debt collection, and this proposed rule would define the parameters of this authority.

Under current debt collection practice:

- For Federal and Indian delinquent debts and civil penalty notices, MMS sends a written notice to debtors either (1) With an invoice; (2) after the due date of an invoice; or (3) after the receipt date of an unpaid Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0140).
- For Federal oil and gas leases, if MMS sends a written notice to the payor, then MMS also sends written notice to the lessees and operating rights owners.

The MMS allows the debtor 60 days from the date of the written notification to either pay the debt or enter into a payment agreement with MMS. A debtor may also appeal the debt to MMS under 30 CFR part 290 or part 241. If the debtor fails to take one of these actions, MMS refers the delinquent debt to Treasury within 180 days of when the debt became delinquent.

II. Explanation of Proposed Amendments

Before reading the explanatory information below, please turn to the proposed rule language, which immediately follows the List of Subjects in 30 CFR part 218 and signature page in this proposed rule. This language will be codified in the Code of Federal Regulations (CFR) if this rule is finalized as written.

After you have read the proposed rule language, please return to the preamble discussion below. The preamble contains additional information about the proposed rule, such as why we defined a term in a certain manner, why we chose a certain procedure, and how we interpret the laws this rule implements.

We are proposing to add a new subpart to codify and enhance current MMS debt collection practices. The new subpart is proposed at 30 CFR part 218, subpart J—Debt Collection and Administrative Offset. Following is a section-by-section explanation of the new subpart (omitting sections that require no further explanation):

A. 30 CFR 218.700 What definitions apply to the regulations in this subpart?

Subsection (a) would define "administrative offset" in a manner essentially identical to its definition in the DCIA (31 U.S.C. 3701(a)(1)).

Subsection (b) would define "agency" in a manner essentially identical to its definition in the DCIA (31 U.S.C. 3701(a)(4)).

Subsection (e) would clarify that "day" means a calendar day. The MMS further clarifies that, in determining the ending date for a particular period of time, the last day of the period must be counted unless it is a Saturday, Sunday, or Federal holiday.

Subsection (f) would define "debt" and "claim" in a manner similar to the definition in the DCIA (31 U.S.C. 3701(b)). However, subsection (f) omits the examples of types of debts or claims included in 31 U.S.C. 3701(b) as

unnecessary and potentially confusing. It is our intention that "debt" and "claim" be read synonymously and broadly to encompass any and all amounts that are determined to be due the United States from any entity, other than a Federal Agency. For example, "debt" or "claim" would include, but is not limited to, royalties and other lease revenues and monies due under (1) A royalty-in-kind purchase agreement; (2) a Bureau of Land Management (BLM) storage agreement; or (3) a Department of Interior (DOI) contract, agreement, license, easement, permit, or right-of-way. With two changes, subsection (f) essentially would adopt verbatim the 31 U.S.C. 3701(b)(2) definition of "debt" or "claim" in relation to administrative offsets. The word "money" would be included in subsection (f) to ensure that the scope of definition of "debt" and "claim" is not inadvertently limited by 31 U.S.C. 3701(b)(2)'s reference only to "funds or property." The phrase "by a person" would be struck from this portion of subsection (f) because it is redundant and potentially limiting to the first sentence of subsection (f).

Subsection (g) would broadly define "debtor." Thus, subsection (g) would encompass not only lessees and payors, but also any entity covered by the definition of "person" in subsection (s), and any contractor or other entity that owes a debt to the Department related to Federal or Indian energy or mineral resources.

Subsection (n) would define "legally enforceable" to mean that there has been a final agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset consistent with the definition at 31 CFR 285.5. A final agency determination may include, but is not limited to, a bill, order, MMS Director's decision, or Interior Board of Land Appeals decision that you neither pay nor appeal.

Subsection (o) would broadly define "lessee" to cover any record title holder, assignee, operating rights owner, or any other person or entity who holds an interest in a lease, easement, right-of-way, contract, or other agreement, regardless of form, for the development or use of Federal or Indian minerals or other resources for which MMS collects monies or other compensation. The definition in subsection (o) is broader than the definition of "lessee" in 30 CFR part 206 because it is intended to apply to holders of leases and other contracts and agreements for any type of Federal and Indian minerals and resources.

Subsection (r) would include "payors" within the scope of debtors subject to this rulemaking. Therefore, subsection (r) would define a "payor" as a person responsible for payment obligations on all Indian mineral leases, as well as Federal solid and geothermal leases, regardless of whether the payor is also a lessee.

Subsection (s) would broadly define "person" as, effectively, any person or entity of any kind that owes a debt to the United States, other than the United States.

Subsection (t) would define "tax refund offset." The DCA authorizes this type of offset under 31 U.S.C. 3720A. Section 3720A allows an agency to notify Treasury of certain delinquent debts and have the amount of the debt withheld from any tax refund to which the debtor would otherwise be entitled.

B. 30 CFR 218.701 What is MMS's authority to issue these regulations?

Subsection (a) would identify and cite the statutory and regulatory authority for this proposed regulation.

Subsection (b) would specifically adopt the FCCS and would clarify that this proposed regulation supplements the FCCS. Supplementation is necessary to adapt portions of the FCCS to better meet the needs of MMS, to comply with certain provisions of the FCCS requiring agency-specific regulation (i.e., 31 CFR 901.9(h)), and to exercise certain discretionary authorities granted MMS by the DCIA and FCCS. To the degree that a matter is addressed in both the FCCS and this proposed regulation, we will follow this proposed regulation in lieu of the FCCS parallel provision.

C. 30 CFR 218.702 What happens to delinquent debts a debtor owes MMS?

Subsection (a) specifies that MMS would follow the procedures contained in this proposed regulation in its debt collection activities. Subsection (a) is not intended to imply that the proposed rule would be the sole source of debt collection procedures available to MMS. As noted above and in proposed section 218.701(b), MMS adopts the provisions of the FCCS and is governed by the FCCS collection standards to the extent that one of those standards is not specifically addressed in this proposed regulation.

Subsection (b) would implement 31 U.S.C. 3711(g)(1), which requires Federal agencies to transfer nontax delinquent debt to Treasury within 180 days of when the debt becomes delinquent. This would allow Treasury to take appropriate action to collect the debt or terminate the collection action in accordance with 5 U.S.C. 5514, 26 U.S.C. 6402, 31 U.S.C. 3711 and 3716, the FCCS, 5 CFR 550.1108, and 31 CFR part 285.

Transferring debts to Treasury advances the statutory goal of the DCIA to centralize the administrative collection of nontax debt with Treasury's Financial Management Service. This centralization allows us to focus our efforts on collecting more recent debt and on working with willing debtors to reach agreements to repay their debts. It also ensures consistent application of debt collection procedures regardless of which Federal Agency is owed the debt.

D. 30 CFR 218.703 What notice will MMS give to a debtor of our intent to collect a debt?

Subsection (a) would implement 31 U.S.C. 3716(a), under which an agency must give notice to the debtor of certain matters before collecting a claim by administrative offset. Subsection (a) would explain that we will (1) Provide notice to a debtor of the type and amount of the claim, the methods of offset we may employ, and the availability of opportunities for the debtor to inspect and copy records related to the debt; (2) obtain internal agency review of our decision regarding the debt; and (3) describe how the debtor may request to enter into a written agreement with MMS to repay the debt.

Subsection (a) also would explain that the notice we send the debtor will include (1) our policy concerning the interest, penalty charges, and administrative costs MMS may assess against the debtor; and (2) the date by which the debtor must pay the debt to avoid added late charges and enforced collection activities. In addition, subsection (a) would explain that the notice MMS gives the debtor will provide contact information for the appropriate MMS employee or office for the debtor to contact regarding the debt. It is our intent to provide the debtor with notice of these additional factors to ensure the debtor is fully informed of the financial consequences of continued failure to pay. It is further intended that, by providing the debtor with contact information for the appropriate personnel and office, the debtor will be encouraged to work with us voluntarily to pay the debt, and thus to lessen the need to refer debt to Treasury for administrative offset and additional collection activities.

Subsection (b) would clarify that 218.703(a)(8) does not allow a debtor to reopen matters pertaining to orders and demands, notices of violations, or civil penalties, which are subject to MMS appeals regulations at 30 CFR part 290 or part 241. The procedures under part 290 and part 241, and the

complementary procedures specified in 43 CFR part 4, establish a comprehensive system by which certain MMS decisions may be appealed to the MMS Director, Interior Board of Land Appeals, or Office of Hearings and Appeals Hearings Division. This system includes time limits for filing an appeal and an explanation of when a party has exhausted its administrative remedies. These provisions are essential to establishing when an MMS decision becomes final and determining the legal rights of both MMS and the entity that is the subject of our decision. By including subsection (b), we ensure part 290 and part 241, and the important purposes they serve, are not circumvented by an appeal of an MMS decision on debt.

E. 30 CFR 218.704 What is MMS's policy on interest, penalty charges, and administrative costs?

Subsection (a)(1) would ensure conformance with 31 U.S.C. 3717(a)(1) and 31 CFR 901.9(a), both of which require Federal agencies to charge interest on all outstanding debts owed to the United States.

Subsection (a)(2) would clarify 31 CFR 901.9(b)(1), which specifies that "[i]nterest shall accrue from the date of delinquency, or as otherwise specified by law." We are specifying that interest begins to accrue from the date that the debt becomes delinquent unless otherwise specified by law or lease terms. Our intent in including this language is to assure that we comply with the unique requirements of law, such as the interest provisions of the Royalty Simplification and Fairness Act (RSFA), which states that a royalty obligation on Federal oil and gas leases becomes due the end of the month after the month of production (30 U.S.C. 1724(c)(2)). In such instances, although the principal royalties may be due 60 days after the order is issued, interest would accrue from the end of the month following the month of production until the debt is paid, not from 60 days after the order until the debt was paid. The same holds true for all mineral leases, which may have unique interest requirements that would dictate when interest begins to accrue.

Subsection (a)(3) specifies that MMS would use the interest and late payment charge calculation and other provisions contained in 30 CFR 218.54 and 218.102 to assess interest due on debts involving Federal and Indian oil and gas leases. However, the rule would provide that this is the case unless otherwise specified by lease terms because some non-standard mineral leases have unique interest requirements. In such cases, the lease terms regarding interest would apply.

Subsection (a)(4) explains that MMS would apply the interest provisions for Federal and Indian solid mineral (including coal) and geothermal leases found in 30 CFR 218.202 and 218.302.

Subsection (b) explains that MMS would assess a penalty of 6 percent on any delinquent debt that is more than 90 days from the date of delinquency that it refers to Treasury consistent with the DCIA (31 U.S.C. 3717(e)(2)) and FCCS (31 CFR 901.9(d)). The penalty would accrue from the date of delinquency through the date MMS refers the debt to Treasury. It is important to note that penalties and interest will continue to accrue on any debt referred to Treasury. However, Treasury will assess and collect those amounts.

The penalty would accrue not only on the delinquent debt, but also on any interest accrued through the date of referral and on the $436 in administrative costs we would assess under paragraph (c) of this section explained below. For example, assume you receive an order to pay $1,000 in additional royalties due on Federal oil and gas leases, and the order gives you 60 days to pay the bill (due date), but you do not pay. Assuming accrued interest is $100 on the day the debt is referred to Treasury, we will refer $1,628 to Treasury, calculated as follows:

$1,000 royalties + $100 interest + $436 administrative costs = $1,536 +

$92 penalty charge (6 percent × $1,536 = $92.16, rounded to $92) = $1,628.

Like Federal Oil and Gas Royalty Management Act (FOGRMA) civil penalties (30 U.S.C. 1719), the DCIA does not designate where MMS should deposit penalties collected. Therefore, as in the case of FOGRMA civil penalties, MMS would deposit such monies in the Treasury General Fund. Unlike FOGRMA, the DCIA does not provide that civil penalties can be shared with states and tribes in certain circumstances (30 U.S.C. 1736). Because we have no such statutory authority, we will not share penalties collected under this rule with any state, county, or tribe.

Subsection (c) explains that MMS would assess $436 in fees for administrative costs for each referral of debt to Treasury incurred because of the debtor's failure to pay the debt. Consistent with the FCCS (31 CFR 901.9(c)), we calculated the $436 administrative cost we propose to assess in this rule based on our estimate of the average actual costs we incur to refer debts to Treasury. Administrative costs include (1) the cost of providing a copy of the file to the debtor; and (2) the costs incurred in processing and handling the debt because it became delinquent; *e.g.,* costs incurred in obtaining a credit report or in using a private collection contractor or service fees charged by a Federal Agency for collection activities undertaken on our behalf.

The debt referral tasks are currently performed by employees paid at the United States 2009 General Schedule, Grade 12 pay-scale level, and at the Grade 13 pay-scale level. On average, the current time it takes for these employees to refer debts to Treasury is an MMS burden of 2 hours for the Grade 13 employee, plus 5 hours for the Grade 12 employee(s) for each referral. The hourly labor cost is calculated as follows:

$39.35 per hour (2009 GS–12, Step 5) × 1.5 (benefits factor) = $59.03; and

$46.80 per hour (2009 GS–13, Step 5) × 1.5 (benefits factor) = $70.20.

We calculated the estimated administrative costs proposed under this rule as follows:

5 hours × $59.03 (GS–12, Step 5) + 2 hours × $70.20 (GS–13, Step 5) = $435.55, rounded to $436 (which includes the benefits factor), per referral.

Because our administrative costs will increase with time, paragraph (c) would also provide that MMS may publish a notice of any such increase in the **Federal Register**.

Subsection (d) would meet the requirement of 31 CFR 901.9(h), that agency regulations address the imposition of interest and related charges during periods in which debts are under appeal. Subsection (d) does so by specifying that an appeal would not toll the accrual of interest, penalties, or administrative costs.

Subsection (e) explains how MMS would apply partial or installment payments a debtor makes on delinquent debts sent to Treasury. We would apply any such partial or installment payments first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

Subsection (f) would remove any ambiguity regarding our authority and intent to impose interest, penalty charges, and administrative costs for debt not subject to 31 U.S.C. 3717. We impose a variety of charges on outstanding obligations under other statutory or regulatory authority.

Subsection (g) would implement and define the discretionary authority granted to MMS in 31 U.S.C. 3717(h) for the Director to waive collection of accrued interest, penalty charges, or

administrative costs. Consistent with 31 CFR 901.9(g), subsection (g) would provide that MMS may decide to waive collection of all or portions of these costs as part of a compromise, or if we determine that collection would be against equity and good conscience, or not in "the Government's best interest." In determining what constitutes "the Government's best interest," we will consider the interests of the Federal Government, Indian tribes, states, and the United States as a whole, consistent with our mission to collect, account for, and disburse revenues. This approach is consistent with 31 CFR 901.9(g), which qualifies "best interest" as being the best interest of the United States. "Equity," "good conscience," and "best interests" are all inherently subjective.

In keeping with the discretionary nature of our authority to collect and waive collection of charges, subsection (h) would specify that our decision to collect or waive is final for the Department and not subject to administrative review.

F. 30 CFR 218.705 What is MMS's policy on revoking the ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way?

Section 218.705 would explain MMS's discretion, consistent with 31 CFR 901.6(b), to recommend suspension or revocation of a debtor's ability to engage in Federal or Indian leasing activities when a debtor inexcusably or willfully fails to pay a debt. This section is intended to give debtors an incentive to take diligent and prompt action to pay their debts. For offshore leases that MMS issues, MMS may directly use the authority provided in 31 CFR 901.6(b) to revoke a debtor's ability to engage in leasing activities. The MMS may not itself revoke a debtor's ability to engage in leasing activities conducted by BLM and the Bureau of Indian Affairs (BIA); we are constrained to making recommendations to these bureaus. This section would ensure debtors are aware that certain failures to pay may have significant consequences that are not directly related to the specific debt.

G. 30 CFR 218.706 What debts can MMS refer to Treasury for collection by administrative and tax refund offset?

Subsection (a) would incorporate the pertinent requirements of regulations governing the referral to Treasury of debt for collection through administrative and tax refund offset in 31 CFR 901.3, 285.2, and 285.5. Thus, this subsection would limit the claims that MMS may refer for offset to claims that are (1) Past due, (2) legally enforceable, and (3) at least $25.00 or another amount established by Treasury, provided that the debtor has had notice for at least 60 days and that the debt or claim has not been delinquent for more than 10 years. Subsection (a) also would exclude from referral any claims for offset of any Federal oil and gas lease obligations for which offset is precluded under 30 U.S.C. 1724(b)(3).

Subsection (b) clarifies that the time restrictions noted in subsection (a) would not limit our authority to refer to Treasury, for tax refund offset, those debts that have been included in court-ordered judgments.

III. Procedural Matters

1. Summary Cost and Royalty Impact Data

This is a technical rule formalizing and enhancing current MMS debt collection practices and procedures consistent with the statutory mandates under the DCA and DCIA. The proposed changes explained above would have no royalty impacts on industry, state and local governments, Indian tribes and individual Indian mineral owners, and the Federal Government. Industry would incur additional administrative costs and penalties under this proposed rulemaking.

A. Industry

(1) Royalty Impacts. None.

(2) Administrative Costs. The MMS would assess $436 for recovery of administrative costs for each referral of debt to Treasury. We calculated the $436 administrative costs proposed in this rule based on our estimate of the average actual costs we incur to refer debts to Treasury.

(3) Penalties. The MMS would assess a penalty of 6 percent on the principal, interest, and administrative costs on any delinquent debt that is more than 90 days from the date of delinquency consistent with the DCIA (31 U.S.C. 3717(e)(2)), and FCCS (31 CFR 901.9(d)). (See Section II Explanation of Proposed Amendments.)

B. State and Local Governments

(1) Royalty Impacts. None.

(2) Administrative Costs—State and Local Governments. The MMS determined that this proposed rule would have no administrative costs for state and local governments.

(3) Penalties. None.

C. Indian Tribes and Individual Indian Mineral Owners

(1) Royalty Impacts. None.

(2) Administrative Costs. The MMS determined that this proposed rule would have no administrative costs to Indian tribes and individual Indian mineral owners.

(3) Penalties. None.

D. Federal Government

(1) Royalty Impacts. None.

(2) Administrative Costs. The proposed rule would have no net administrative costs to the Federal Government. All administrative costs to the Government incurred as a result of collection activities would be recovered from industry.

(3) Penalties. Based on historical data, we estimate that approximately $79,380 in penalties would be referred annually to Treasury. We estimate the annual penalties as follows:

- The average number of delinquent debts referred annually = 300.
- The average amount referred (principal and interest) annually = $2,569,214.
- Administrative costs recovered of $436 × 300 debts = $130,800.
- Amount on which to base 6 percent penalty = $2,700,014 ($2,569,214 (royalties plus interest) + $130,800 (administrative costs)).
- Assuming all debts were 179 days past due at the time of referral (because MMS has 180 days to refer the debt), penalties referred annually = $79,380 (179/365 × 6 percent = 0.0294 × $2,700,014 = $79,380).

2. Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule, and the Office of Management and Budget (OMB) has not reviewed this proposed rule under Executive Order 12866. We have made the assessments required by E.O. 12866, and the results are given below.

a. This proposed rule would not have an effect of $100 million or more on the economy. It 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. This is a technical rule formalizing and enhancing current MMS debt collection practices and procedures consistent with the statutory mandates under the DCA and DCIA. The impact to industry would be additional administrative costs, including penalties. We estimate administrative costs, including penalties, to be less than $500,000 per year.

b. This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This proposed rule would not alter the budgetary effects of entitlements,

grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This proposed rule would not raise novel legal or policy issues.

3. Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule would affect large and small entities but would not have a significant economic effect on either. Based on historical data, we estimate that the proposed rule would affect approximately 85 small entities per year.

4. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. This is a technical rule formalizing and enhancing current MMS debt collection practices and procedures consistent with the statutory mandates under the DCA and DCIA. Industry would incur fees for administrative costs and penalties for failure to pay a delinquent debt to the Federal Government. These administrative costs and penalties would be avoided by paying delinquent debts owed to the Federal Government accurately and timely.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

5. Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on state, local, or tribal governments, or the private sector of more than $100 million per year. This proposed rule would not have a significant or unique effect on state, local, or tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

This is a technical rule formalizing and enhancing current MMS debt collection practices and procedures consistent with the statutory mandates under the DCA and DCIA. This proposed rule would allow MMS to assess a 6-percent penalty on delinquent debts and impose fees to cover the administrative costs of recovering a delinquent debt. These penalties and recovery of administrative costs are mandated by the DCA and DCIA.

6. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this proposed rule would not have any significant takings implications. This proposed rule would apply to Federal and Indian leases only. It would not apply to private property. A takings implication assessment is not required.

7. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This is a technical rule formalizing and enhancing current MMS debt collection practices and procedures. A Federalism Assessment is not required.

8. Civil Justice Reform (E.O. 12988)

This proposed rule would comply with the requirements of Executive Order 12988. Specifically, this rule:

a. Would meet the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

b. Would meet the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

9. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this proposed rule and determined that it would have no potential effects on federally recognized Indian tribes.

10. Paperwork Reduction Act

This proposed rule does not contain information collection requirements, and a submission to OMB is not required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

11. National Environmental Policy Act

This proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

12. Data Quality Act

In developing this proposed rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

13. Effects on the Energy Supply (E.O. 13211)

This proposed rule would not be a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects would not be required.

14. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must: (a) Be logically organized; (b) Use the active voice to address readers directly; (c) Use clear language rather than jargon; (d) Be divided into short sections and sentences; and (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

15. Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

List of Subjects in 30 CFR part 218

Administrative offset, Debt Collection Act of 1982 and Debt Collection Improvement Act of 1996, royalties, rentals, bonuses, Federal and Indian mineral leases, Administrative Procedure Act, collections.

Dated: May 24, 2010.

Ned Farquhar,

Deputy Assistant Secretary for Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service proposes to amend 30 CFR part 218 as set forth below:

PART 218—COLLECTION OF MONIES AND PROVISION FOR GEOTHERMAL CREDITS AND INCENTIVES

1. The authority citation for part 218 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.;* 25 U.S.C. 396 *et seq.,* 396a *et seq.,* 2101 *et seq.;* 30 U.S.C. 181 *et seq.,* 351 *et seq.,* 1001 *et seq.,* 1701 *et seq.;* 31 U.S.C. 3335, 3711, 3716–18, 3720A, 9701; 43 U.S.C. 1301 *et seq.,* 1331 *et seq.,* and 1801 *et seq.*

2. Add subpart J to read as follows:

Subpart J—Debt Collection and Administrative Offset

Sec.

218.700 What definitions apply to the regulations in this subpart?
218.701 What is MMS's authority to issue these regulations?
218.702 What happens to delinquent debts a debtor owes MMS?
218.703 What notice will MMS give to a debtor of our intent to collect a debt?
218.704 What is MMS's policy on interest, penalty charges, and administrative costs?
218.705 What is MMS's policy on revoking the ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way?
218.706 What debts can MMS refer to Treasury for collection by administrative and tax refund offset?

Subpart J—Debt Collection and Administrative Offset

§ 218.700 What definitions apply to the regulations in this subpart?

As used in this subpart:

(a) *Administrative offset* means the withholding of funds payable by the United States (including funds payable by the United States on behalf of a state government) to any person, or the withholding of funds held by the United States for any person, in order to satisfy a debt owed to the United States.

(b) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of government, including a government corporation.

(c) *BIA* means the Bureau of Indian Affairs.

(d) *BLM* means the Bureau of Land Management.

(e) *Day* means calendar day. To count days, include the last day of the period unless it is a Saturday, Sunday, or Federal legal holiday.

(f) *Debt and claim* are synonymous and interchangeable. They refer to, among other things, royalties, rentals, and any other monies due to the United States or MMS, as well as fines, fees, and penalties that a Federal Agency has determined are due to the United States from any person, organization, or entity, except another Federal Agency. For the purposes of administrative offset under 31 U.S.C. 3716 and this subpart, the terms "debt" and "claims" include money, funds, or property owed to the United States, a state, the District of Columbia, American Samoa, Guam, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

(g) *Debtor* means a lessee, payor, person, contractor, or other entity that owes a debt to the United States, MMS, or from whom MMS collects debts on behalf of the United States, the Department, or an Indian lessor.

(h) *Delinquent debt* means a debt that has not been paid within the time limit prescribed by the applicable Act, law, regulation, lease, order, demand, notice of noncompliance, and/or assessment of civil penalties, contract, or any other agreement to pay the Department money, funds, or property.

(i) *Department* means the Department of the Interior, and any of its bureaus.

(j) *Director* means the Director of Minerals Management Service, or his or her designee.

(k) *DOJ* means the U.S. Department of Justice.

(l) *FCCS* means the Federal Claims Collection Standards, which are published at 31 CFR parts 900–904.

(m) *FMS* means the Financial Management Service, a bureau of the U.S. Department of the Treasury.

(n) *Legally enforceable* means that there has been a final agency determination that the debt, in the amount stated, is due, and there are no legal bars to collection by offset.

(o) *Lessee* means any person to whom the United States or an Indian tribe or individual Indian mineral owner issues a Federal or Indian mineral or other resource lease, easement, right-of-way, or other agreement, regardless of form, an assignee of all or a part of the record title interest, or any person to whom operating rights have been assigned.

(p) *MMS* means the Minerals Management Service, a bureau of the Department.

(q) OCS means Outer Continental Shelf.

(r) *Payor* means any person who reports and pays royalties on Indian mineral leases, or Federal oil and gas, solid, or geothermal leases, regardless of whether they are also a lessee.

(s) *Person* includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, or other entity that owes a debt to the United States, excluding the United States.

(t) *Tax refund offset* means the reduction of a tax refund by the amount of a past-due legally enforceable debt.

§ 218.701 What is MMS's authority to issue these regulations?

(a) The MMS is issuing the regulations in this subpart under the authority of the FCCS; the Debt Collection Act of 1982, and the Debt Collection Improvement Act of 1996, 31 U.S.C. 3711, 3716–3718, and 3720A.

(b) The MMS hereby adopts the provisions of the FCCS (31 CFR parts 900–904). The MMS regulations supplement the FCCS as necessary.

§ 218.702 What happens to delinquent debts a debtor owes MMS?

(a) The MMS will collect debts from debtors in accordance with the regulations in this subpart.

(b) The MMS will transfer to the U.S. Department of the Treasury any past due, legally enforceable nontax debt that is delinquent within 180 days from the date the debt becomes delinquent so that Treasury may take appropriate action to collect the debt or terminate the collection action in accordance with 5 U.S.C. 5514, 26 U.S.C. 6402, 31 U.S.C. 3711 and 3716, the FCCS, 5 CFR 550.1108, and 31 CFR part 285.

§ 218.703 What notice will MMS give to a debtor of our intent to collect a debt?

(a) When the Director determines that a debt is owed to MMS, the Director will send a written notice (Notice), also known as a Demand Letter. The Notice will be sent by facsimile or mail to the most current address known to us. The Notice will inform the debtor of the following:

(1) The amount, nature, and basis of the debt;

(2) The methods of offset that may be employed;

(3) The debtor's opportunity to inspect and copy agency records related to the debt;

(4) The debtor's opportunity to enter into a written agreement with us to repay the debt;

(5) Our policy concerning interest, penalty charges, and administrative costs, as set out in § 218.704, including a statement that such assessments must be made against the debtor unless excused in accordance with the FCCS and this part;

(6) The date by which payment should be made to avoid additional late charges and enforced collection;

(7) The name, address, and telephone number of a contact person (or office) at MMS who is available to discuss the debt; and

(8) The debtor's opportunity for review under 30 CFR part 290 or part

241, if any. See paragraph (b) of this section.

(b) A debtor, whose delinquent debt:

(1) Has not been paid within the time limit prescribed by the applicable Act, law, regulation, lease, order, demand, notice of noncompliance, and/or assessment of civil penalties, contract, or any other agreement to pay the Department money, funds, or property; and

(2) Was the subject of an order, demand, notice of noncompliance, and/or assessment of civil penalties that was appealable under 30 CFR part 290 or part 241, may not re-litigate matters that were the subject of the final order or appeal decision. This subsection applies whether or not the debtor appealed the order, demand, notice of noncompliance, and/or assessment of civil penalties under 30 CFR part 290 or part 241.

§ 218.704 What is MMS's policy on interest, penalty charges, and administrative costs?

(a) Interest.

(1) The MMS will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent unless otherwise specified by law or lease terms.

(3) The MMS will assess interest on debts involving Federal and Indian oil and gas leases under 30 CFR 218.54 and 218.102 unless otherwise specified by lease terms.

(4) The MMS will assess interest on debts involving Federal and Indian solid mineral and geothermal leases under 30 CFR 218.202 and 218.302 unless otherwise specified by lease terms.

(b) Penalties. We will assess a penalty charge of 6 percent a year on any delinquent debt, interest, and administrative costs assessed under paragraph (c) of this section on any debt we refer to Treasury at the time we refer the debt to Treasury:

(1) After the debt has been delinquent for more than 90 days; and

(2) The penalty will accrue from the date of delinquency.

(c) Administrative costs. We will assess $436.00 for administrative costs incurred as a result of the debtor's failure to pay a delinquent debt. We will publish a notice of any increase in administrative costs assessed under this section in the **Federal Register**.

(d) Interest, penalties, and administrative costs will continue to accrue throughout any appeal process.

(e) Allocation of payments. The MMS will apply a partial or installment payment by a debtor on a delinquent debt sent to Treasury first to outstanding penalty assessments, second to administrative costs, third to accrued interest, and fourth to the outstanding debt principal.

(f) Additional authority. The MMS may assess interest, penalty charges, and administrative costs on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under common law or other applicable statutory or regulatory authority.

(g) Waiver. Regardless of the amount of the debt, the Director may decide to waive collection of all or part of the accrued penalty charges or administrative costs either in compromise of the delinquent debt or if the Director determines collection of these charges would be against equity and good conscience or not in the Government's best interest.

(h) Our decision whether to collect or waive collection of penalties and administrative costs is the final decision for the Department and is not subject to administrative review.

§ 218.705 What is MMS' policy on revoking the ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way?

For OCS leases, the Director may decide to revoke a debtor's ability to engage in Federal OCS leasing, licensing, or granting of easements, permits, or rights-of-way if the debtor inexcusably or willfully fails to pay a debt. The Director may also recommend that BLM or BIA revoke a debtor's ability to engage in Federal onshore and Indian leasing, licensing, or granting of easements, permits, or rights-of-way if the debtor inexcusably or willfully fails to pay a debt. The Director will recommend that revocation of a debtor's ability to engage in Federal or Indian leasing, licensing, or granting of easements, permits, or rights-of-way should last only as long as the debtor's indebtedness.

§ 218.706 What debts can MMS refer to Treasury for collection by administrative and tax refund offset?

(a) The MMS may refer any past due, legally enforceable debt of a debtor to Treasury for administrative and tax refund offset at least 60 days after we give notice to the debtor under section 218.703 if the debt:

(1) Will not have been delinquent more than 10 years at the time the offset is made;

(2) Is at least $25.00 or another amount established by Treasury; and

(3) Does not involve Federal oil and gas lease obligations for which offset is precluded under 30 U.S.C. 1724(b)(3).

(b) Debts reduced to judgment may be referred to Treasury for tax refund offset at any time.

[FR Doc. 2010–13646 Filed 6–7–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0308]

RIN 1625–AA09

Drawbridge Operation Regulation; Old River, Between Victoria Island and Byron Tract, CA

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is seeking comments and information on how best to address a proposal to change the operating regulation for the State Highway 4 Drawbridge, mile 14.8, over Old River. The bridge owner has asked to change from the existing requirement by eliminating the "on signal" openings and replacing them with an "open on signal if at least 4 hours notice is given" at all times. The 4 hour notice would be provided to the drawtender at the Rio Vista drawbridge across the Sacramento River, mile 12.8. This proposed change may reduce unnecessary staffing of the drawbridge during observed periods of reduced navigational activity.

DATES: Comments and related material must reach the Coast Guard on or before July 23, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0308 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *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 notice, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone (510) 437–3516, e-mail *David.H.Sulouff@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 respond to this notice 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 notice (USCG–2009–0308), 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 *http://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 Rules" and insert "USCG–2009–0308" 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 them 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–2009–0308" 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 before the comment period ends, 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 in solving this problem, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background

Presently, the California Department of Transportation (Caltrans) is the owner of the State Route 4 Drawbridge, mile 14.8, over Old River, between Victoria Island and Byron Tract, CA (herein referenced as Old River State Route 4 Drawbridge). Caltrans operates this drawbridge in accordance with 33 CFR 117.183: Specifically, opening the drawbridge on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. and at all other times, opening the draw on signal if at least four hours advance notice is given to the drawtender at the Rio Vista drawbridge across the Sacramento River, mile 12.8. The Old River State Route 4 Drawbridge provides 12 feet of vertical clearance for vessels above Mean High Water (MHW) in the closed-to-navigation position and unlimited vertical clearance when open.

Old River is 44 miles in length and is navigable in its entirety, from Franks Tract Recreation Area to the west to the San Joaquin River to the east. It is located in the southern portion of the San Joaquin River Delta. There are approximately 10 marinas on Old River and nearby waterways. From July 2007 through July 2008 the Old River State Route 4 Drawbridge opened for vessels 42 times, an average of 3.5 times per month. From August 2008 through January 2009 the Old River State Route 4 Drawbridge opened 24 times, an average of 2 times per month. Most openings have been for recreational vessels. Commercial vessels regularly transiting the area are barges used in emergency and routine levee repair. Channel maintenance, dredging, search and rescue and law enforcement vessels also use the waterway.

Due to infrequent calls for drawbridge openings, Caltrans has requested a four hour notification for all drawbridge openings at this location. A four hour notification may allow Caltrans to use personnel more efficiently, reduce unnecessary staffing of the drawbridge during periods of navigational inactivity, and may continue to meet the reasonable needs of navigation on the waterway.

Information Requested

Based on the last analysis of this waterway the Coast Guard determined in 1985 that the existing regulation met the reasonable needs of waterway traffic while still meeting the needs of land traffic and Caltrans.

To aid us in developing this proposed rule, we seek response from all waterway users to the following questions:

(1) Would changing the existing operating schedule of the Old River State Route 4 Drawbridge (found at 33 CFR 117.183), to the proposed 4 hour advance notice at all times, add or subtract transit time through this bridge or on the waterway?

(2) Would there be a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601–612)? 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.

This document is issued under authority of 5 U.S.C. 552(a); 33 CFR 1.05–1; and 117.8.

Dated: May 20, 2010.

J.R. Castillo,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2010–13642 Filed 6–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0234]

RIN 1625–AA09

Drawbridge Operation Regulation; Taunton River, Fall River and Somerset, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the drawbridge operation regulations for the Brightman Street (Rt-6) Bridge at mile 1.8, between Fall River and Somerset, Massachusetts, to help relieve the bridge owner from the burden of crewing the bridge during time periods when the bridge receives few requests to open. In addition, we are removing some obsolete language from the regulations, the operating regulations for the Bristol County Bridge at mile 10.3, because that bridge has subsequently been replaced with a fixed span highway bridge.

DATES: Comments and related material must be received by the Coast Guard on or before July 8, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0234 using any one of the following methods:

(1) *Federal Rulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *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 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 Mr. John W. McDonald, Project Officer, First Coast Guard District Bridge Branch, at 617–223–8364, e-mail *john.w.mcdonald@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–2010–0234), 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 (*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 *http://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 phone 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 Rules" and insert "USCG–2010–0234" 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 them 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–2010–0234" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit either 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 one 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**.

Background and Purpose

The Brightman Street (Rt-6) Bridge at mile 1.8, across the Taunton River between Fall River and Somerset, Massachusetts, has a vertical clearance in the closed position of 27 feet at mean high water and 31 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.619.

The bridge is required under the existing regulations to open on signal as follows:

At all times from April 1 through May 31 and from September 1 through November 1.

From June 1 through August 31, the draw need not open for pleasure craft from 7 a.m. to 9:30 a.m. and 4 p.m. through 6:30 p.m., Monday through Friday, except holidays. The draw is required to open on signal for commercial vessels at any time during the June 1 through August 31, time period.

From November 1 through March 31, the bridge is required to open on signal 6 a.m. through 6 p.m. and from 6 p.m. through 6 a.m. the bridge shall open after a one-hour advance notice is given.

The owner of the bridge, Massachusetts Department of Transportation, has been crewing the bridge in excess of the time required in the existing regulations during the winter months, November 1 through March 31. They have been crewing the bridge from 5 a.m. through 9 p.m. with a one-hour advance notice required from 9 p.m. through 5 a.m. This allows the bridge owner to crew the bridge in two eight hour shifts rather than one eight hour shift plus four hours of overtime.

The bridge owner has subsequently requested a change to the regulations to allow them to crew the bridge year round from 5 a.m. through 9 p.m., daily, with a one-hour advance notice from 9 p.m. through 5 a.m.

The bridge owner provided bridge logs which indicated few requests to open the draw after 9 p.m. In addition, the NRG power plant (Montop Electric) which formerly operated upstream from the bridge has closed permanently which will eliminate most, if not all, commercial vessel transits.

The bridge opening logs for the past three years, 2007, 2008, and 2009, indicated few requests to open the bridge after 9 p.m. year round for vessel traffic.

There were 11 requests to open the bridge after 9 p.m. in 2009, 9 requests to open after 9 p.m. in 2008, and 14 requests to open after 9 p.m. in 2007.

Under this proposed rule the bridge would open on signal year round from 5 a.m. to 9 p.m. and between 9 p.m. and 5 a.m., after a one-hour advance notice is given by calling the number posted at the bridge.

Coast Guard believes this proposed rule is reasonable, and if implemented, should continue to meet the present and future needs of navigation.

Discussion of Proposed Rule

The Coast Guard proposes to amend the drawbridge operation regulations for the Brightman Street (Rt-6) Bridge by revising 33 CFR 117.619, which lists the operation of the Brightman Street Bridge.

This proposed rule would change the regulations to allow the bridge to open on signal from 5 a.m. through 9 p.m., and after a one-hour advance notice is given from 9 p.m. through 5 a.m. year round.

It is anticipated that commercial vessel traffic will be infrequent, if not, non-existent, due to the permanent closing of the NRG power plant (Montop Electric) formerly located upstream from the bridge. Several coal deliveries were made to the power plant each month while it was in operation; however, the power plant has subsequently ceased operation.

In addition, we are removing the language formerly located in paragraph (c) from the proposed regulation because the bridge it references, the Bristol County Bridge at mile 10.3, across the Taunton River has been removed and replaced with a fixed highway bridge; thus, the drawbridge operation regulations are no longer necessary.

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. This conclusion is based upon the fact that this proposal expands the time period the bridge is crewed in the winter months and extends the winter schedule to year round based on historic infrequent use between 9 p.m. and 5 a.m.

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 action will not have a significant economic impact on a substantial number of small entities for the following reasons. The vessel operators that normally frequent this waterway will still be able to obtain bridge openings after 9 p.m. by simply providing a one-hour advance notice by calling the number posted at the bridge.

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 Mr. John W. McDonald, Project Officer, First Coast Guard District Bridge branch by telephone at 617–223–8364 or by e-mail *john.w.mcdonald@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 will 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 guides 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 which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. 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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Section 117.619 is revised to read as follows:

§ 117.619 Taunton River.

(a) The Brightman Street (Route-6) Bridge at mile 1.8, between Fall River and Somerset, shall operate as follows:

(b) The draw shall open on signal between 5 a.m. and 9 p.m., daily. From 9 p.m. through 5 a.m. the draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

(c) From June 1 through August 31, the draw need not open for the passage of pleasure craft from 7 a.m. to 9:30 a.m. and from 4 p.m. to 6:30 p.m., Monday through Friday, except holidays. The draw shall open for commercial vessels at all times.

(d) From 6 p.m. on December 24 to midnight on December 25, and from 6 p.m. on December 31 to midnight on January 1, the draw shall open on signal if at least a two-hour advance notice is given by calling the number posted at the bridge.

The owner of the bridge shall provide and keep in good legible condition clearance gauges located on both upstream and downstream sides of the draw with figures not less than twelve inches in height, designed, installed and maintained according to the provisions of section 118.160 of this chapter.

Dated: May 25, 2010.

Joseph A. Servidio,

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

[FR Doc. 2010–13643 Filed 6–7–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0276; FRL–9139–8]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern standards for continuous emission monitoring systems. We are proposing to approve local rules to regulate the monitoring of emissions under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by July 8, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0276, 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 *http://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 *http://www.regulations.gov* or e-mail. *http://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 *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules:

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted/ amended	Submitted
SCAQMD	218	Continuous Emission Monitoring	05/14/99	07/23/99
SCAQMD	218.1	Continuous Emission Monitoring Performance Specifications.	05/14/99	07/23/99

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 this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule 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. 2010–13682 Filed 6–7–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 75, No. 109
Tuesday, June 8, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 2, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Timber Purchasers' Cost and Sales Data.

OMB Control Number: 0596–0017.

Summary of Collection: The National Forest Management Act (NFMA), 16 U.S.C. 472a, is applicable to appraisal of National Forest timber sales. The NFMA requires that the Federal government receive not less than the appraised value of timber or forest product. In regulation 36 CFR part 223.60, the objective of Forest Service (FS) timber appraisals is to determine fair market value. The Multiple-Use Sustained Yield Act of 1960, the Forest Rangeland Renewable Resources Planning Act of 1974, and the National Forest Management Act of 1976, authorizes the FS to sell forest products and National Forest System timber. FS timber and product appraisers develop advertised timber and product sale prices using residual and transaction evidence method of appraisal. Residual appraisals begin through the collection of production cost data. Transaction evidence appraisals begin with an average of past successful bids by timber purchasers for timber for which the stumpage rate has been adjusted for the timber sale and market conditions at the time. FS collects the data from timber sales and product purchases through submissions by contractors both locally and nationally. There are no forms required for the collection of costs data.

Need and Use of the Information: FS will collect information to verify the minimum rates returned a fair value to the Government and that the residual and transaction system are a reliable approach to valuing timber and products. The information is also used to assure the accuracy of the residual and transaction systems and to develop minimum stumpage rates for small sales or for areas where there is no current sale activity to use for transaction evidence. If the information is not collected, FS does not have a sound check to determine if the value being received from products really reflects the true market value.

Description of Respondents: Individuals; Business or other for-profit.

Number of Respondents: 20.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 80.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–13623 Filed 6–7–10; 8:45 am]
BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–FV–10–0040]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request for revision of a currently approved information collection for Fruit and Vegetable Market News.

DATES: Comments must be received by August 9, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at *http://www.regulations* or to the Market News Branch, Fruit & Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 2702 South, Stop 0238, Washington, DC 20250–0238. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Terry C. Long, Chief; Fruit and Vegetable Market News Branch, Fruit and Vegetable Programs, (202) 720–2175, Fax: (202) 720–0547.

SUPPLEMENTARY INFORMATION:

Title: Fruit and Vegetable Market News.

OMB Number: 0581–0006.

Expiration Date of Approval: November 30, 2010.

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

Abstract: Collection and dissemination of information for fruit,

vegetable and ornamental production and to facilitate trading by providing a price base used by producers, wholesalers, and retailers to market product.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), section 203(g) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and to bring about a balance between production and utilization.

The fruit and vegetable industry provides information on a voluntary basis, and is gathered through confidential telephone and face-to-face interviews by market reporters. Reporters request supplies, demand, and prices of over 330 fresh fruit, vegetable, nut ornamental, and other specialty crops. The information is collected, compiled, and disseminated by Market News in its critical role as an impartial third party. It is collected and reported in a manner which protects the confidentiality of the respondent and their operations.

The fruit and vegetable market news reports are used by academia and various government agencies for regulatory and other purposes, but are primarily used by the fruit, vegetable and ornamental trade, which includes packers, processors, brokers, retailers, producers, and associated industries. Members of the fruit and vegetable industry regularly make it clear that they need and expect the Department of Agriculture will issue price and supply market reports for commodities of regional, national and international significance in order to assist in making immediate production and marketing decisions and as a guide to the amount of product in the supply channel. Market News data is a critical component in AMS' decisionmaking process with regard to the purchase of fruit and vegetable products each for domestic feeding programs.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .0647 hours per response.

Respondents: Fruit, vegetable, and ornamental industry, or other for-profit businesses, individuals or households, farms.

Estimated Number of Respondents: 4,013.

Estimated Number of Responses per Respondent: 219.

Estimated Total Annual Burden on Respondents: 56,861 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 2, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–13625 Filed 6–7–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2007-0156]

Pioneer Hi-Bred International, Inc.; Determination of Nonregulated Status for Genetically Engineered High-oleic Soybeans

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that a soybean line developed by Pioneer Hi-Bred International, designated as transformation event 305423, which has been genetically engineered to have higher levels of oleic acid, and lower levels of linoleic and linolenic acids in the soybean oil, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Pioneer Hi-Bred International in its petition for a determination of nonregulated status, our analysis of other scientific data, and comments received from the public in response to our previous notice announcing the availability of the petition for nonregulated status and its associated environmental assessment and plant pest risk assessment. This notice also announces the availability of our written determination and finding of no significant impact.

EFFECTIVE DATE: June 8, 2010.

ADDRESSES: You may read the documents referenced in this notice and the comments we received in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming. Those documents are also available on the Internet at (*http://www.aphis.usda.gov/brs/not_reg.html*) and are posted with the previous notices and the comments we received on the Regulations.gov Web site at (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0156*).

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Ms. Karen Green, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 734-0672, email: (*karen.c.green@aphis.usda.gov*). To obtain copies of the documents referenced in this notice, contact Ms. Cindy Eck at (301) 734-0667, email: (*cynthia.a.eck@aphis.usda.gov*).

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a

determination of nonregulated status must take and the information that must be included in the petition.

On December 20, 2006, APHIS received a petition seeking a determination of nonregulated status (APHIS Petition No. 06-354-01p) from Pioneer Hi-Bred International, Inc., of Johnston, IA (Pioneer), for soybean (*Glycine max* L.) designated as transformation event 305423, which has been genetically engineered for higher levels of oleic acid, a monounsaturated fat in soybean oil, stating that soybean line 305423 does not present a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

In a notice [1] published in the **Federal Register** on September 2, 2009 (74 FR 45413-45415, Docket No. APHIS-2007-0156), APHIS announced the availability of Pioneer's petition and the associated draft environmental assessment (EA) and plant pest risk assessment for public comment. APHIS solicited comments for 60 days ending on November 2, 2009, on whether the genetically engineered soybean is or could be a plant pest and on the draft EA and the risk assessment. In a subsequent notice published in the **Federal Register** on October 26, 2009 (74 FR 54950-54951, Docket No. APHIS-2007-0156), we extended the comment period until December 28, 2009.

APHIS received 40 comments during the comment period. There were 22 comments from groups or individuals who supported deregulation and 18 from those who opposed deregulation. APHIS has addressed the issues raised during the comment period and has provided responses to these comments as an attachment to the finding of no significant impact.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the determination of nonregulated status for Pioneer's 305423 soybean, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, the response to public comments, and other pertinent scientific data, APHIS has reached a finding of no significant impact with regard to the preferred alternative identified in the EA, i.e., that Pioneer's 305423 soybean line and lines developed from it are granted nonregulated status and are no longer regulated articles under its regulations in 7 CFR part 340.

Determination

Based on APHIS' analysis of field, greenhouse, and laboratory data submitted by Pioneer, references provided in the petition, information analyzed in the EA, the plant pest risk assessment, comments provided by the public, and information provided in APHIS' response to those public comments, APHIS has determined that Pioneer's 305423 soybean is unlikely to pose a plant pest risk and should be granted nonregulated status.

Copies of the signed determination document, as well as copies of the petition, plant pest risk assessment, EA, finding of no significant impact, and response to comments are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 2nd day of June 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–13722 Filed 6–7–10; 6:37 am]

BILLING CODE 3410–34–S

[1] To view the notices, petition, EA, risk assessment, and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0156*).

DEPARTMENT OF AGRICULTURE

Forest Service

Gallatin National Forest; Montana; Jack Rabbit to Big Sky Meadow Village 161 kV Transmission Line Upgrade Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Forest Service (Forest Service) is preparing an environmental impact statement (EIS) to consider potential effects of a proposed project by NorthWestern Energy to rebuild an existing 69-kilovolt (kV) electric transmission line to a 161-kV electric transmission line. The upgraded 161-kV transmission line would connect the existing Jack Rabbit Substation located near Four Corners, west of Bozeman, Montana, to a new substation near Big Sky Meadow Village in Big Sky, Montana. Alternatives for the proposed transmission line would pass through private, state, and federally managed lands in Montana. Federally managed lands include National Forest System (NFS) lands administered by the Gallatin National Forest. The Forest Service will consider whether to authorize the construction, operation and maintenance activities along and within the existing right of way for the portion of the transmisson line that is on NFS lands, approximately 16 miles of the proposed 37-mile route.

DATES: Comments concerning the scope of the analysis must be received by July 8, 2010. The draft EIS is expected in December 2010 and the final EIS is expected in April 2011.

ADDRESSES: Send written comments to Teri Seth, Forest Service Project Manager, Gallatin National Forest, 3710 Fallon Street, Suite C, Bozeman, MT 59718. Comments may also be sent via e-mail to *comments-northern-gallatin@fs.fed.us* or via facsimile to (406) 522–2528. Electronic comments must be submitted with Microsoft word software.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions specific to this proposal on NFS lands.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, also.

FOR FURTHER INFORMATION CONTACT: Teri Seth, Forest Service Project Manager, Gallatin National Forest; or Lisa Stoeffler, District Ranger. Both contacts can be reached at 406/522–2520. For additional project details you can also go to the Gallatin Forest Webpage, look for the Big Sky 161 kV Upgrade Project on the Planning page: *http://www.fs.fed.us/rl/gallatin/?page=projects.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Gallatin Valley and Big Sky, MT are among the fastest growing areas within NorthWestern Energy's service territory. NorthWestern Energy is the sole electricity provider for the project area. Electrical Utility companies in the United States must plan, operate, and maintain their transmission systems according to the North American Electrical Reliability Corporation (NERC) reliability standards. NERC develops and enforces reliability standards; monitors power systems; assesses future adequacy; audits owners, operators, and users for preparedness; and educates and trains industry personnel. NERC works with eight regional entities to improve the reliability of the bulk power system. The Jack Rabbit to Big Sky Meadows system operates under the guidance of the Western Electric Coordinating Council (WECC). Utility companies must remain in compliance with these industry standards. When loop service is provided to an area or load, utility transmission systems must be built with sufficient levels of redundancy to enable the transmission system to reliably operate in the event of the loss of any single element (*e.g.* transmission line segment or substation element). In the simplest application of these standards, a bulk transmission system consisting of one line and one substation will have to be constructed with an additional (redundant) line and necessary substation components capable of providing backup electrical paths in the event an element of the system is lost due to forced outage or outage required for maintenance.

The electrical power demand in the Big Sky area is currently served from two 69 kV transmission lines—one from the Ennis Auto Substation at Ennis, MT and the other from Jack Rabbit Auto Substation near Four Corners west of Bozeman, MT. On an annual basis, current usage exceeds capacity of the Jack Rabbit Auto 69 kV line about 40% of time. In the event of a power outage from the Ennis Auto side, there is inadequate infrastructure to serve the electrical load from the Jack Rabbit Auto and some level of power outage would be experienced in the entire area. As the Big Sky area continues to grow, this situation will worsen. These reliability shortfalls do not meet industry standards.

Rebuilding and upgrade of the existing 69 kV line to a 161 kV facility between the Jack Rabbit substation and the Meadow Village substation, along with building a new Meadow Village Substation and an upgraded distribution circuit, eliminates the adequacy and reliability problems associated with the current electric transmission system. This proposed project would meet the current energy demands and provide for anticipated growth, which would better comply with industry standards and customer needs.

Proposed Action

The Gallatin National Forest proposes to authorize the construction, operation and maintenance of an entirely new transmission and distribution line facility along and within the existing right of way for the portion of the line on National Forest System lands. Construction of the project would take one to two years to complete. Construction would be scheduled to begin in 2011 with the system coming on line, energized at the 161-kV level, during the fall of 2013. The design, construction, operation and maintenance of the project would meet or exceed the requirements of the National Electrical Safety Code (NESC), U.S. Department of Labor, Occupational Safety and Health Standards, Western Electricity Coordinating Council (WECC) Transmission System Performance and Reliability Criteria and North Western Energy's requirements for safety and the protection of landowners and their property.

The Forest Service will also consider the no-action alternative in the ETS. Under the no-action alternative, the existing special use permit would remain in place and maintenance of the existing 69 kV line would be continued.

Responsible Official

Forest Supervisor, Gallatin National Forest.

Nature of Decision To Be Made

The decision framework refers to the scope of the decision that will be issued at the conclusion of this analysis by the Responsible Official. The decision will be based on information disclosed in the EIS and comments submitted during the scoping of the proposed action and the comment period. The decision maker will take into consideration relationships of alternatives to the identified significant issues.

The Responsible Official may decide whether or not to:

- Authorize the rebuild and/or upgrade of the transmission and distribution line for the portion of the Jack Rabbit to Big Sky Meadow Village Transmission Line on NFS land;
- What if any associated activities, mitigation measures, restoration actions or monitoring would be included in the decision
- Whether a site specific Forest Plan Amendment is needed.

Preliminary Issues

Northwestern Energy and the Forest Service previously held internal and public information meetings in April 2009 to obtain input on issues and concerns for the proposed action. Through these initial activities, the Forest Service identified the need for an ETS and the following issues, potential impacts, mitigation measures, and alternatives to the proposed action:

- Cultural and archeological resources
- Visual resources/Scenery
- Human health and safety (including electric and magnetic fields)
- Recreation and land use (including special management designations on public land)
- Socioeconomics (including property value impacts and impacts to ratepayers)
- Soils and geology
- Biological resources (wildlife, special status plants and animals, invasive weeds, snag habitat)
- Water resources and wetlands
- Road blockages and power outages from construction
- Fire risk
- Reclamation practices
- Alternative energy generation
- Alternative transmission methods (*i.e.* underground lines)
- Consideration of adding a second line on Ennis side
- Consideration of reroutes near Cascade Creek homes/Lava Lake Trailhead area, Greek Creek homes and the Deer Creek Trailhead areas.

Permits or Licenses Required

Permits would be required to construct, operate and maintain the proposed project. A special use authorization is required for use of NFS lands. A utility encroachment/occupancy permit would need to be obtained from the Montana Department of Transportation to cross and occupy the right-of-way of US 191 that extends through the Gallatin National Forest. Montana Department of Environmental Quality would require a Joint Application for Proposed Work in Streams, Lakes and Wetlands. Depending on the resources impacted by the proposed action and alternatives, other permits may be required and will be identified in the EIS.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service

encourages you to send your comments concerning the proposed action, possible mitigation measures, and any other information relevant to the proposal.

Any persons wanting to be added to a mailing list of interested parties can call or write to Forest Service, as described in this notice. Additional announcements will be made by news release to the Bozeman Daily Chronicle and other media outlets. Scoping meetings were held last spring and summer. No additional meetings are planned. All comments received by the Forest Service during the scoping comment period in March/April 2009 and the follow-up meetings will be considered and are part of the record for this EIS. You are encouraged to submit additional issues but there is no need to resubmit previously submitted comments or concerns. All comments will be considered in the EIS.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). 5

Because of these court rulings, it is very important that those interested in this proposed action participate during comment periods provided so that substantive comments and objections are made available to the Forest Service at a time when they can meaningfully consider them. To assist the Forest Service in identifying and considering issues, comments should be specific to concerns associated with the upgraded 161-kV transmission line. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in structuring comments.

Dated: May 25, 2010.

Mary C. Erickson,

Forest Supervisor.

[FR Doc. 2010–13499 Filed 6–7–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Rio Grande Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Upper Rio Grande Resource Advisory Committee will meet in South Fork, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held on June 22, 2010, and will begin at 1 p.m.

ADDRESSES: The meeting will be held at the South Fork Community Building, 0254 Highway 149, South Fork, Colorado. Written comments should be sent to Mike Blakeman, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144. Comments may also be sent via e-mail to *mblakeman@fs.fed.us*, or via facsimile to 719–852–6250.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144.

FOR FURTHER INFORMATION CONTACT: Mike Blakeman, RAC coordinator, USDA, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144; 719–852–6212; E-mail *mblakeman@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel. (2) Selection of a chairperson by the committee members. (3) Receive materials explaining the process for considering and recommending Title II projects; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: May 26, 2010.

Dan S. Dallas,

Forest Supervisor.

[FR Doc. 2010–13476 Filed 6–7–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Kern and Tulare Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Kern and Tulare Counties Resource Advisory Committee (RAC) will meet in Porterville and Bakersfield, California. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meetings is to establish and implement a process to accept projects and determine which projects to recommend to the Forest Supervisor for funding under Title II of the Act.

DATES: The meetings will be held on June 30, 2010, July 22, 2010, and August 26, 2010. All meetings will begin at 5 p.m.

ADDRESSES: The June and August meetings will be held at the Sequoia National Forest Headquarters, 1839 South Newcomb Street, Porterville, California. The July meeting will be held at the Doubletree Inn, 3100 Camino Del Rio Court, Bakersfield, California. Written comments should be sent to Priscilla Summers, Western Divide Ranger District, 32588 Highway 190, Springville, California 93265. Comments may also be sent via e-mail to *psummers@fs.fed.us,* or via facsimile to 559–539–2067.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Western Divide Ranger District, 32588 Highway 190, Springville, CA 93265. Visitors are encouraged to call ahead to 559–539–2607 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Mary Chislock, RAC coordinator, Sequoia National Forest Headquarters, 1839 South Newcomb Street,

Porterville, CA; (559) 784–1500; or e-mail: *mchislock@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call 559–781–6650 between 8:00 a.m. and 4:30 p.m., Pacific Daylight Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussions are limited to Forest Service staff and committee members. The following business will be conducted: (1) Introductions of all committee members, replacement members, and Forest Service personnel; (2) selection of a chairperson by the committee members; (3) By-laws; (4) develop a procedure to receive, process, and recommend projects for funding; and (5) receive public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: June 1, 2010.

Tina J. Terrell,

Forest Supervisor.

[FR Doc. 2010–13648 Filed 6–7–10; 8:45 am]

BILLING CODE 3410–11–P

THE BROADCASTING BOARD OF GOVERNORS

Notice of Membership of SES Performance Review Board

AGENCY: Broadcasting Board of Governors (BBG).

ACTION: Notice of Membership of SES Performance Review Board.

SUMMARY: Title 5 United States Code, Section 4314, requires that notice of the appointment of an individual to serve as a member of a performance review board (PRB) shall be published in the **Federal Register**. The following individuals have been appointed to serve as PRB members for BBG: Barbara J. Barger, Acting Deputy Director, Force Development, Manpower, Personnel and Services, U.S. Department of the Air Force; Angelique Crumbly, Director, Office of Management Policy, Budget and Performance, U.S. Agency for International Development; and Randy T. Streufert, Director, Office of Security, U.S. Agency for International Development.

ADDRESSES: Broadcasting Board of Governors, 330 Independence Ave., SW., Washington, DC 20237.

FOR FURTHER INFORMATION CONTACT: Donna S. Grace, Director, Office of Human Resources, 202–382–7500.

Jeffrey N. Trimble,

Executive Director, Broadcasting Board of Governors.

[FR Doc. 2010–13645 Filed 6–7–10; 8:45 am]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Alaska Crab Report Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 9, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907–586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Fishery Management Plans (FMP) are developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) The FMP for Bering Sea and Aleutian Islands (BSAI) Crab includes the Crab Rationalization (CR) Program, a limited access system that allocates BSAI Management Area Crab resources among harvesters, processors, and coastal communities. The intent of the CR Program Crab Reports is to monitor crab landings in the BSAI crab fisheries through receipt of reports.

II. Method of Collection

Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0570.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; Individuals or households.

Estimated Number of Respondents: 1,692.

Estimated Time per Response: 40 hours for Eligible Crab Community Organization (ECCO) annual report; 2 hours for CR Registered Crab Receiver Ex-vessel Volume and Value Report.

Estimated Total Annual Burden Hours: 350.

Estimated Total Annual Cost to Public: $81.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 2, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–13614 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Licensing of Private Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 9, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to David Hasenauer*: David.Hasenauer@noaa.gov* or (301) 713–1644.

SUPPLEMENTARY INFORMATION:

I. Abstract

NOAA has established requirements for the licensing of private operators of remote-sensing space systems. The information in applications and subsequent reports is needed to ensure compliance with the Land Remote-Sensing Policy Act of 1992 and with the national security and international obligations of the United States. The requirements are contained in 15 CFR part 960.

II. Method of Collection

Information is submitted via e-mail.

III. Data

OMB Control Number: 0648–0174.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 18.

Estimated Time per Response: 40 hours for the submission of a license application; 10 hours for the submission of a data protection plan; 5 hours for the submission of a plan describing how the licensee will comply with data collection restrictions; 3 hours for the submission of an operations plan for restricting collection or dissemination of imagery of Israeli territory; 3 hours for submission of a data flow diagram; 2 hours for the submission of satellite subsystems drawings; 3 hours for the submission of a final imaging system specifications document; 2 hours for the submission of a public summary for a licensed system; 2 hours for the submission of a preliminary design review; 2 hours for the submission of a critical design review; 1 hour for notification of a binding launch services contract; 1 hour for notification of completion of pre-ship review; 10 hours for the submission of a license amendment; 2 hours for the submission of a foreign agreement notification; 2 hours for the submission of spacecraft operational information submitted when a spacecraft becomes operational; 2 hours for notification of deviation in orbit or spacecraft disposition; 2 hours for notification of any operational deviation; 2 hours for notification of planned purges of information to the National Satellite Land Remote Sensing Data Archive; 3 hours for the submission of an operational quarterly report; 8 hours for an annual compliance audit; 10 hours for an annual operational audit; and 2 hours for notification of the demise of a system or a decision to discontinue system operations.

Estimated Total Annual Burden Hours: 552.

Estimated Total Annual Cost to Public: $1,000 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 3, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–13773 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From The People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0780.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2009, the Department of Commerce ("Department") published a notice of initiation of an administrative review of fresh garlic from the People's Republic of China covering the period November 1, 2008 through October 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, and Request for Revocation in Part,* 74 FR 68229 (December 23, 2009). On February 12, 2010, the Department issued a memorandum that tolled the deadlines for all Import Administration cases by seven calendar days due to the Federal Government closure. *See* Memorandum for the Record from Ronald Lorentzen, DAS for Import Administration, Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm, dated February 12, 2010. As a result, the preliminary results of this administrative review are currently due no later than August 9, 2010.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the order for which the administrative review was requested. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2) allow the Department to extend the 245-day period to 365 days.

Pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we determine that it is not practicable to complete the results of this review within the original time limit. The Department needs additional time to analyze a significant amount of information, which was recently submitted, and to determine whether any additional information is required. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department has decided to extend the time limit for the preliminary results from 245 days to 365 days. The preliminary results will now be due no later than December 7, 2010. Unless extended, the final results continue to be due 120 days after the publication of the preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1) of the Department's regulations.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: June 1, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–13730 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Extension of Time Limit for the Preliminary Results of the New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 8, 2010.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0780.

Background

On December 29, 2009, the Department of Commerce (Department) initiated new shipper reviews of fresh garlic from the People's Republic of China (PRC) for Jinxiang Chengda Imp & Exp Co., Ltd. (Chengda), Jinxiang Yuanxin Imp & Exp Co., Ltd. (Yuanxin), and Zhengzhou Huachao Industrial Co., Ltd. (Huachao) covering the period November 1, 2008 through October 31, 2009. *See Fresh Garlic from the People's Republic of China: Initiation of New Shipper Reviews,* 75 FR 343 (January 5, 2010). On February 12, 2010, the Department issued a memorandum that tolled the deadlines for all Import Administration cases by seven calendar days due to the Federal Government closure. *See* Memorandum for the Record from Ronald Lorentzen, DAS for Import Administration, Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm, dated February 12, 2010. As a result, the preliminary results of these new shipper reviews are currently due no later than July 6, 2010.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. *See also* 19 CFR 351.214(i)(1). The Act further provides that the Department may extend that 180-day period to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214(i)(2).

Extension of Time Limit for Preliminary Results

The Department determines that these new shipper reviews involve extraordinarily complicated methodological issues, including the examination of importer information. Additional time is also required to ensure that the Department has adequate time to include Chengda, Yuanxin, and Huachao's supplemental questionnaire responses in its examination of the *bona fides* of the companies' sales. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for these preliminary results to 300 days, until no later than November 1, 2010.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: June 1, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–13731 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–948]

Certain Steel Grating from the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined that countervailable subsidies are being provided to producers and exporters of steel grating from the People's Republic of China (PRC). For information on the estimated countervailable subsidy rates, please see the "Suspension of Liquidation" section, below.

EFFECTIVE DATE: June 8, 2010.

FOR FURTHER INFORMATION CONTACT: Justin Neuman or Nicholas Czajkowski AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0486, (202) 482–1395, respectively.

Petitioners

Petitioners in this investigation are Alabama Metal Industries Corp. (AMICO) and Fisher & Ludlow (collectively, "Petitioners").

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2008 through December 31, 2008.

Case History

The following events have occurred since the preliminary determination. *See Certain Steel Grating from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 74 FR 56796 (November 3, 2009) (*Preliminary Determination*).

The Department issued several supplemental questionnaires to the Government of the People's Republic of China (GOC) and Ningbo Jiulong Machinery Manufacturing Co., Ltd. (Ningbo Jiulong). The Department received responses to questionnaires issued to the GOC in December 2009, as well as in January and February 2010. The Department received responses to questionnaires issued to Ningbo Jiulong in December 2009, as well as in January, February, and March 2010. Public versions of the questionnaires and

responses, as well as the various memoranda cited below, are available in the Department's Central Records Unit (Room 1117 in the HCHB Building) (hereinafter referred to as the CRU).

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 this final CVD determination is now May 28, 2010. *See* Memorandum to the Record from Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm" (February 12, 2010).

On February 24, 2010, Department officials met with Petitioners' counsel to discuss issues related to the upcoming verification of the GOC and Ningbo Jiulong. *See* Memorandum for the File from Nicholas Czajkowski, Case Analyst, AD/CVD Operations, *Meeting with Counsel for Petitioners: Countervailing Duty Investigation on Certain Steel Grating from the People's Republic of China* (February 26, 2010).

On March 8, 2010, Petitioners placed on the record a detailed analysis of mill test certificates that were provided to the Department by Ningbo Jiulong. *See* Letter to Secretary Locke from Timothy C. Brightbill, *Certain Steel Grating from the People's Republic of China: Comments on Mill Test Certificates* (March 8, 2010).

From March 8 through March 13, 2010, we conducted verification of the questionnaire responses submitted by the GOC and Ningbo Jiulong. We issued verification reports on April 14, 2010. *See* Memorandum to the File from Thomas Beline, Staff Attorney; Nicholas Czajkowski, International Trade Analyst; and Justin Neuman, International Trade Analyst, *Verification of the Questionnaire Responses Submitted by the Government of China* (April 14, 2010), and Memorandum to the File from Thomas Beline, Staff Attorney; Nicholas Czajkowski, International Trade Analyst; and Justin Neuman, International Trade Analyst, *Verification of the Questionnaire Responses Submitted by Ningbo Jiulong Machinery Manufacturing Co., Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory* (April 14, 2010) (*Ningbo Jiulong Verification Report*).

On March 15, 2010, Ningbo Jiulong filed a copy of the minor corrections provided to the Department at verification. *See* Letter to Secretary Locke from Gregory S. Menegaz, *Certain Steel Grating from the People's Republic of China – Minor Corrections – Ningbo Jiulong* (March 15, 2010).

On March 23, 2010, we requested permission from Customs and Border Protection (CBP) to place on the record certain entry documents that it had provided for the record in the corresponding antidumping (AD) investigation. *See* Memorandum to Tom Futtner, Supervisory Import Compliance Analyst, Customs Unit, Import Administration from Nicholas Czajkowski, International Trade Analyst, Office 6, *Countervailing Duty Investigation of Certain Steel Grating from the People's Republic of China: Request for Customs Documents* (March 23, 2010). Those documents were placed on the record on April 6, 2010. *See* Memorandum to the File from Nicholas Czajkowski, Trade Analyst, Office 6, AD/CVD Operations, *Countervailing Duty Investigation of Certain Steel Grating (CSG) from the People's Republic of China (PRC): CBP Entry Documents* (April 6, 2010).

On March 23, 2010, we issued a letter establishing a deadline for parties to rebut factual information recently added to the record. *See* Letter to Ningbo Jiulong from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, *Countervailing Duty Investigation; Certain Steel Grating from the People's Republic of China* (March 23, 2010).

On March 23, 2010, Ningbo Jiulong filed clarifying and rebuttal comments related to Petitioners' March 8, 2010 analysis of mill test certificates provided by Ningbo Jiulong to the Department. *See* Letter to Secretary Locke from Ningbo Jiulong, *Steel Grating from China – Ningbo Jiulong Machinery Manufacturing Co. Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory – Rebuttal to Petitioners' March 8, 2010 Submission* (March 24, 2010).

On April 15, 2010, we issued our post–preliminary determination regarding the "Provision of Electricity at Less than Adequate Remuneration." *See* Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration from John M. Andersen, Acting Deputy Assistant Secretary for AD/CVD Operations, *Countervailing Duty Investigation of Certain Steel Grating from the People's Republic of China (PRC): Post–Preliminary Determination Regarding the Provision of Electricity for Less than Adequate Remuneration* (April 15, 2010).

On April 23, 2010, we received comments from Ningbo Jiulong regarding what it considers to be several significant errors in the *Ningbo Jiulong Verification Report* issued by the Department on April 14, 2010, and urging the Department not to let those errors color its analysis for the purposes of the final determination.

On April 26, 2010, we received case briefs from Petitioners, the GOC, Ningbo Jiulong, and Yantai Xinke Steel Structure Co., Ltd. (an exporter/producer of steel grating that was not selected as a mandatory respondent in this investigation). On April 28, the Department issued a letter rejecting Petitioners' brief because it contained new factual information. *See* Letter to AMICO and Fisher & Ludlow from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, Import Administration, *Rejection of New Factual Information Submitted in Case Brief Dated April 26, 2010*. Petitioners resubmitted their brief on April 29, 2010. Rebuttal briefs were submitted by Petitioners, the GOC, and Ningbo Jiulong on May 3, 2010.

On May 4, 2010, Ningbo Jiulong withdrew its request for a hearing. On May 6, 2010, Department officials met with representatives of Ningbo Jiulong regarding issues in the briefs submitted by their client and by Petitioners. *See* Memorandum for the File from Justin M. Neuman, International Trade Analyst, AD/CVD Operations, Office 6, *Ex–Parte Meeting with Representatives of Ningbo Jiulong Machinery Manufacturing Co., Ltd.* (May 10, 2010). On May 10, 2010, Department officials met with Petitioners' counsel to discuss issues related to the briefs. *See* Memorandum for the File from Justin M. Neuman, International Trade Analyst, AD/CVD Operations, Office 6, *Countervailing Duty Investigation of Certain Steel Grating from the People's Republic of China: Ex–Parte Meeting with Representatives of Alabama Metal Industries, Fisher and Ludlow* (May 19, 2010).

Scope of the Investigation

The products covered by this investigation are certain steel grating, consisting of two or more pieces of steel, including load–bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as "bar grating," although the components may consist of steel other than bars, such as hot–rolled sheet, plate, or wire rod.

The scope of this investigation excludes expanded metal grating, which

is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded, and does not involve welding or joining of multiple pieces of steel. The scope of this investigation also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel.

Certain steel grating that is the subject of this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheading 7308.90.7000. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) is required to determine, pursuant to section 701(a)(2) of the Act, whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a United States industry. On July 20, 2009, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from the PRC of subject merchandise. *See Certain Steel Grating From China Determinations*, 74 FR 35204 (July 20, 2009); and *Certain Steel Grating from China (Preliminary)*, USITC Pub. 4087, Inv. Nos. 701–TA–465 and 731–TA–1161 (July 2009).

Analysis of Subsidy Programs and Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Steel Grating from the People's Republic of China," dated concurrently with this notice (hereinafter, *Decision Memorandum*), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum*. The *Decision Memorandum* also contains a complete analysis of the programs covered by this investigation, and the methodologies used to calculate the subsidy rates. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117 in the main building of the Commerce Department. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Use of Adverse Facts Available

For purposes of this final determination, we have relied on facts available and drawn adverse inferences, in accordance with sections 776(a) and (b) of the Act, with regard to Ningbo Jiulong's receipt of countervailable subsidies under the "Provision of Hot–Rolled Steel for Less than Adequate Remuneration" and "Provision of Wire Rod for Less than Adequate Remuneration" programs. A full discussion of our decision to apply partial adverse facts available (AFA) is presented in the *Decision Memorandum* in the section "Application of Facts Available, Including the Application of Adverse Inferences," as well as the Department's position on Comment 4 in the *Decision Memorandum*.

With respect to the GOC's "Provision of Electricity for Less than Adequate Remuneration," the Department has also relied upon facts available and drawn adverse inferences, in accordance with sections 776(a) and (b) of the Act. A full discussion of our decision to apply partial AFA is presented in the section "Application of Facts Available, Including the Application of Adverse Inferences," and the Department's position on Comment 10 of the *Decision Memorandum*.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the mandatory respondent under investigation, Ningbo Jiulong Machinery Manufacturing Co., Ltd. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an "all others" rate equal to the weighted–average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. In this investigation, the Department selected two mandatory respondents to review. After receiving and reviewing the questionnaire responses of one of the mandatory respondents, United Steel Structures, Ltd. (USSL), the Department determined that, because USSL was not a steel grating exporter or producer, it would be an inappropriate mandatory respondent in this investigation. *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration from John M. Andersen, Acting Deputy Assistant Secretary for AD/CVD Operations, *Countervailing Duty Investigation of Certain Steel Grating from the People's Republic of China: Whether USSL Should be Maintained as a Mandatory Respondent*. However, because that determination was made on October 23, 2009, three days before the preliminary determination, the Department determined that it could not select an additional mandatory respondent to calculate an individual rate for in this investigation. Because there is only one respondent in this investigation for which the Department has calculated a company–specific rate, consistent with our practice and section 705(c)(5)(A)(i) of the Act, its rate serves as the "all others" rate. *See e.g.*, *Final Affirmative Countervailing Duty Determination: Certain Hot–Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410, 50411 (October 3, 2001); and *Final Affirmative Countervailing Duty Determination: Pure Magnesium From Israel*, 66 FR 49351, 49353 (Sept. 27, 2001).

Exporter/Manufacturer	Net Countervailable Subsidy Rate
Ningbo Jiulong Machinery Manufacturing Co., Ltd. ...	62.46% *ad valorem*
All Others	62.46% *ad valorem*

As a result of our *Preliminary Determination*, we instructed CBP to suspend liquidation of all entries of steel grating from the PRC which were entered or withdrawn from warehouse, for consumption on or after November 3, 2009, the date of the publication of the *Preliminary Determination* in the **Federal Register** and to collect cash deposits of estimated countervailing duties or bonds, in the amount of the preliminary countervailing duty rates.

Pursuant to section 703(d) of the Act, we subsequently instructed CBP to discontinue the suspension of liquidation for countervailing duty

purposes for subject merchandise entered on or after March 3, 2010, but to continue the suspension of liquidation of entries made on or after November 3, 2009 through March 2, 2010.

If the ITC issues a final affirmative injury determination, we will issue a countervailing duty order and order CBP to resume the suspension of liquidation of entries of steel grating and to require a cash deposit on all such entries equal to the subsidy rate listed above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all deposits or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 28, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

Appendix

I. Summary

II. Background

III. Subsidies Valuation

A. *Date of Applicability of CVD Law to the PRC*
B. *Allocation Period*
C. *Cross–Ownership*

IV. Application of Facts Available, Including the Application of Adverse Inferences

V. Analysis of Programs

A. Programs Determined to Be Countervailable

1. Government Provision of Hot–Rolled Steel for Less than Adequate Remuneration
2. Government Provision of Wire Rod for Less than Adequate Remuneration
3. Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment
4. Government Provision of Electricity for Less than Adequate Remuneration
5. Other Grant Programs
a) Export Grant 2006, 2007, 2008
b) Jiulong Lake Town Grant 2008
c) Energy Saving Grant 2008
d) Foreign Trade Grant 2008
e) Famous Brand Grant 2008
f) Innovative Small- and Medium–Sized Enterprise Grant 2008
g) Water Fund Refund/Exemption 2008
h) Product Quality Grant

B. Program Determined To Be Not Countervailable

Cleaning Production Grant 2008

C. Programs Determined To Be Not Used or To Not Provide Benefits During the POI

1. *GOC Provision of Steel Bar for Less than Adequate Remuneration*
2. *GOC Provision of Steel Plate for Less than Adequate Remuneration*
3. *GOC Provision of Land–Use Rights to SOEs for Less than Adequate Remuneration*
4. "*Two Free, Three Half*" *Program*
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18. *Export Incentive Payments Characterized as* "*VAT Rebates*"
19. *VAT Refunds for FIEs Purchasing Domestically–Produced Equipment*
20. *Technical Upgrading Grant 2005, 2007*
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D. Programs For Which Ningbo Jiulong Is Determined to Be Ineligible

1. *Liaoning Province* "*Five Points, One Line*" *Program*
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3. *Grants to Companies for* "*Outward Expansion*" *in Guangdong Province*

IV. Analysis of Comments

Comment 1: Application of U.S. Countervailing Duty Law to China
Comment 2: Cut–Off Date
Comment 3: Selection of Two Mandatory Respondents
Comment 4: Application of Adverse Facts Available
Comment 5: Department Procedures
Comment 6: Provision of Hot–Rolled Steel and Wire Rod for Less than Adequate Remuneration – The Role of Mill Test Certificates
Comment 7: Provision of Hot–Rolled Steel and Wire Rod for Less than Adequate Remuneration – Whether These Programs Are Countervailable
Comment 8: Provision of Hot–Rolled Steel and Wire Rod for Less than Adequate Remuneration – Appropriate Benchmark

Comment 9: Income Tax Credits for Domestically Owned Companies Purchasing Domestically Produced Equipment

Comment 10: Provision of Electricity for Less than Adequate Remuneration
Comment 11: Grant Programs
Comment 12: Separate CVD Rate for Xinke

VII. Recommendation

[FR Doc. 2010–13776 Filed 6–7–10; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–947]

Certain Steel Grating From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 8, 2010.

SUMMARY: On January 6, 2010, the Department of Commerce ("Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping duty investigation of certain steel grating ("steel grating") from the People's Republic of China ("PRC"). *See Certain Steel Grating From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 847 (January 6, 2010) ("*Preliminary Determination*"). We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes from the *Preliminary Determination.* We determine that steel grating from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("Act"). The final dumping margins for this investigation are listed in the "Final Determination Margins" section below.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Case History

The period of investigation ("POI") is October 1, 2008, through March 31, 2009. The Department published its preliminary determination of sales at LTFV on January 6, 2010. *See Preliminary Determination.* On February 4, 2010, we postponed the final determination. *See Certain Steel Grating From the People's Republic of China: Postponement of Final Determination,* 75 FR 5766 (February 4, 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 final determination of this investigation is now May 28, 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.

Between January 11, 2010, through January 15, 2010, the Department conducted verification of Ningbo Jiulong Machinery Manufacturing Co., Ltd. and Ningbo Zhenhai Jiulong Electronic Equipment Factory (collectively "Ningbo Jiulong"). *See* the "Verification" section below for additional information. On March 8, 2010, Fisher & Ludlow and Alabama Metal Industries Corporation (hereafter referred to as "Petitioners") filed comments regarding mill test certificates from Ningbo Jiulong's suppliers of steel coils and wire rod that were included in the Department's verification exhibits. Petitioners cited numerous aspects of the mill test certificates that they deemed irregular, and which indicated that the mill test certificates were not genuine.

On March 8, 2010, the Department issued a supplemental questionnaire to Ningbo Jiulong, requiring a response to Petitioners' analysis and specific allegations, and to reconcile its suppliers' mill test certificates with other information on the record. On March 9, 2010, the Department requested additional information from Petitioners, supporting the analysis in its March 8, 2010 submission. Also, on March 9, 2010, the Department requested U.S. Customs and Border Protection ("CBP") entry documents pertaining to certain Ningbo Jiulong shipments, specifically any mill test certificates filed by the importer of record. On March 10, 2010, the Department issued an additional request to Ningbo Jiulong to provide mill test certificates for its steel inputs for certain specific U.S. sales of steel grating that the Department had selected for specific review at verification.

On March 16, 2010, and March 18, 2010, the Department received from CBP entry documentation and certain mill test certificates created by Ningbo Jiulong for steel coils, filed with CBP by the importer of record.

On March 18, 2010, Ningbo Jiulong responded to the Department's March 10, 2010, request for specific mill test certificates by stating that (1) Ningbo Jiulong could not link steel coil mill test certificates to the U.S. sales of steel grating in which the steel coil was used in production, and (2) in practice Ningbo Jiulong did not provide mill test certificates to its customer for most sales, despite the "legalistic terms in the small print" of its purchase orders.

On March 19, 2010, Petitioners responded to the Department's request with supporting information concerning the analysis in their March 8, 2010 submission. Also, on March 19, 2010, Ningbo Jiulong responded to the Department's supplemental questionnaire, stating: (1) Ningbo Jiulong cannot trace any of its suppliers' mill test certificates to specific purchases of steel coil or wire rod, because mill test certificates are production records that pertain to steel sold to multiple customers; (2) mill test certificates are not accounting records (*e.g.,* invoices, inventory slips, delivery notes), and thus Ningbo Jiulong does not keep mill test certificates in its records in the normal course of business; (3) Ningbo Jiulong creates its own mill test certificates that it admits are unreliable, and that it has no ability to determine with its own analysis the chemical properties of any steel that it purchases; and (4) irregularities in the mill test certificates noted by Petitioners are due to the carelessness of their suppliers and/or "estimations" made by its suppliers using the content of prior mill test certificates.

On April 5, 2010, Petitioners, Ningbo Jiulong, and the Government of China submitted case briefs. On April 12, 2010, Petitioners, Ningbo Jiulong, Ningbo Haitian International Co. Ltd. ("Haitian"), and Yantai Xinke Steel Structure Co., Ltd. ("Xinke") submitted rebuttal briefs. On April 19, 2010, the Department held a public hearing.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the

"Certain Steel Grating from the People's Republic of China: Issues and Decision Memorandum for the Final Determination," ("Issues and Decision Memorandum"), dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Room 1117 of the main Commerce building, and is accessible on the World Wide Web at *http://trade.gov/ia/index.asp*. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of information on the record of this investigation, we have determined that the application of total adverse facts available ("AFA") is warranted in the case of Ningbo Jiulong. For further details, *see* Issues and Decision Memorandum at Comments 3; *see also* Memorandum from Thomas Martin to John M. Andersen, regarding: Application of Total Adverse Facts Available for Ningbo Jiulong Machinery Manufacturing Co., Ltd. in the Antidumping Duty Investigation of Certain Steel Grating from the People's Republic of China, dated May 28, 2010 ("Ningbo Jiulong AFA Memo").

Scope of Investigation

The products covered by this investigation are certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) Size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as "bar grating," although the components may consist of steel other than bars, such as hot-rolled sheet, plate, or wire rod.

The scope of this investigation excludes expanded metal grating, which is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded, and does not involve welding or joining of multiple pieces of steel. The scope of this investigation also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel.

Certain steel grating that is the subject of this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheading 7308.90.7000. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Application of Adverse Facts Available to Ningbo Jiulong

Section 776(a)(1) of the Act provides that the Department may rely on facts otherwise available where necessary information is not available on the record, and section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the administering authority finds that an interested party has not acted to the best of its ability to comply with a request for information, the administering authority may, in reaching its determination, use an inference that is adverse to that party. The adverse inference may be based upon: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record.

The Department has determined that the information to construct an accurate and otherwise reliable margin is not available on the record with respect to Ningbo Jiulong because Ningbo Jiulong withheld information that had been requested, significantly impeded this proceeding, and provided information that could not be verified, pursuant to sections 776(a)(1) and (2)(A), (C) and (D) of the of Act.[1] As a result, the Department has determined to apply the facts otherwise available. Further, the Department finds that Ningbo Jiulong failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act, and the Department has determined to use an adverse inference when applying facts available in this investigation.[2] In addition, we have concluded that the nature of Ningbo Jiulong's unreliable submissions calls into question the reliability of the questionnaire responses with respect to Ningbo Jiulong's claim of eligibility for separate rate status. Thus, as an adverse inference, we find that Ningbo Jiulong is part of the PRC-wide entity for purposes of this investigation.[3]

The PRC Entity (Including Ningbo Jiulong)

Because we begin with the presumption that all companies within an non-market-economy ("NME") country are subject to government control and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of

[1] *See* Ningbo Jiulong AFA Memo at 10–14.

[2] *See* Ningbo Jiulong AFA Memo at 14–17.

[3] *See* Ningbo Jiulong AFA Memo at 17.

merchandise under consideration from the PRC, including Ningbo Jiulong.[4] The PRC-wide rate applies to all entries of subject merchandise except for entries from the respondents identified as receiving a separate rate in the "Final Determination Margins" section below.

Verification

As provided in section 782(i) of the Act, the Department attempted to verify Ningbo Jiulong's questionnaire responses.[5] We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents. However, as detailed in the AFA section of this notice, and Comment 3 of the Issues and Decision Memorandum, we cannot conclude that the information submitted is either accurate or reliable.

Surrogate Country

In the *Preliminary Determination,* we stated that we selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. *See Preliminary Determination.* We received no comments on this issue after the *Preliminary Determination,* and we have made no changes to our findings with respect to the selection of a surrogate country for the final determination.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994), and 19 CFR 351.107(d).

In the *Preliminary Determination,* we found that the separate rate applicants Sinosteel Yantai Steel Grating Co., Ltd. ("Sinosteel"), Ningbo Haitian, and Xinke (collectively, the "Separate Rate Applicants") demonstrated their eligibility for, and were hence assigned, separate rate status. No party has commented on the eligibility of these companies for separate rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control with respect to their exports of the merchandise under investigation. Thus, we continue to find that they are eligible for separate rate status. Normally, the separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on AFA. *See* section 735(c)(5)(A) of the Act.

In the *Preliminary Determination,* the Department assigned to the Separate Rate Applicants' exporter/producer combinations that qualified for a separate rate a weighted-average margin based on the experience of the mandatory respondent, Ningbo Jiulong. *See Preliminary Determination.* For the final determination, we have denied Ningbo Jiulong a separate rate in applying total AFA.[6] *See* "Application of Adverse Facts Available To Ningbo Jiulong" section above. In this case, where there are no mandatory respondents receiving a calculated rate and the PRC-wide entity's rate is based upon total AFA, we find that applying the simple average of the rates alleged in the petition, incorporating revisions made in Petitioners' supplemental responses, is both reasonable and reliable for purposes of establishing a separate rate.[7] Therefore, the Department will assign a separate rate for the Separate Rate Applicants' exporter/producer combinations using the average of the margins alleged in the petition, or 136.76 percent, pursuant to its practice. This rate is corroborated, to the extent practicable, for the reasons stated the "Corroboration" section, below.

The PRC-Wide Rate

In the *Preliminary Determination,* the Department found that the PRC-wide entity did not respond to our requests for information. In the *Preliminary Determination,* we treated PRC exporters/producers that did not respond to the Department's request for information as part of the PRC-wide entity because they did not demonstrate that they operate free of government control. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination.* The PRC-wide entity has not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000). *See also,* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994). We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within an NME country are subject to government control and because only the companies listed under the "Final Determination Margins" section below have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries

[4] *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000).

[5] *See* Memorandum To the File from Robert Bolling, Thomas Martin, and Brian Soiset, "Verification of the Sales and Factors Response of Ningbo Jiulong Machinery Manufacturing Co., Ltd. in the Antidumping Investigation of Certain Steel Grating from the People's Republic of China" dated February 23, 2010.

[6] *See* Issues and Decision Memorandum at Comment 3.

[7] *See Amended Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Carbon Quality Steel Pipe From the People's Republic of China,* 73 FR 22130, 22133 (April 24, 2008); *Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China,* 73 FR 6479 (February 4, 2008) and the accompanying Issues and Decision Memorandum at Comment 2.

of subject merchandise except for entries from the Separate Rate Applicants, which are listed in the "Final Determination Margins" section below.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil,* 65 FR 5554, 5568 (February 4, 2000); *see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996).

As total AFA, the Department preliminarily selected the rate of 145.18 percent from the *Initiation Notice,*[8] *i.e.,* a margin from the petition as revised by the Department through supplemental questionnaires. Petitioners' methodology for calculating the export price and normal value ("NV") in the petition is discussed in the *Initiation Notice.*[9] At the *Preliminary Determination,* in accordance with section 776(c) of the Act, we corroborated our AFA margin by comparing it to the CONNUM margins we found for the mandatory respondent. We found that the margin of 145.18 percent had probative value because it was in the range of CONNUM model margins we found for the only participating mandatory respondent, Ningbo Jiulong. Accordingly, we found that the rate of 145.18 percent was corroborated within the meaning of section 776(c) of the Act.

Because there are no cooperating mandatory respondents to corroborate the 145.18 percent margin used as AFA for the PRC-wide entity, to the extent appropriate information was available, we revisited our pre-initiation analysis of the adequacy and accuracy of the information in the petition. *See* Antidumping Investigation Initiation Checklist: Certain Steel Grating from the People's Republic of China, dated June 18, 2009 ("Initiation Checklist"). We examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioners prior to initiation to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price and NV in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition (*e.g.,* Global Trade Atlas, and Petitioners' experience with selling and producing the merchandise under consideration), which corroborated key elements of the export price and NV calculations. *See* Initiation Checklist at 7–12. We received no comments as to the relevance or probative value of this information. Therefore, the Department finds that the margin of 145.18 percent has probative value for the purpose of being selected as the AFA rate assigned to the PRC-wide entity (including Ningbo Jiulong).

Therefore, the Department finds that the rates derived from the petition for purposes of initiation have probative value for the purpose of being selected as the AFA rate assigned to the PRC-wide entity (including Ningbo Jiulong).

Combination Rates

In the initiation notice, the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. *See Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 74 FR 19049 (April 27, 2009). This practice is described in *Separate Rates and Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries,* 70 FR 17233 (April 5, 2005) which states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its {non-market economy} investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

Final Determination Margins

The Department determines that the following dumping margins exist for the period October 1, 2008, through March 31, 2009:

Manufacturer	Exporter	Antidumping duty percent margin
Sinosteel Yantai Steel Grating Co., Ltd	Sinosteel Yantai Steel Grating Co., Ltd	136.76
Ningbo Haitian International Co., Ltd	Ningbo Lihong Steel Grating Co., Ltd	136.76
Yantai Xinke Steel Structure Co., Ltd	Yantai Xinke Steel Structure Co., Ltd	136.76
PRC-wide Entity[10]		145.18

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to continue to suspend liquidation of all entries of steel grating from PRC, as described in the "Scope of Investigation" section, above, entered, or withdrawn from warehouse, for consumption on or after January 6, 2010, the date of publication of the *Preliminary Determination* in the

[8] *See Certain Steel Grating From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 74 FR 30273. 30277 (June 25, 2009) ("*Initiation Notice*").

[9] *See Initiation Notice,* 74 FR at 30277.

[10] Ningbo Jiulong Machinery Manufacturing Co., Ltd., Ningbo Zhenhai Jiulong Electronic Equipment Factory and Shanghai DAHE Grating Co., Ltd. are part of the PRC-wide entity.

Federal Register. The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate the Department has determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide entity rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, the Department notified the International Trade Commission ("ITC") of its final determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 28, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

Appendix I

Issues For Final Determination

General Issues

Comment 1: Whether the Department Can Concurrently Apply Antidumping and Countervailing Duties to Non-Market Economy Producers and Exporters

Comment 2: Whether the Department Should Recalculate the Petition Margins With Updated Surrogate Values

Ningbo Jiulong Specific Issues

Comment 3: Whether the Department Should Apply Adverse Facts Available to Ningbo Jiulong Based Upon Submitted False Information Regarding Its Steel Inputs

Comment 4: Whether the Department Should Rely Upon Documents Obtained From CBP in the Final Determination

Comment 5: Whether the Department Should Apply Adverse Facts Available to Ningbo Jiulong Based Upon the Failure To Report the Correct Customer

Comment 6: Whether the Department Should Apply Adverse Facts Available to Ningbo Jiulong Based Upon Unreported Sales

Comment 7: Whether the Department Should Apply Partial Adverse Facts Available to Ningbo Jiulong's Packing Inputs

Comment 8: Whether the Department Should Revise Ningbo Jiulong's Steel Scrap Offset

Surrogate Value Issues for Specific Factors of Production

Comment 9: Whether the Department Should Revise the Surrogate Value for the Steel Coil Input

Comment 10: Whether the Department Should Revise the Surrogate Value for the Wire Rod Input

Comment 11: Whether the Department Should Revise the Surrogate Value for Galvanizing Services

Surrogate Financial Ratio Calculation Issues

Comment 12: Whether the Department Should Use the Financial Statement of Greatweld Steel Grating Private Limited to Calculate Surrogate Financial Ratios

Comment 13: Whether the Department Should Use the Financial Statements of Comparable Merchandise Producers to Calculate Surrogate Financial Ratios

Separate Rate Applicant Rate Issues

Comment 14: Whether the Department Should Revise the Rate Assigned to Separate Rate Applicants

[FR Doc. 2010–13778 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–403–801]

Final Results of Antidumping Duty Changed Circumstances Review: Fresh and Chilled Atlantic Salmon from Norway

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final Results of Antidumping Duty Changed Circumstances Review: Fresh and Chilled Atlantic Salmon from Norway

SUMMARY: On August 5, 2009, the Department of Commerce (Department) initiated a changed circumstances review of the antidumping order on fresh and chilled Atlantic Salmon from Norway and preliminarily determined that Nordic Group AS is the successor–in-interest to Nordic Group A/L for purposes of determining antidumping duty liability. We received comments from interested parties. Based on our analysis, we are now affirming our preliminary results.

EFFECTIVE DATE: June 8, 2010.

FOR FURTHER INFORMATION CONTACT: John Conniff, Office of AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1009.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1991, the Department issued the order on fresh and chilled Atlantic Salmon from Norway. *See Antidumping Duty Order: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 14920 (April 12, 1991) (*Norwegian Salmon Order*). Nordic Group A/L, as an exporter of subject fresh whole salmon from Norway to the U.S., requested a new shipper review (NSR) in 1995. The Department issued the final results of the NSR in which it calculated *a de minimis* margin for Nordic Group A/L. *See Fresh and Chilled Salmon from Norway: Final Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 1430 (January 10, 1997). On December 30, 2005, the Department published in the **Federal Register** the final results of the full sunset review of the antidumping duty order on fresh and chilled Atlantic Salmon from Norway. *See Fresh and Chilled Atlantic Salmon from Norway: Final Results of the Full Sunset Review of Antidumping Duty Order*, 70 FR

77378 (December 30, 2005) (Sunset Final), and continued the order in 2005.

On June 12, 2009, Nordic Group AS (respondent) filed a request for a changed circumstances review of the *Norwegian Salmon Order*. Claiming that Nordic Group A/L changed its name to Nordic Group AS, Nordic Group AS requested that it receive the same antidumping duty treatment as is accorded to Nordic Group A/L. In addition, Nordic Group AS submitted documentation of its management, sales operations, supplier relationships and customer base in support of its claim. Nordic Group AS requested further that the Department combine the notice of initiation of the review and the preliminary results of review in a single notice as this review essentially involves only corporate name changes.

On August 5, 2009, the Department published its *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Fresh and Chilled Atlantic Salmon from Norway*, 74 FR, August 5, 2009) (*Initiation and Preliminary Notice*) determining that expedited action was warranted because Nordic Group AS had provided *prima facia* evidence that Nordic Group AS is the successor–in-interest and operates as the same business entity as Nordic Group A/L.

On August 26, 2009, Cooke Aquaculture Inc. ("the petitioner") filed a case brief in response to the Department's Initiation and *Preliminary Notice* requesting that the Department conduct a full 270-day investigation of the proceeding and within its brief submitted new information in support of its allegations that the Nordic Group AS failed to provide full descriptions of its operation and organization. On September 16, 2009, the respondent submitted a case brief rebutting petitioners' assertions, which also included new information.

Under 19 CFR 351.301(b), parties will have "140 days after the date of publication of notice of initiation of the review to submit new factual information, except that factual information requested by the verifying officials." Thus, parties had until December 23, 2009, to submit new information and argument. Accordingly, the Department accepted all of the new factual information supplied by both parties on the record submitted before the December 23, 2009, deadline. Further, in light of the new information on the record, on April 6, 2010, the Department issued an additional briefing schedule inviting parties to brief the new information in addition to what was already on the record. We received case and rebuttal briefs from both parties on April 13, 2010, and April 20, 2010.

On April 30, 2010 the Department determined that it needed additional time to complete the review in accordance with 19 CFR 351.302 (b), extended the time period for issuing the final results of the changed circumstances review by two weeks, until May 17, 2010.

Scope of the Order

The product covered by this order is the species Atlantic salmon (Salmon Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink") and Chum ("dog"). Atlantic salmon is a whole or nearly–whole fish, typically (but not necessarily) marketed gutted, and cleaned, with the head on. The subject merchandise is typically packed in fresh–water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon was classifiable under item number 110.2045 of the Tariff Schedules of the United States Annotated. Atlantic salmon is currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 0302.12.0003 and 0302.12.0004. The HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this changed circumstances review are addressed in the *Issues and Decision Memorandum*, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Issues and Decision Memorandum*, is attached to this notice as an Appendix. The Issues and Decision Memorandum is available in the Central Records Unit, room 1117, of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Final Results of Changed Circumstances Review

In accordance with 19 CFR 351.221(c)(3)(i), we have determined that Nordic Group AS is the successor–in-interest to Nordic Group A/L and should be accorded the same treatment as Nordic Group A/L. We will instruct U.S. Customs and Border Protection that a cash deposit rate of zero percent will be effective Nordic Group AS for all shipments of the subject merchandise entered, or withdraw from a warehouse, for consumption on or after the date of publication of these final results.

Notification

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221.

Dated: June 1, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

APPENDIX

Comment 1 Evidence on the Record to Support a CCR

Comment 2 Comparison of Nordic Group A/L Relative to Nordic Group AS

Comment 3 CCR with Respect To Nordic AS

A) Customer and Supplier Relationships

B)Management Structure and Board of Directors

C)Production Facilities

Comment 4 Document Retention

Comment 5 Timeliness of Nordic AS Request for a CCR

Comment 6 Nordic Group Utilizing the Zero Percent Rate

Comment 7 Nordic Group AS's Corporate History

[FR Doc. 2010–13780 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 100402174–0238–02]

RIN 0660–XA12

Information Privacy and Innovation in the Internet Economy

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Inquiry, Comment Deadline Extension.

SUMMARY: The Department of Commerce's Internet Policy Task Force announces that the closing deadline for submission of comments responsive to the April 23, 2010 notice of inquiry on privacy and innovation has been extended until 5 p.m. Eastern Daylight Time (EDT) on June 14, 2010.

DATES: Comments are due by 5 p.m. EDT on June 14, 2010.

ADDRESSES: Written comments may be submitted by mail to the National Telecommunications and Information Administration at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230. Submissions may be in any of the following formats: HTML, ASCII, Word, rtf, or pdf. Online submissions in electronic form may be sent to *privacy-noi-2010@ntia.doc.gov*. Paper submissions should include a three and one-half inch computer diskette or compact disc (CD). Diskettes or CDs should be labeled with the name and organizational affiliation of the filer and the name of the word processing program used to create the document. Comments will be posted at *http://www.ntia.doc.gov/advisory/privacyinnovation*.

FOR FURTHER INFORMATION CONTACT: For general questions about this amended Notice contact: Joe Gattuso, Office of Policy Analysis and Development, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230, telephone (202) 482–1880; e-mail *jgattuso@ntia.doc.gov*. Please direct media inquires to NTIA's Office of Public Affairs at (202) 482–7002.

SUPPLEMENTARY INFORMATION: On April 21, 2010, the Department of Commerce (the "Department") announced the launch of an initiative designed to gather public input and review the nexus between privacy policy and innovation in the Internet economy.[1] In addition, the Department announced the formation of a Commerce-wide Internet Policy Task Force ("Task Force") to identify leading public policy and operational issues impacting the U.S. private sector's ability to realize the potential for economic growth and job creation through the Internet.

The Privacy and Innovation Initiative of the Task Force will identify policies that enhance: (1) The clarity, transparency, scalability and flexibility needed to foster innovation in the information economy; (2) the public confidence necessary for full citizen participation with the Internet; and (3) fundamental democratic values essential to the functioning of a free market and a free society.

On April 23, 2010, the Task Force issued a notice of inquiry on privacy and innovation issues with a closing date for comments of June 7, 2010.[2] The Task Force announces that the closing deadline for submission of comments responsive to the April 23, 2010 notice has been extended until 5 p.m. Eastern Daylight Time (EDT) on June 14, 2010.

Dated: June 3, 2010.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2010–13697 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–60–P

[1] Commerce Secretary Locke Announces Public Review of Privacy Policy and Innovation in the Internet Economy, Launches Internet Policy Task Force, Department of Commerce Press Release (April 21, 2010), at *http://www.commerce.gov/news/press-releases?page=1*.

[2] See 75 FR 21, 226 (April 23, 2010).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO45

Marine Mammals; File No. 14241, Correction

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

ACTION: Notice; receipt of application for permit amendment; correction.

SUMMARY: Notice is hereby given that Dr. Peter Tyack, Woods Hole Oceanographic Institution, Woods Hole, MA has applied for an amendment to Permit No. 14241 to conduct research on marine mammals. This document makes a correction to a previously published document (May 28, 2010) in which the DATES section was inadvertently omitted.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 28, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the **FEATURES** box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14241 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978)281–9300; fax (978)281–9333; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION:

Need for Correction

On May 28, 2010 (75 FR 29991) notice of receipt of an application to amend Permit No. 14241 was inadvertently published without specifying the date on which comments are due. Applications are available for comment for 30 days from publication of the notice of receipt. The comment deadline is specified in the **DATES** section of this correction notice.

Dated: June 2, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–13702 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW82

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 104th Scientific and Statistical Committee (SSC) and 148th Council meetings to take recommendations and action on fishery management issues in the Western Pacific Region.

DATES: The 104th SSC Meeting will be held on June 22–24 2010 in Honolulu, and the 148th Council meeting will be held on June 28–July 1, 2010 in Honolulu. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 104th SSC will be held at the New Otani Hotel, 2863 Kalakaua Avenue, Honolulu, HI 96815.

The 148th Council Standing Committee meeting will be held at Council office on June 28, 2010, and the full Council meeting between June 29 and July 1, 2010, at the Laniakea YWCA-Fuller Hall, 1040 Richards Street, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the SSC and Council will hear recommendations from Council advisory groups. Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for 104th SSC Meeting:

Tuesday, June 22, 2010, 8:30 a.m.

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 103rd SSC Meeting Recommendations
4. Report from the Pacific Islands Fisheries Science Center Director
5. Program Planning
A. Annual Catch Limits (ACLs) Process (Action)
1. Tiers Working Group
2. Ecosystem Components Working Group
3. Only Reliable Catch Series (ORCS) Data Analysis
B. Management Measures for Aquaculture in the Western Pacific (Action)
C. Cooperative Research Priorities (Action)
D. Hawaii Longline Video Monitoring Project
E. National Habitat & Stock Assessment Workshop
F. Status of Stocks Report
G. Public Comment
H. SSC Discussion and Recommendations
6. Insular Fisheries
A. Update on Potential Management Measures for Fishing in the Marine National Monuments (Action)
B. American Samoa Archipelago
1. American Samoa Advisory Panel (AP), Plan Team (PT) & Regional Ecosystem Advisory Committee (REAC) Reports
C. Hawaii Archipelago
1. Review of Essential Fish Habitat (EFH) and Habitat of Particular Concern (HAPC) for Hawaiian Archipelago Bottomfish
2. Draft Amendment for Refining EFH and HAPC for Main Hawaiian Islands (MHI) Bottomfish (Action)
3. Report on 2009/10 MHI Bottomfish Fishery Performance
4. Total Allowable Catch (TAC) for MHI Bottomfish (Action)
5. Hawaii Archipelagic PT and REAC Reports
D. Public Comment
E. SSC Discussion and Recommendations

Wednesday, June 23, 2010, 8:30 a.m.

7. Pelagic Fisheries
A. Hawaii Longline Bigeye Tuna Management Under a Catch Limit (Action)
B. Options to Modify Hawaii Deep Set Tuna Longline Fishery Swordfish Trip Catch Limit (Action)
C. American Samoa Longline Limited Entry Program Modifications (Action)
D. Territory Fisheries Development (Action)
E. Recommendations of WCPFC Transshipment Requirements (Action)
F. Hawaii Longline Bigeye Tuna Catch Shares Update
G. American Samoa and Hawaii Longline Quarterly Reports
H. Bigeye and Yellowfin Tuna Catch Limit Monitoring
I. Inter-American Tropical Tuna Commission (IATTC) External Review of Bigeye Stock Assessment
J. International Fisheries/Meetings
1. Kobe Bycatch & Management Meetings
2. Coral Triangle Fishers Forum
3. Secretariat of the Pacific Community Tagging and Stock Assessment Workshops
4. Fifth International Fishers Forum
K. Pelagic Plan Team Recommendations
L. Public Comment
M. SSC Discussion and Recommendations
8. Protected Species
A. False Killer Whale Take Reduction Team Meeting Report
B. Cetacean Survey Methodology
C. Updates on Endangered Species Act Issues (83 Species of Coral, Bumphead Parrotfish, Sea Turtles, and False Killer Whale)
D. American Samoa Longline Amendment Consultation
E. Public Comment
F. SSC Discussion and Recommendations

Thursday, June 24, 2010, 8:30 a.m.

9. Other Business
A. 105th SSC Meeting
10. Summary of SSC Recommendations to the Council

148th Council Meeting, Monday, June 28, 2010, Council office

Executive and Budget Standing Committee*10 a.m. - 12 noon*
Pelagics and International Fisheries Standing Committee *1:30 p.m. - 4 p.m.*

148th Council Meeting, Tuesday, June 29, 2010, Laniakea YWCA-Fuller Hall

9 a.m. - 5 p.m.

1. Introductions
2. Approval of Agenda
3. Approval of the 147th Meeting Minutes
4. Executive Director's Report
5. Agency Reports
A. National Marine Fisheries Service (NMFS)
1. Pacific Islands Regional Office (PIRO)
2. Pacific Islands Fisheries Science Center (PIFSC)
B. NOAA Regional Counsel
C. U.S. Fish and Wildlife Service
D. Enforcement
1. U.S. Coast Guard
2. NMFS Office for Law Enforcement
3. NOAA General Counsel for Enforcement and Litigation
E. National Marine Sanctuaries Program
6. Hawaii Archipelago
A. Moku Pepa
B. Legislative Report
C. Enforcement Issues
D. Action Items
1. Recommendations on Refining Bottomfish Essential Fish Habitat for the Hawaii Archipelago
a. Review of New Habitat and Life History Information
b. Draft Alternatives for Hawaii Bottomfish Essential Fish Habitat/ Habitat Areas of Particular Concern
2. Recommendations on the 2010/11 MHI Bottomfish TAC
a. Review of MHI Bottomfish Fishery Performance
b. 2010/11 TAC Determination
3. Adjustment to Northwestern Hawaiian islands (NWHI) Mau and

Hoomalu Zone Boundaries for Consistency with NWHI Monument
E. Community Activities and Issues
1. Hawaii Community Fishery Workshop Report
F. Hawaii Advisory Panel Recommendations
G. Hawaii Plan Team Recommendations
H. Hawaii Regional Ecosystem Advisory Committee (REAC) Recommendations
I. SSC Recommendations
J. Public Comment
K. Council Discussion and Action
7. Program Planning and Research
A. Action Items
1. Recommendations on a Process for Establishing Annual Catch Limits
2. Recommendations on Management Measures for Aquaculture in the Western Pacific
3. Recommendations on Options for Exemptions from Federal Fishery Permits
4. Recommendations on Cooperative Research Priorities
B. Recreational Fishery
1. NOAA Recreational Initiative
2. Report of the NOAA Recreational Fishing Summit
8. Public Comment on Non-Agenda Items

6 p.m. - 9 p.m. Fishers Forum

Seafood: Past, Present and Future

Wednesday, June 30, 2010, 8 a.m. - 5 p.m.

7. Program Planning and Research (continued)
C. Fisheries Monitoring and Compliance
1. Report on Video Monitoring Projects
a. Hawaii Longline Video Monitoring
b. Australian Live Video Monitoring
2. Harbor Wing Unmanned, At-sea Surveillance
3. Vessel Monitoring System Policy
D. Marine Spatial Planning Update
E. Status of Stocks Report
F. Hawaii, Regional, National & International Education and Outreach Initiatives
G. Community Demonstration Project Program Advisory Panel Recommendations
H. Program Planning Recommendations from Council Advisory Groups
I. SSC Recommendations
J. Public Hearing
K. Council Discussion and Action
9. Pelagic & International Fisheries
A. Action Items
1. Recommendations on Hawaii Longline Bigeye Tuna Management Under a Catch Limit
2. Recommendations on Options to Modify the Hawaii Deep-set Tuna Longline Swordfish Trip Catch Limit
3. Recommendations on Modifications to the American Samoa Longline Limited Entry Program
4. Recommendations on Territory Fishery Development
5. Recommendations on Western & Central Pacific Fisheries Commission Transshipment Requirements
B. Inter-American Tropical Tuna Commission (IATTC) Pacific Bigeye Tuna Stock Assessment
C. International Fisheries
1. Fifth International Fishers Forum
2. Western Central Pacific Fisheries Commission
3. Kobe Bycatch Meeting
4. Coral Reef Triangle Bycatch Meeting
D. Pacific Pelagic Advisory Panel Recommendations
E. Pelagic Plan Team Recommendations
F. SSC Recommendations
G. Pelagics Standing Committee Recommendations
H. Public Hearing
I. Council Discussion and Action
10. Protected Species
A. False Killer Whale Take Reduction Team Meeting Report
B. Sea Turtle Advisory Committee Report
C. Cetacean Survey Methodology
D. Updates on Endangered Species Act Issues (83 Species of Coral, Bumphead Parrotfish, Sea Turtles, and False Killer Whale)
E. American Samoa Longline Amendment Consultation
F. SSC Recommendations
G. Public Comment
H. Council Discussion and Action
11. Marianas Archipelago
A. Arongo Flaeey
B. Isla Informe
C. Legislative Report
D. Enforcement Issues
E. Action Items
1. Recommendations on Fishery Management Measures for the Marianas Trench Marine National Monument
F. Marianas Bottomfish Survey Report
G. Community Activities and Issues
H. Update on Military Activities
I. Education and Outreach Initiatives
J. SSC Recommendations
K. Public Hearing
L. Council Discussion and Action

Thursday, July 1, 2010, 8 a.m. - 1 p.m.

12. American Samoa Archipelago
A. Motu Lipoti
B. Fono Report
C. Enforcement Issues
D. Action Items
1. Recommendations on Management Measures for Non-Commercial Fishing in the Rose Atoll and Pacific Remote Islands Marine National Monuments
E. Community Activities and Issues
1. Report of Fishery Development
2. Report on Disaster Relief
F. Education and Outreach Initiatives
G. American Samoa Advisory Panel Recommendations
H. American Samoa Plan Team Recommendations
I. American Samoa REAC Recommendations
J. SSC Recommendations
K. Public Hearing
L. Council Discussion and Action
13. Administrative Matters
A. Financial Reports
B. Administrative Reports
C. Standard Operating Procedures and Practices Review and Changes
D. Council Family Changes
E. Meetings and Workshops
F. Other Business
G. Standing Committee Recommendations
H. Public Comment
I. Council Discussion and Action
14. Other Business

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during these meetings. Action will be restricted to those issues specifically listed 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 that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: June 2, 2010.

William D. Chappell,

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

[FR Doc. 2010–13566 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW84

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day Council meeting on Tuesday through Thursday, June 22–24, 2010, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will begin on Tuesday, June 22 at 9 a.m. and Wednesday and Thursday, June 23–24, beginning at 8:30 a.m.

ADDRESSES: The meeting will be held at the Eastland Park Hotel,157 High Street, Portland, ME 04101; telephone: (207) 775–5411; fax: (207) 775–2872.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, June 22, 2010

Following introductions and any announcements, the Council meeting will begin with a series of brief reports from the Council Chairman and Executive Director, the NOAA Fisheries Regional Administrator, Northeast Region, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel, representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission, as well as NOAA Enforcement. The Enforcement Committee will then report about simplifying and enforcing fishing regulations, including those associated with sector management, and provide an update about improving relations with stakeholders. This will be followed by a separate U.S. Coast Guard presentation that addresses safety at sea relative to the problem of ageing fishing vessels. During the Tuesday afternoon session, the Northeast Regional Ocean Council will provide a briefing on its mission and objectives and discuss its potential relationship with the NEFMC; and the Habitat Committee will bring forward for Council consideration alternative management measures to reduce or spatially optimize the adverse effects of fishing on essential fish habitat. The measures are under consideration for inclusion in Habitat Omnibus Amendment 2, an action which would amend all NEFMC Fishery Management Plans (FMPs).

Wednesday, June 23, 2010

During the morning session, the Council will address only multispecies groundfish management-related issues. These will include: initial action on Framework Adjustment 45 to the Northeast Multispecies FMP. Measures under consideration include possible modification of the Georges Bank yellowtail flounder stock rebuilding strategy, new sector requests and a general category scallop dredge exemption for yellowtail flounder in the Great South Channel. Other Framework 45 measures include a party/charter boat limited entry control date, a Gulf of Maine winter flounder zero possession limit, accountability measures and permit banks in the groundfish fishery. Additional discussion is scheduled to consider the possibility of an amendment to address fleet diversity and accumulation limits for this fishery and an update on activities associated with the Joint Groundfish/Sea Scallop Committee. The afternoon session will begin with an overview of the status of spiny dogfish by the staff of the Northeast Fisheries Science Center, followed by the Scientific and Statistical Committee's (SSC) report on its most recent meeting. The SSC's topics include a recommendation for a revised red crab Acceptable Biological Catch (ABC) to now include discards, an ABC for Atlantic salmon and reports on progress to date concerning its ABC control rules, five-year research priorities and an ecosystem-based fisheries management white paper. This report will be followed by Council actions to revise the red crab ABC and set the Atlantic salmon ABC. The day will end with a review of analyses and public comments concerning a monkfish management alternative proposed at the last Council meeting. If approved, the addition of this management measure will constitute the final action on Amendment 5 to the Monkfish FMP.

Thursday, June 24, 2010

The last day of the June Council meeting will include a review of any experimental fishery permit applications that have been received since the last Council meeting, revisiting Council work priorities based on comments from the April Council meeting and an open period for public comments. The open public period is an opportunity for interested parties to provide brief comments on issues relevant to Council business but not listed on the meeting agenda. There also will be a report by NOAA Fisheries on recreational fishing issues. The Sea Scallop Committee also will begin their report during the morning session on Thursday and may take initial action on Framework Adjustment 22 to the Atlantic Sea Scallop FMP. The primary purpose of the action is to set fishery specifications for the 2011–12 fishing years. The action also will include measures to minimize the risk sea scallop gear/incidental encounters with sea turtles. The Council also will review and finalize scallop research recommendations that will apply to the fishery management plan's research set-aside program. Before adjournment, the Council may address any other outstanding business related to this meeting.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed 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 that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 2, 2010.

William D. Chappell,

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

[FR Doc. 2010–13567 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off–the-Road Tires from the People's Republic of China: Preliminary Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 10, 2009, the Department of Commerce ("the Department") published in the **Federal Register** a notice of initiation of a changed circumstances review of the antidumping duty order on certain new pneumatic off–the-road ("OTR") tires from the People's Republic of China ("PRC") in order to determine whether Mai Shandong Radial Tyre Co., Ltd. ("Mai Shandong") is the successor–in-interest to Shandong Jinyu Tyre Co., Ltd. ("Shandong Jinyu") for the purpose of determining antidumping duty liability. We have preliminarily determined that Mai Shandong is not the successor–in-interest to Shandong Jinyu for the purpose of determining antidumping duty liability. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 8, 2010.

FOR FURTHER INFORMATION CONTACT: Raquel Silva, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–6475.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2008, the Department published in the **Federal Register** an antidumping duty order on OTR tires from the PRC. *See Certain New Pneumatic Off–the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 73 FR 51624 (September 4, 2008) ("*Order*"). As part of the Order, Shandong Jinyu received the separate–rate respondent amended rate of 12.91 percent. *Id.* at 51627. On September 14, 2009, Mai Shandong filed a submission requesting that the Department conduct a changed circumstances review of the *Order* to confirm that it is the successor–in-interest to Shandong Jinyu.[1] In its submission, Mai Shandong provided the Joint Venture Contract, Articles of Association and various other documents confirming: 1) an approximately 90–percent transfer of OTR tire assets from Shandong Jinyu to Maitech Fin S.r.l. (now known as Mai International); and 2) the resulting formation of the Mai Shandong joint venture. In addition, Mai Shandong provided narrative explanation and limited documentation relating to the management, production facilities and process, customer base, supplier relationships, distribution and marketing channels and product mix of both it and the company as it previously operated as Shandong Jinyu. As part of its September 14, 2009 submission, Mai Shandong requested that the Department conduct an expedited review.

In response to the request, the Department initiated a changed circumstances review of Mai Shandong on November 10, 2009. *See Certain New Pneumatic Off–the-Road Tires from the People's Republic of China: Initiation of Changed Circumstances Review*, 74 FR 57999 (November 10, 2009). However, the Department found conclusive evidence lacking and, therefore, determined an expedited preliminary result was not appropriate. *Id.* at 58001. Subsequent to initiation, the Department issued, and Mai Shandong responded to, several supplemental questionnaires requesting additional information.

Scope of the Order

The products covered by the order are new pneumatic tires designed for off–the-road and off–highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off–road or off–highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,[2] combine harvesters,[3] agricultural high clearance sprayers,[4] industrial tractors,[5] log–skidders,[6] agricultural implements, highway–towed implements, agricultural logging, and agricultural, industrial, skid–steers/mini–loaders;[7] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[8] front end loaders,[9] dozers,[10] lift trucks, straddle carriers,[11] graders,[12] mobile cranes,[13] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid–steers/mini–loaders, and smooth floor off–the-road counterbalanced lift trucks.[14] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and

[1] *See* Letter from Mai Shandong to the Department regarding *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China, Request for Changed Circumstances Review* (Case No. A-570-912) (September 14, 2009).

[2] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[3] Combine harvesters are used to harvest crops such as corn or wheat.

[4] Agricultural sprayers are used to irrigate agricultural fields

[5] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

[6] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[7] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[8] Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[9] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

[10] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform "rough grading" in road construction.

[11] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[12] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course on to which asphalt or other paving material will be laid.

[13] *I.e.*, "on-site" mobile cranes designed for off-highway use.

[14] A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

equipment that use certain OTR tires, but are not necessarily all–inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off–road and off–highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube–type[15] or tubeless, radial or non–radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on–highway or on–road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on–road or on–highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol "DOT" must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P - Identifies a tire intended primarily for service on passenger cars;
- LT - Identifies a tire intended primarily for service on light trucks; and,
- ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

- TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156″ or plus 0.250″;
- MH - Identifies tires for Mobile Homes;
- HC - Identifies a heavy duty tire designated for use on "HC" 15″ tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non–pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all–terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Preliminary Results of the Review

In this changed circumstances review pursuant to section 751(b) of the Tariff Act of 1930, as amended (the "Act"), the Department has conducted a successor–in-interest analysis. In making a successor–in-interest determination, the Department examines several factors, including, but not limited to, changes in the following: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (January 2, 2002). While no single factor or combination of factors will necessarily provide a dispositive indication of a successor–in-interest relationship, generally, the Department will consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999). Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor.

In accordance with 19 CFR 351.221(c)(3)(i), we preliminarily determine that Mai Shandong, formed by an approximately 90–10 ownership joint venture of Mai International and Shandong Jinyu, respectively, is not the successor–in-interest to Shandong Jinyu. While the record evidence indicates that Mai Shandong retained identical production facilities, distribution channels and similar suppliers to Shandong Jinyu, it also indicates that Mai Shandong's ownership, management composition, corporate structure and sales/marketing operations changed significantly from that of Shandong Jinyu. The remaining business characteristics (*e.g.*, production process) changed moderately, but not sufficiently to warrant elaboration.

While Mai Shandong claims that the majority of its personnel transferred from Shandong Jinyu, none of Shandong Jinyu's executive–level managers remain in Mai Shandong. Furthermore, Mai Shandong is now governed by a Board of Directors, in which Mai Shandong's new Italian parent company retains two–thirds control overall of Mai Shandong's major operational decisions.

With respect to corporate and operational structure, the new entity no longer has its own independent human resources, raw material processing, corporate–level research and development or sales capabilities. Shandong Jinyu conducted those business functions for itself whereas Mai Shandong depends on its parent companies for each of those functions. For further information, please *see* Memorandum from Raquel Silva, Analyst, regarding "Analysis Memo for Preliminary Results of Antidumping Duty Changed Circumstances Review of New Pneumatic Off–the-Road Tires from the People's Republic of China," dated concurrently with the signature date of this notice ("Preliminary Results Analysis Memo").

Finally, Mai Shandong's sales and marketing operations are now highly dependent upon its Italian parent. Mai Shandong retains an employee partially dedicated to sales activities; the employee plays a supportive, but not leading role. It also routes all sales

[15] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

through Mai International, selling no product directly to customers as Shandong Jinyu had done. Additionally, Mai Shandong has not sold any product to any of Shandong Jinyu's former U.S. customers. The evidence on the record also shows a significant change in customer base. For further information, please see the Preliminary Results Analysis Memo.

Therefore, we preliminarily find that the record evidence does not support Mai Shandong's claim that it is the successor–in-interest to Shandong Jinyu. Mai International's acquisition of approximately 90 percent equity in Shandong Jinyu's OTR tires business resulted in a joint venture that is majority owned and operated by a new, foreign entity, with a new corporate structure, changed management, and significantly altered sales and marketing operations. Therefore, given the totality of the considered factors, the record evidence demonstrates that Mai Shandong is a new entity that operates in a significantly different manner from Shandong Jinyu. Consequently, we preliminarily determine that Mai Shandong should not be given the same antidumping duty treatment as Shandong Jinyu, *i.e.*, the separate rate status previously afforded to Shandong Jinyu and the accompanying 12.91 percent antidumping duty cash deposit rate. Instead, Mai Shandong, as a new entity, should continue to be treated as part of the PRC–entity until such time as it demonstrates that it meets the separate rates criteria established by the Department and assigned, as its cash deposit rate, the "PRC–wide entity" rate, which in this proceeding is 210.48 percent.

The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See Granular Polytetrafluoroethylene Resin from Italy: Final Results of Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This deposit rate shall remain in effect until further notice.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs no later than 14 days after the date of publication of this notice, in accordance with 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs, in accordance with 19 CFR 351.309(d)(1). Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. See 19 CFR 351.310(d). The Department will issue its final results of review within 270 days after the date on which the changed circumstances review was initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 of the Department's regulations.

Dated: June 1, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–13759 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW73

Fisheries of the Exclusive Economic Zone off Alaska; Chinook Salmon Bycatch Data Collection; Workshop for Industry Review of Data Forms

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

ACTION: Notice of a public workshop.

SUMMARY: NMFS announces a workshop to solicit comments from the Bering Sea pollock trawl industry on data forms for evaluating the Bering Sea Chinook salmon bycatch management program that will be implemented under Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The workshop is open to the public, but NMFS is particularly seeking participation by members of the Bering Sea pollock trawl fishery who are knowledgeable about industry plans and operations for avoiding Chinook salmon bycatch.

DATES: The public workshop will be held June 21, 2010, 9 a.m. to 5 p.m. Pacific Standard Time.

ADDRESSES: The review will be held at the NMFS Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Building 4, Rm 2076 - Traynor Conference Room, Seattle, WA 98115. Photo identification is required to enter this facility.

FOR FURTHER INFORMATION CONTACT: Ron Felthoven, 206–526–4114.

SUPPLEMENTARY INFORMATION: National Marine Fisheries Service (NMFS) Alaska Fisheries Science Center (AFSC) staff are hosting a public workshop to solicit comments on data forms related to the Bering Sea Chinook salmon bycatch data collection program. This program was recommended by the North Pacific Fisheries Management Council at its December 2009 meeting and will be implemented under Amendment 91. AFSC staff will use the results of the workshop to refine the data forms and to evaluate the effectiveness of the program. The workshop is open to the public, but NMFS is particularly seeking participation by members of the Bering Sea pollock trawl fishery who are knowledgeable about the operations and plans for avoidance of Chinook salmon bycatch. NMFS invites owners and operators of American Fisheries Act (AFA) catcher/vessels, catcher/processors, motherships, inshore processors, and Community Development Quota (CDQ) groups to comment on the clarity of the questions in the data forms and contribute advice based on their knowledge of pollock fishing operations.

Special Accommodations

This workshop will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ron Felthoven, 206–526–4114, at least 10 working days prior to the workshop date.

Dated: June 3, 2010.

Carrie Selberg,

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

[FR Doc. 2010–13706 Filed 6–3–10; 4:15 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW13

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Open Water Marine Seismic Survey in the Chukchi Sea, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS received an application from Statoil USA E&P Inc. (Statoil) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to a proposed open water marine seismic survey in the Chukchi Sea, Alaska, between July through November 2010. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to Statoil to take, by Level B harassment only, twelve species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than July 8, 2010.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *PR1.0648–XW13@noaa.gov*. NMFS is not responsible for e mail comments sent to addresses other than the one provided here. Comments sent via e mail, including all attachments, must not exceed a 10 megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713 2289, ext 137.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45 day time limit for NMFS review of an application followed by a 30 day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].

Summary of Request

NMFS received an application on December 24, 2009, from Statoil for the taking, by harassment, of marine mammals incidental to a 3D marine seismic surveys in the Chukchi Sea, Alaska, during the 2010 open-water season. After addressing comments from NMFS, Statoil modified its application and submitted a revised application on April 12, 2010. The April 12, 2010, application is the one available for public comment (see **ADDRESSES**) and considered by NMFS for this proposed IHA.

This proposed marine seismic survey will use two towed airgun array consisting of 26 active (10 spare) airguns with a maximum discharge volume of 3,000 cubic inch (in^3). The proposed 3D survey will take place in a 915 mi^2 (2,370 km^2) survey area approximately 150 mi (241 km) west of Barrow in water depth of approximately 100 to 165 ft (30 to 50 m). The seismic survey is designed to collect 3D data of the deep sub-surface in Statoil's Chukchi leases in support of future oil and gas development within the area of coverage. The data will help identify source rocks, migration pathways, and play types. In addition, a 2D tie line survey has been designed as a second priority program to acquire useful information in the region. The four stand alone 2D lines (with a total length of approximately 420 mi or 675 km) are designed to tie the details of the new high resolution 3D image to the surrounding regional geology to facilitate interpretation of more regional trends. The number of 2D km acquired will to some degree be dependent on the 2010 season's restrictive ice coverage and the 3D data acquisition progress.

Statoil intends to conduct these marine surveys during the 2010 Arctic open-water season (July through November). Impacts to marine mammals may occur from noise produced by airgun sources used in the surveys.

Description of the Specified Activity

Statoil plans to conduct geophysical data acquisition activities in the Chukchi Sea in the period July 15 through November 30, 2010. Data acquisition is expected to take approximately 60 days (including anticipated downtime), but the total period for this request is from July 15 through November 30 to allow for unexpected downtime. The project area

encompasses approximately 915 mi^2 (2,370 km^2) in Statoil lease holdings in the Minerals Management Service (MMS) Outer Continental Shelf (OCS) Lease Sale 193 area in the northern Chukchi Sea (Figure 1 of the Statoil IHA application). The activities consist of 3D seismic data acquisition and a 2D tie line survey as a second priority program.

The entire 3D program, if it can be completed, will consist of approximately 3,100 mi (4,990 km) of production line, not including line turns. A total of four 2D well tie lines with a total length of approximately 420 mi (675 km) are included in the survey plan as a second priority program. The 3D seismic data acquisition will be conducted from the M/V Geo Celtic. The M/V Geo Celtic will tow two identical airgun arrays at approximately 20 ft (6 m) depth and at a distance of about 902 ft (275 m) behind the vessel. Each array is composed of three strings for a total of 26 active G-guns (4 60 in^3, 8 70 in^3, 6 100 in^3, 4 150 in^3, and 4 250 in^3) with a total discharge volume of 3000 in^3. Each array also consists of 5 clusters of 10 inactive airguns that will be used as spares. One of the smallest guns in the array (60 in^3) will be used as the mitigation gun. More details of the airgun array and its components are described in Appendix B of Statoil's IHA application. In addition to the airgun array, pinger systems (DigiRANGE II, or similar systems) will be used to position the streamer array relative to the vessel.

The estimated source level for the full 3000 in^3 array is 245 dB re 1 µPa (rms) at 1 m. The maximum distances to received levels of 190, 180 160, and 120 dB re 1 µPa (rms) from sound source verification (SSV) measurements of the 3,147 in^3 airgun array used in the Chukchi Sea during 2006–2008 were used to model the received levels at these distances, which show that the maximum distances are 700, 2,500, 13,000, and 120,000 m, respectively.

The estimated source level of this single 60 in^3 airgun is 230 dB re 1 µPa (rms) at 1 m, and the modeled distances to received levels of 190, 180 160, and 120 dB re 1 µPa (rms) are 75, 220, 1,800, and 50,000 m, respectively.

The DigiRANGE II pinger system produces very short pulses, occurring for 10 ms, with source level approximately 180 dB re 1 µPa (rms) at 1 m at 55 kHz, 188 dB re 1 µPa (rms) at 1 m at 75 kHz, and 184 dB re 1 µPa (rms) at 1 m at 95 kHz. One pulse is emitted on command from the operator aboard the source vessel, which under normal operating conditions is once every 10 s. Most of the energy in the sound pulses emitted by this pinger is between 50 and 100 kHz. The signal is omnidirectional. Using simple spherical spreading modeling for sound propagation, the calculated distances to received levels of 180, 160, and 120 dB re 1 µPa (rms) are 2.5 m, 25 m, and 2,512 m, respectively. These distances are well within the radii for airgun arrays and that of a single mitigation gun.

The vessel will travel along pre-determined lines at a speed of about 4 - 5 knots while one of the airgun arrays discharges every 8 - 10 seconds (shot interval 61.52 ft [18.75 m]). The streamer hydrophone array will consist of twelve streamers of up to approximately 2.2 mi (4 km) in length, with a total of 20,000 - 25,000 hydrophones at 6.6 ft (2 m) spacing. This large hydrophone streamer receiver array, designed to maximize efficiency and minimize the number of source points, will receive the reflected signals from the airgun array and transfer the data to an on-board processing system.

A 2D tie line survey has been designed as a second priority program to allow the vessel to acquire useful information in the region. The four stand alone 2D lines have a total length of approximately 420 mi (675 km) and are designed to tie the details of the new high resolution 3D image to known surrounding regional geology.

The approximate boundaries of the total surface area are between 71° 30' N and 72° 00' N and between 165° W and 162° 30' W. The water depth in the survey area varies from 100 to 165 ft (30 to 50 m).

The vessels involved in the seismic survey activities will consist of at least three vessels as listed below. Specifications of these vessels (or equivalent vessels if availability changes) are provided in Appendix A of Statoil's IHA application.

- One (1) seismic source vessel, the M/V Geo Celtic or similar equipped vessel, to tow the two 3,000 in^3 airgun arrays and hydrophone streamer for the 3D (and 2D) seismic data acquisition and to serve as a platform for marine mammal monitoring;
- One (1) chase/monitoring vessel, the M/V Gulf Provider or similar equipped vessel, for marine mammal monitoring, crew transfer, support and supply duties.
- One (1) chase/monitoring vessel, the M/V Thor Alpha or similar equipped vessel, for marine mammal monitoring, support and supply duties.

The M/V Geo Celtic, or similar vessel, will arrive in Dutch Harbor around mid July 2010. The vessels will be resupplied and the crew changed at this port. Depending on ice conditions, all three vessels will depart Dutch Harbor around mid/end July with an expected transit time of approximately 5 days (weather depending). Directly upon arrival in the 3D survey area, depending on ice conditions, the M/V Geo Celtic will deploy the airgun array and start operating their guns for the purpose of sound source verification measurements (see Statoil IHA application for more details). The startup date of seismic data acquisition is expected to be early/mid August but depends on local ice conditions.

Upon completion of these measurements the seismic data acquisition in the Chukchi Sea will start and, depending on the start date, is expected to be completed in the first half of October. This is based on an estimated duration of 60 days from first to last shot point (including anticipated downtime). The data acquisition is a 24–hour operation.

Description of Marine Mammals in the Area of the Specified Activity

Eight cetacean and four pinniped species under NMFS jurisdiction could occur in the general area of Statoil's open water marine seismic survey area in the Chukchi Sea. These species most likely to occur in the general area project vicinity include two cetacean species: beluga (*Delphinapterus leucas*) and bowhead whales (*Balaena mysticetus*), and three seal species: ringed (*Phoca hispida*), spotted (*P. largha*), and bearded seals (*Erignathus barbatus*). Most encounters are likely to occur in nearshore shelf habitats or along the ice edge. The marine mammal species that is likely to be encountered most widely (in space and time) throughout the period of the open water seismic survey is the ringed seal. Encounters with bowhead and beluga whales are expected to be limited to particular regions and seasons, as discussed below.

Other marine mammal species that have been observed in the Chukchi Sea but are less frequent or uncommon in the project area include harbor porpoise (*Phocoena phocoena*), narwhal (*Monodon monoceros*), killer whale (*Orcinus orca*), fin whale (*Balaenoptera physalus*), minke whale (*B. acutorostrata*), humpback whale (*Megaptera novaeangliae*), gray whale (*Eschrichtius robustus*), and ribbon seal (*Histriophoca fasciata*). These species could occur in the project area, but each of these species is uncommon or rare in the area and relatively few encounters with these species are expected during the proposed marine seismic survey. The narwhal occurs in Canadian waters

and occasionally in the Beaufort Sea, but it is rare there and is not expected to be encountered. There are scattered records of narwhal in Alaskan waters, including reports by subsistence hunters, where the species is considered extralimital (Reeves *et al.* 2002). Point Barrow, Alaska, is the approximate northeastern extent of the harbor porpoise's regular range (Suydam and George 1992). Humpback, fin, and minke whales have recently been sighted in the Chukchi Sea but very rarely in the Beaufort Sea. Greene *et al.* (2007) reported and photographed a humpback whale cow/calf pair east of Barrow near Smith Bay in 2007, which is the first known occurrence of humpbacks in the Beaufort Sea. Savarese *et al.* (2009) reported one minke whale sighting in the Beaufort Sea in 2007 and 2008. Ribbon seals do not normally occur in the Beaufort Sea; however, two ribbon seal sightings were reported during vessel-based activities near Prudhoe Bay in 2008 (Savarese *et al.* 2009).

The bowhead, fin, and humpback whales are listed as "endangered" under the Endangered Species Act (ESA) and as depleted under the MMPA. Certain stocks or populations of gray, beluga, and killer whales and spotted seals are listed as endangered or proposed for listing under the ESA; however, none of those stocks or populations occur in the proposed activity area. Additionally, the ribbon seal is considered a "species of concern" under the ESA, and the bearded and ringed seals are "candidate species" under the ESA, meaning they are currently being considered for listing.

Statoil's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS jurisdiction mentioned in this document. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2009 SAR is available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2009.pdf*.

Potential Effects of the Specified Activity on Marine Mammals

Operating active acoustic sources such as an airgun array has the potential for adverse effects on marine mammals.

Potential Effects of Airgun Sounds on Marine Mammals

The effects of sounds from airgun pulses might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.* 1995). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.* 1995):

(1) Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Numerous studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response. That is often true even in cases when the pulsed sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to airgun pulses under some conditions, at other times, mammals of all three types have shown no overt reactions. In general, pinnipeds and small odontocetes seem to be more tolerant of exposure to airgun pulses than baleen whales.

(2) Behavioral Disturbance

Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. These behavioral reactions are often shown as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping), avoidance of areas where noise sources are located, and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, and reproduction. Some of these significant behavioral modifications include:

- Drastic change in diving/surfacing patterns (such as those thought to be causing beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cease feeding or social interaction.

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.* 2007).

Currently NMFS uses 160 dB re 1 μPa at received level for impulse noises (such as airgun pulses) as the onset of marine mammal behavioral harassment.

(3) Masking

Chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals that utilize sound for vital biological functions. Masking can interfere with detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Since marine mammals depend on acoustic cues for vital biological functions, such as orientation, communication, finding prey, and avoiding predators, marine mammals that experience severe acoustic masking will have reduced fitness in survival and reproduction.

Masking occurs when noise and signals (that animal utilizes) overlap at both spectral and temporal scales. For the airgun noise generated from the proposed marine seismic survey, these are low frequency (under 1 kHz) pulses with extremely short durations (in the scale of milliseconds). Lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. There is little concern regarding masking due to the brief duration of these pulses and relatively longer silence between airgun shots (9 - 12 seconds) near the noise source, however, at long distances (over tens of kilometers away), due to multipath propagation and reverberation, the durations of airgun pulses can be "stretched" to seconds with long decays (Madsen *et al.* 2006). Therefore it could affect communication signals used by low frequency mysticetes when they occur near the noise band and thus reduce the communication space of animals (e.g., Clark *et al.* 2009) and cause increased stress levels (e.g., Foote *et al.* 2004; Holt *et al.* 2009). Nevertheless, the intensity of the noise is also greatly reduced at such long distances (for example, the modeled received level drops below 120 dB re 1 μPa rms at 14,900 m from the source).

Marine mammals are thought to be able to compensate for masking by adjusting their acoustic behavior such as

shifting call frequencies, increasing call volume and vocalization rates. For example, blue whales are found to increase call rates when exposed to seismic survey noise in the St. Lawrence Estuary (Di Iorio and Clark 2010). The North Atlantic right whales (Eubalaena glacialis) exposed to high shipping noise increase call frequency (Parks *et al.* 2007), while some humpback whales respond to low-frequency active sonar playbacks by increasing song length (Miller el al. 2000).

(4) Hearing Impairment

Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is unrecoverable, or temporary (TTS), in which case the animal's hearing threshold will recover over time (Southall *et al.* 2007). Just like masking, marine mammals that suffer from PTS or TTS will have reduced fitness in survival and reproduction, either permanently or temporarily. Repeated noise exposure that leads to TTS could cause PTS. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound.

Experiments on a bottlenose dolphin (Tursiops truncates) and beluga whale showed that exposure to a single watergun impulse at a received level of 207 kPa (or 30 psi) peak-to-peak (p-p), which is equivalent to 228 dB re 1 μPa (p-p), resulted in a 7 and 6 dB TTS in the beluga whale at 0.4 and 30 kHz, respectively. Thresholds returned to within 2 dB of the pre-exposure level within 4 minutes of the exposure (Finneran *et al.* 2002). No TTS was observed in the bottlenose dolphin. Although the source level of pile driving from one hammer strike is expected to be much lower than the single watergun impulse cited here, animals being exposed for a prolonged period to repeated hammer strikes could receive more noise exposure in terms of SEL than from the single watergun impulse (estimated at 188 dB re 1 μPa2–s) in the aforementioned experiment (Finneran *et al.* 2002).

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are lower than those to which odontocetes are most sensitive, and natural ambient noise levels at those low frequencies tend to be higher (Urick 1983). As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales. However, no cases of TTS are expected given the small size of the airguns proposed to be used and the strong likelihood that baleen whales (especially migrating bowheads) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from prolonged exposures suggested that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.* 1999, 2005; Ketten *et al.* 2001). However, more recent indications are that TTS onset in the most sensitive pinniped species studied (harbor seal, which is closely related to the ringed seal) may occur at a similar SEL as in odontocetes (Kastak *et al.*, 2004).

NMFS (1995, 2000) concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding, respectively, 180 and 190 dB re 1 μPa rms. The established 180- and 190–dB re 1 μPa rms criteria are not considered to be the levels above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS before TTS measurements for marine mammals started to become available, one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As summarized above, data that are now available to imply that TTS is unlikely to occur unless bow-riding odontocetes are exposed to airgun pulses much stronger than 180 dB re 1 μPa rms (Southall *et al.* 2007).

No cases of TTS are expected as a result of Statoil's proposed seismic activity due to the fact that much higher received levels than 180- and 190–dB would be needed to induce TTS. In addition, the strong likelihood that baleen whales (especially migrating bowheads) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS, and the mitigation and monitoring measures prescribed (described below in the document) will largely prevent marine mammals from being exposed to SPL above 180 and 190 dB re 1 μPa (rms).

There is no empirical evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns (see Southall *et al.*, 2007). However, given the possibility that mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. That is, PTS might occur at a received sound level magnitudes higher than the level of onset TTS, or by repeated exposure to the levels that cause TTS. Therefore, by means of preventing the onset of TTS, it is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient duration) to cause permanent hearing impairment during the proposed marine seismic survey in the Chukchi Sea.

(5) Non-auditory Physical Effects

Non-auditory physical effects might occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. Some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, there is no definitive evidence that any of these effects occur even for marine mammals in close proximity to large arrays of airguns, and beaked whales do not occur in the proposed project area. In addition, marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes (including belugas), and some pinnipeds, are especially unlikely to incur non-auditory impairment or other physical effects.

(6) Stranding and Mortality

Marine mammals close to underwater detonations of high explosive can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.* 1993; Ketten 1995). Airgun pulses are less

energetic and their peak amplitudes have slower rise times. Up-to-date, there is no evidence that serious injury, death, or stranding by marine mammals can occur from exposure to airgun pulses, even in the case of large airgun arrays.

However, in numerous past IHA notices for seismic surveys, commenters have referenced two stranding events allegedly associated with seismic activities, one off Baja California and a second off Brazil. NMFS has addressed this concern several times, and, without new information, does not believe that this issue warrants further discussion. For information relevant to strandings of marine mammals, readers are encouraged to review NMFS' response to comments on this matter found in 69 FR 74905 (December 14, 2004), 71 FR 43112 (July 31, 2006), 71 FR 50027 (August 24, 2006), and 71 FR 49418 (August 23, 2006). In addition, a May-June 2008, stranding of 100–200 melon-headed whales (*Peponocephala electra*) off Madagascar that appears to be associated with seismic surveys is currently under investigation (IWC 2009).

It should be noted that strandings related to sound exposure have not been recorded for marine mammal species in the Beaufort and Chukchi seas. NMFS notes that in the Beaufort Sea, aerial surveys have been conducted by MMS and industry during periods of industrial activity (and by MMS during times with no activity). No strandings or marine mammals in distress have been observed during these surveys and none have been reported by North Slope Borough inhabitants. As a result, NMFS does not expect any marine mammals will incur serious injury or mortality in the Arctic Ocean or strand as a result of proposed seismic survey.

Potential Effects from Pinger System on Marine Mammals

A pinger system (DigiRANGE II) will be used during seismic operations to position the airgun array and hydrophone streamer relative to the vessel. The specifications of the DigiRANGE II pinger system (source levels and frequency ranges) are provided above. The pinger produces sounds that are above the range of frequencies produced or heard by mysticetes. However, the beluga whales and other odontocetes have good hearing sensitivity across the pingers major frequency range, which is at 50 - 100 kHz (Au *et al.* 1978; Johnson *et al.* 1989). Some seals also can hear sounds at frequencies up to somewhat above 55 kHz. In general, the potential effects of the pulse pinger on marine mammals are similar to those from the airgun, but the magnitude of the impacts is expected to be much less due to much lower intensity and higher frequencies. Estimated source levels and zones of influence from the pinger system are discussed above.

Vessel Sounds

In addition to the noise generated from seismic airguns, various types of vessels will be used in the operations, including source vessels and support vessels. Sounds from boats and vessels have been reported extensively (Greene and Moore 1995; Blackwell and Greene 2002; 2005; 2006). Numerous measurements of underwater vessel sound have been performed in support of recent industry activity in the Chukchi and Beaufort Seas. Results of these measurements were reported in various 90–day and comprehensive reports since 2007 (e.g., Aerts *et al.* 2008; Hauser *et al.* 2008; Brueggeman 2009; Ireland *et al.* 2009). For example, Garner and Hannay (2009) estimated sound pressure levels of 100 dB at distances ranging from approximately 1.5 to 2.3 mi (2.4 to 3.7 km) from various types of barges. MacDonald *et al.* (2008) estimated higher underwater SPLs from the seismic vessel *Gilavar* of 120 dB at approximately 13 mi (21 km) from the source, although the sound level was only 150 dB at 85 ft (26 m) from the vessel. Compared to airgun pulses, underwater sound from vessels is generally at relatively low frequencies.

The primary sources of sounds from all vessel classes are propeller cavitation, propeller singing, and propulsion or other machinery. Propeller cavitation is usually the dominant noise source for vessels (Ross 1976). Propeller cavitation and singing are produced outside the hull, whereas propulsion or other machinery noise originates inside the hull. There are additional sounds produced by vessel activity, such as pumps, generators, flow noise from water passing over the hull, and bubbles breaking in the wake. Icebreakers contribute greater sound levels during ice-breaking activities than ships of similar size during normal operation in open water (Richardson *et al.* 1995). This higher sound production results from the greater amount of power and propeller cavitation required when operating in thick ice. Source levels from various vessels would be empirically measured before the start of marine surveys.

Anticipated Effects on Habitat

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by airguns and other active acoustic sources. However, other potential impacts to the surrounding habitat from physical disturbance are also possible.

Potential Impacts on Prey Species

With regard to fish as a prey source for cetaceans and pinnipeds, fish are known to hear and react to sounds and to use sound to communicate (Tavolga *et al.* 1981) and possibly avoid predators (Wilson and Dill 2002). Experiments have shown that fish can sense both the strength and direction of sound (Hawkins, 1981). Primary factors determining whether a fish can sense a sound signal, and potentially react to it, are the frequency of the signal and the strength of the signal in relation to the natural background noise level.

The level of sound at which a fish will react or alter its behavior is usually well above the detection level. Fish have been found to react to sounds when the sound level increased to about 20 dB above the detection level of 120 dB (Ona 1988); however, the response threshold can depend on the time of year and the fish's physiological condition (Engas *et al.* 1993). In general, fish react more strongly to pulses of sound rather than a continuous signal (Blaxter *et al.* 1981), and a quicker alarm response is elicited when the sound signal intensity rises rapidly compared to sound rising more slowly to the same level.

Investigations of fish behavior in relation to vessel noise (Olsen *et al.* 1983; Ona 1988; Ona and Godo 1990) have shown that fish react when the sound from the engines and propeller exceeds a certain level. Avoidance reactions have been observed in fish such as cod and herring when vessels approached close enough that received sound levels are 110 dB to 130 dB (Nakken 1992; Olsen 1979; Ona and Godo 1990; Ona and Toresen 1988). However, other researchers have found that fish such as polar cod, herring, and capeline are often attracted to vessels (apparently by the noise) and swim toward the vessel (Rostad *et al.* 2006). Typical sound source levels of vessel noise in the audible range for fish are 150 dB to 170 dB (Richardson *et al.* 1995).

Some mysticetes, including bowhead whales, feed on concentrations of zooplankton. Some feeding bowhead whales may occur in the Alaskan Beaufort Sea in July and August, and others feed intermittently during their westward migration in September and October (Richardson and Thomson [eds.] 2002; Lowry *et al.* 2004). However, by the time most bowhead

whales reach the Chukchi Sea (October), they will likely no longer be feeding, or if it occurs it will be very limited. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused concentrations of zooplankton to scatter. Pressure changes of sufficient magnitude to cause that type of reaction would probably occur only very close to the source. Impacts on zooplankton behavior are predicted to be negligible, and that would translate into negligible impacts on feeding mysticetes. Thus, the proposed activity is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an incidental take authorization under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For the proposed Statoil open water marine seismic survey in the Chukchi Sea, Statoil worked with NMFS and proposed the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity as a result of the marine seismic survey activities.

As part of the application, Statoil submitted to NMFS a Marine Mammal Monitoring and Mitigation Program (4MP) for its open water seismic survey in the Chukchi Sea during the 2010 open-water season. The objectives of the 4MP are:

- to ensure that disturbance to marine mammals and subsistence hunts is minimized and all permit stipulations are followed,
- to document the effects of the proposed survey activities on marine mammals, and
- to collect baseline data on the occurrence and distribution of marine mammals in the study area.

The 4MP may be modified or supplemented based on comments or new information received from the public during the public comment period or from the peer review panel (see the "Monitoring Plan Peer Review" section later in this document).

Mitigation Measures Proposed in Statoil's IHA Application

For the proposed mitigation measures, Statoil listed the following protocols to be implemented during its marine seismic survey in the Chukchi Sea.

(1) Sound Source Measurements

As described above, previous measurements of similar airgun arrays in the Chukchi Sea were used to model the distances at which received levels are likely to fall below 120, 160, 180, and 190 dB re 1 μPa (rms) from the planned airgun sources. These modeled distances will be used as temporary safety radii until measurements of the airgun sound source are conducted. The measurements will be made at the beginning of the field season and the measured radii used for the remainder of the survey period.

The objectives of the sound source verification measurements planned for 2010 in the Chukchi Sea will be to measure the distances in the broadside and endfire directions at which broadband received levels reach 190, 180, 170, 160, and 120 dB re 1 μPa (rms) for the energy source array combinations that may be used during the survey activities. The configurations will include at least the full array and the operation of a single mitigation source that will be used during power downs. The measurements of energy source array sounds will be made by an acoustics contractor at the beginning of the survey and the distances to the various radii will be reported as soon as possible after recovery of the equipment. The primary radii of concern will be the 190 and 180 dB safety radii for pinnipeds and cetaceans, respectively, and the 160 dB radii for zone of influence (ZOI). In addition to reporting the radii of specific regulatory concern, nominal distances to other sound isopleths down to 120 dB (rms) will be reported in increments of 10 dB.

Data will be previewed in the field immediately after download from the ocean bottom hydrophone (OBH) instruments. An initial sound source analysis will be supplied to NMFS and the airgun operators within 120 hours of completion of the measurements, if possible. The report will indicate the distances to sound levels between 190 dB re 1 μPa (rms) and 120 dB re 1 μPa (rms) based on fits of empirical transmission loss formulae to data in the endfire and broadside directions. The 120–hour report findings will be based on analysis of measurements from at least three of the OBH systems. A more detailed report including analysis of data from all OBH systems will be issued to NMFS as part of the 90–day report following completion of the acoustic program.

(2) Safety and Disturbance Zones

Under current NMFS guidelines, "safety radii" for marine mammal exposure to impulse sources are customarily defined as the distances within which received sound levels are μ180 dB re 1 μPa (rms) for cetaceans and μ190 dB re 1 μPa (rms) for pinnipeds. These safety criteria are based on an assumption that SPL received at levels lower than these will not injure these animals or impair their hearing abilities, but that at higher levels might have some such effects. Disturbance or behavioral effects to marine mammals from underwater sound may occur after exposure to sound at distances greater than the safety radii (Richardson *et al.* 1995).

Initial safety and disturbance radii for the sound levels produced by the survey activities have been estimated from measurements of similar seismic arrays used in the Chukchi Sea in previous years. These radii will be used for mitigation purposes until results of direct measurements are available early during the exploration activities.

The basis for the estimation of distances to the four received sound levels from the proposed 3000 in^3 airgun array operating at a depth of 20 ft (6 m) are the 2006, 2007 and 2008 sound source verification (SSV) measurements in the Chukchi Sea of a similar array, towed at a similar depth. The measured airgun array had a total discharge volume of 3,147 in^3 and was composed of three identically-tuned Bolt airgun sub-arrays, totaling 24 airguns (6 clusters of 2 airguns and 12 single airguns). The proposed 3,000 in^3 array is also composed of three strings with a total of 26 active airguns in 13 clusters. The difference in discharge volume would lead to an expected loss of less than 0.2 dB and is neglected in this assessment. The estimated source level for the full 3,000 in^3 array is 245 dB re 1 μPA (rms). Without measurement data for the specific site to be surveyed, it is reasonable to adopt the maximum distances obtained from a similar array during previous measurements in the Chukchi Sea. Table 1 summarizes the distances to received levels of 190, 180 160, and 120 dB re 1 μPa (rms) that are adopted for the analysis for the proposed survey. Distances for received levels of 120 dB are highly variable, in part because the bottom geoacoustic properties will have a major effect on received levels at such distances.

To estimate the distances to various received levels from the 60 in^3 mitigation gun the data from previous measurements of a 30 in^3 gun were used. In general the pressure increase relative to a 30 in^3 gun can be derived by calculating the square root of (60/30), which is 1.41. This means that the dB levels for the sound pressure levels of a 60 in^3 will increase by approximately 3 dB (20Log[1.41]) compared to the 30 in^3 gun. The distances as summarized in Table 1 were derived by adding 3 dB to the constant term of the equation RL = 226.6 - 21.2log(R) - 0.00022R. The estimated source level of this single 60 in^3 airgun is 230 dB re 1 μPa (rms).

TABLE 1. ESTIMATED DISTANCES TO RECEIVED SOUND LEVELS μ190, 180, 170, 160, AND 120 DB RE 1 μPA (RMS) FROM THE 3,000 IN^3 AIRGUN ARRAY AND THE 60 IN^3 MITIGATION GUN OF THE PROPOSED SEISMIC SURVEY. THESE DISTANCES ARE BASED ON MEASUREMENTS IN THE CHUKCHI SEA FROM A SIMILAR AIRGUN ARRAY.

Received Levels (dB re 1 μPa rms)	Distance (m)	
	3,000 in^3 (full airgun array)	60 in^3 (mitigation airgun)
190	700	70
180	2,500	220
160	13,000	1,800
120	70,000 - 120,000	50,000

An acoustics contractor will perform the direct measurements of the received levels of underwater sound versus distance and direction from the energy source arrays using calibrated hydrophones. The acoustic data will be analyzed as quickly as reasonably practicable in the field and used to verify (and if necessary adjust) the safety distances. The field report will be made available to NMFS and the MMOs within 120 hrs of completing the measurements. The mitigation measures to be implemented at the 190 and 180 dB sound levels will include power downs and shut downs as described below.

(3) Power Downs and Shut Downs

A power-down is the immediate reduction in the number of operating energy sources from all firing to some smaller number. A shutdown is the immediate cessation of firing of all energy sources. The arrays will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable safety zone of the full arrays but is outside or about to enter the applicable safety zone of the single mitigation source. If a marine mammal is sighted within the applicable safety zone of the single mitigation airgun, the entire array will be shut down (i.e., no sources firing).

Following a power-down or shutdown, operation of the airgun array will not resume until the marine mammal has cleared the applicable safety zone. The animal will be considered to have cleared the safety zone if it:

- Is visually observed to have left the safety zone;
- Has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds; or
- Has not been seen within the zone for 30 min in the case of mysticetes.

(4) Ramp Ups

A ramp up of an airgun array provides a gradual increase in sound levels, and involves a stepwise increase in the number and total volume of airguns firing until the full volume is achieved.

The purpose of a ramp up (or "soft start") is to "warn" cetaceans and pinnipeds in the vicinity of the airguns and to provide time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the proposed seismic survey, the seismic operator will ramp up the airgun arrays slowly. Full ramp ups (i.e., from a cold start after a shut down, when no airguns have been firing) will begin by firing a single airgun in the array. The minimum duration of a shut-down period, i.e., without air guns firing, which must be followed by a ramp up, is typically the amount of time it would take the source vessel to cover the 180–dB safety radius. The actual time period depends on ship speed and the size of the 180–dB safety radius. That period is estimated to be about 15 - 20 minutes based on the modeling results described above and a survey speed of 4 knots.

A full ramp up, after a shut down, will not begin until there has been a minimum of 30 min of observation of the safety zone by MMOs to assure that no marine mammals are present. The entire safety zone must be visible during the 30–minute lead-in to a full ramp up. If the entire safety zone is not visible, then ramp up from a cold start cannot begin. If a marine mammal(s) is sighted within the safety zone during the 30–minute watch prior to ramp up, ramp up will be delayed until the marine mammal(s) is sighted outside of the safety zone or the animal(s) is not sighted for at least 15 - 30 minutes: 15 minutes for small odontocetes and pinnipeds, or 30 minutes for baleen whales and large odontocetes.

During turns and transit between seismic transects, at least one airgun will remain operational. The ramp-up procedure still will be followed when increasing the source levels from one airgun to the full arrays. However, keeping one airgun firing will avoid the prohibition of a cold start during darkness or other periods of poor visibility. Through use of this approach, seismic operations can resume upon entry to a new transect without a full ramp up and the associated 30–minute lead-in observations. MMOs will be on duty whenever the airguns are firing during daylight, and during the 30–min periods prior to ramp-ups as well as during ramp-ups. Daylight will occur for 24 h/day until mid-August, so until that date MMOs will automatically be observing during the 30–minute period preceding a ramp up. Later in the season, MMOs will be called out at night to observe prior to and during any ramp up. The seismic operator and MMOs will maintain records of the times when ramp-ups start, and when the airgun arrays reach full power.

Additional Mitigation Measures Proposed by NMFS

Besides Statoil's proposed mitigation measures discussed above, NMFS proposes the following additional protective measures to address some uncertainties regarding the impacts of

bowhead cow-calf pairs and aggregations of whales from seismic surveys. Specifically, NMFS proposes that

• A 160–dB vessel monitoring zone for large whales will be established and monitored in the Chukchi Sea during all seismic surveys. Whenever an aggregation of bowhead whales or gray whales (12 or more whales of any age/sex class that appear to be engaged in a nonmigratory, significant biological behavior (e.g., feeding, socializing)) are observed during an aerial or vessel monitoring program within the 160–dB safety zone around the seismic activity, the seismic operation will not commence or will shut down, until two consecutive surveys (aerial or vessel) indicate they are no longer present within the 160–dB safety zone of seismic-surveying operations.

• Survey information, especially information about bowhead whale cow/calf pairs or feeding bowhead or gray whales, shall be provided to NMFS as required in MMPA authorizations, and will form the basis for NMFS determining whether additional mitigation measures, if any, will be required over a given time period.

Furthermore, NMFS proposes the following measures be included in the IHA, if issued, in order to ensure the least practicable impact on the affected species or stocks:

(1) All vessels should reduce speed when within 300 yards (274 m) of whales, and those vessels capable of steering around such groups should do so. Vessels may not be operated in such a way as to separate members of a group of whales from other members of the group;

(2) Avoid multiple changes in direction and speed when within 300 yards (274 m) of whales; and

(3) When weather conditions require, such as when visibility drops, support vessels must adjust speed accordingly to avoid the likelihood of injury to whales.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

• the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

• the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

• the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring Measures Proposed in Statoil's IHA Application

The monitoring plan proposed by Statoil can be found in the 4MP. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period or from the peer review panel (see the "Monitoring Plan Peer Review" section later in this document). A summary of the primary components of the plan follows.

(1) Vessel-Based MMOs

Vessel-based monitoring for marine mammals will be done by trained MMOs throughout the period of marine survey activities. MMOs will monitor the occurrence and behavior of marine mammals near the survey vessel during all daylight periods during operation and during most daylight periods when airgun operations are not occurring. MMO duties will include watching for and identifying marine mammals, recording their numbers, distances, and reactions to the survey operations, and documenting "take by harassment" as defined by NMFS.

A sufficient number of MMOs will be required onboard the survey vessel to meet the following criteria: (1) 100% monitoring coverage during all periods of survey operations in daylight; (2) maximum of 4 consecutive hours on watch per MMO; and (3) maximum of 12 hours of watch time per day per MMO.

MMO teams will consist of Inupiat observers and experienced field biologists. An experienced field crew leader will supervise the MMO team onboard the survey vessel. The total number of MMOs may decrease later in the season as the duration of daylight decreases.

Statoil anticipates one crew change to occur approximately half-way through the season. During crew rotations detailed hand-over notes will be provided to the incoming crew leader by the outgoing leader. Other communications such as email, fax, and/or phone communication between the current and oncoming crew leaders during each rotation will also occur when possible. In the event of an unexpected crew change Statoil will facilitate such communications to insure monitoring consistency among shifts.

Crew leaders and most other biologists serving as observers in 2010 will be individuals with experience as observers during one or more of the 1996–2009 seismic or shallow hazards monitoring projects in Alaska, the Canadian Beaufort, or other offshore areas in recent years.

Biologist-observers will have previous marine mammal observation experience, and field crew leaders will be highly experienced with previous vessel-based marine mammal monitoring and mitigation projects. Resumes for those individuals will be provided to NMFS for review and acceptance of their qualifications. Inupiat observers will be experienced in the region, familiar with the marine mammals of the area, and complete a NMFS approved observer training course designed to familiarize individuals with monitoring and data collection procedures. A marine mammal observers' handbook, adapted for the specifics of the planned survey program, will be prepared and distributed beforehand to all MMOs.

Most observers, including Inupiat observers, will also complete a two or three-day training and refresher session on marine mammal monitoring, to be conducted shortly before the anticipated start of the 2010 open-water season. Any exceptions will have or receive equivalent experience or training. The training session(s) will be conducted by qualified marine mammalogists with extensive crew-leader experience during previous vessel-based seismic monitoring programs.

Primary objectives of the training include:

• review of the marine mammal monitoring plan for this project, including any amendments specified by NMFS in the IHA (if issued), by USFWS and by MMS, or by other agreements in which Statoil may elect to participate;
• review of marine mammal sighting, identification, and distance estimation methods;
• review of operation of specialized equipment (reticle binoculars, night vision devices, and GPS system);
• review of, and classroom practice with, data recording and data entry systems, including procedures for recording data on marine mammal sightings, monitoring operations, environmental conditions, and entry error control. These procedures will be implemented through use of a customized computer database and laptop computers;
• review of the specific tasks of the Inupiat Communicator.

The MMOs will watch for marine mammals from the best available vantage point on the survey vessels, typically the bridge. The MMOs will scan systematically with the unaided eye and 7 50 reticle binoculars, supplemented during good visibility conditions with Fujinon 25x150 "Big-eye" binoculars mounted on a bride wing or flying bridge (seismic vessel only), and night-vision equipment when needed (see below). Personnel on the bridge will assist the marine mammal observer(s) in watching for marine mammals. Data from the infrared radar will be monitored in order to investigate if this could improve the detection and record keeping of mammals, especially during periods of low visibility.

Information to be recorded by marine mammal observers will include the same types of information that were recorded during recent monitoring programs associated with industry activity in the Arctic (e.g., Ireland *et al.* 2009). When a mammal sighting is made, the following information about the sighting will be recorded:

(A) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from the MMO, apparent reaction to activities (e.g., none, avoidance, approach, paralleling, etc.), closest point of approach, and behavioral pace;

(B) Time, location, speed, activity of the vessel, sea state, ice cover, visibility, and sun glare; and

(C) The positions of other vessel(s) in the vicinity of the MMO location.

The ship's position, speed of support vessels, and water temperature, water depth, sea state, ice cover, visibility, and sun glare will also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

Distances to nearby marine mammals will be estimated with binoculars (Fujinon 7 x 50 binoculars) containing a reticle to measure the vertical angle of the line of sight to the animal relative to the horizon. MMOs may use a laser rangefinder to test and improve their abilities for visually estimating distances to objects in the water. However, previous experience showed that a Class 1 eye-safe device was not able to measure distances to seals more than about 230 ft (70 m) away. The device was very useful in improving the distance estimation abilities of the observers at distances up to about 1,968 ft (600 m)-the maximum range at which the device could measure distances to highly reflective objects such as other vessels. Humans observing objects of more-or-less known size via a standard observation protocol, in this case from a standard height above water, quickly become able to estimate distances within about =20% when given immediate feedback about actual distances during training.

Monitoring At Night and In Poor Visibility

Night-vision equipment (Generation 3 binocular image intensifiers, or equivalent units) will be available for use when/if needed. Past experience with night-vision devices (NVDs) in the Beaufort Sea and elsewhere has indicated that NVDs are not nearly as effective as visual observation during daylight hours (e.g., Harris *et al.* 1997, 1998; Moulton and Lawson 2002).

A prototype infrared radar will be mounted on the source vessel in order to try to improve the visual observations during times of poor visibility. The infrared radar detects thermal contrasts and its ability to sense these differences is not dependent on daylight. It may therefore improve the ability to detect marine mammals during nighttime. The ability of the IR radar to detect marine mammals is not yet proven and the intent is to collect data that can help determine if it can be used as an effective monitoring tool in the future. However, if during the course of testing, a reliable detection of a marine mammal within a safety zone requiring a mitigation action is made using the radar system, the necessary actions will be taken by the MMOs. That is, even if the system is not entirely proven, reliable results made during testing that may provide protection to marine mammals will not be ignored.

(2) Acoustic Monitoring

Sound Source Measurements

As described above, previous measurements of airguns in the Chukchi Sea were used to estimate the distances at which received levels are likely to fall below 120, 160, 180, and 190 dB re 1 µPa (rms) from the planned airgun sources. These modeled distances will be used as temporary safety radii until measurements of the airgun sound source are conducted. The measurements will be made at the beginning of the field season and the measured radii used for the remainder of the survey period. An acoustics contractor with experience in the Arctic conducting similar measurements in recent years will use their equipment to record and analyze the underwater sounds and write the summary reports as described below.

The objectives of the sound source verification measurements planned for 2010 in the Chukchi Sea will be (1) to measure the distances in the broadside and endfire directions at which broadband received levels reach 190, 180, 170, 160, and 120 dB re 1 µPa (rms) for the energy source array combinations that may be used during the survey activities. The configurations will include at least the full array and the operation of a single mitigation source that will be used during power downs. The measurements of energy source array sounds will be made by an acoustics contractor at the beginning of the survey and the distances to the various radii will be reported as soon as possible after recovery of the equipment. The primary radii of concern will be the 190 and 180 dB safety radii for pinnipeds and cetaceans, respectively, and the 160 dB disturbance radii. In addition to reporting the radii of specific regulatory concern, nominal distances to other sound isopleths down to 120 dB re 1 µPa (rms) will be reported in increments of 10 dB.

Data will be previewed in the field immediately after download from the hydrophone instruments. An initial sound source analysis will be supplied to NMFS and the airgun operators within 120 hours of completion of the measurements, if possible. The report will indicate the distances to sound levels based on fits of empirical transmission loss formulae to data in the endfire and broadside directions. A more detailed report will be issued to NMFS as part of the 90–day report following completion of the acoustic program.

2010 Shared Science Program

Statoil, Shell, and ConocoPhillips (CPAI) are jointly funding an extensive science program in the Chukchi Sea. This program will be carried out by Olgoonik-Fairweather LLC (OFJV) with the vessels Norseman II and Westward Wind during the 2010 open water season. The science program is not part of the Statoil seismic program, but worth mentioning in this context due to the acoustic monitoring array deployed within the seismic survey area as shown in Figures 1 and 2 of Statoil's IHA application. The science program components include:

- Acoustics Monitoring
- Fisheries Ecology
- Benthic Ecology
- Plankton Ecology
- Mammals
- Seabirds
- Physical Oceanography

The 2010 program continues the acoustic monitoring programs of 2006–2009 with a total of 44 acoustic recorders distributed both broadly across the Chukchi lease area and nearshore environment and intensively on the Statoil, Burger (Shell), and Klondike (CPAI) lease holdings. The recorders will be deployed in late July or early August and will be retrieved in early to mid-October, depending on ice conditions. The recorders will be the Advanced Multi-Channel Acoustic Recorder (AMAR) and the Autonomous Underwater Recorder for Acoustic Listening (AURAL) model acoustic buoys set to record at 16 kHz sample rate. These are the same recorder models and same sample rates that have been used for this program from 2006 - 2009. The broad area arrays are designed to capture both general background soundscape data, seismic survey sounds and marine mammal call data across the lease area. From these recordings we have been able to gain insight into large-scale distributions of marine mammals, identification of marine mammal species present, movement and migration patterns, and general abundance data.

The site specific focused arrays are designed to also support localization of marine mammal calls on and around the leaseholdings. In the case of the Statoil prospect, where Statoil intends to conduct seismic data acquisition in 2010, localized calls will enable investigators to understand responses of marine mammals to survey operations both in terms of distribution around the operation and behavior (i.e. calling behavior). The site specific array will consist of 7 AMAR recorders deployed in a hexagonal configuration as shown in Figure 2 of Statoil's 4MP, with inter-recorder spacing of 8 km (12.9 mi). These recorders are the same types that were used successfully in the 2009 site-specific acoustic monitoring program on Shell and CPAI prospects. The recorded sample resolution is 24–bits and sample frequency is 16 kHz, which is sufficient to capture part or all of the sounds produced by the marine mammal species known to be present, with the exception of harbor porpoise. The recorders will be synchronized to support localization of calling bowhead whales. Other species' calls are typically detected from distances less than the 8 km recorder separation. Consequently the multi-sensor triangulation method, that is used for bowheads calls, will not be used to determine calling locations of other species; however, detection of other species' calls indicates the animal position within a circular region of radius equal to the maximum detection distances of a few kilometers.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed "where the proposed activity may affect the availability of a species or stock for taking for subsistence uses" (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, "Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan" (50 CFR 216.108(d)).

NMFS convened an independent peer review panel to review Statoil's mitigation and monitoring plan in its IHA application for taking marine mammals incidental to the proposed marine seismic survey in the Chukchi Sea, during 2010. The panel met and reviewed the plan in late March 2010, and provided comments to NMFS in late April 2010. NMFS will consider all recommendations made by the panel, incorporate appropriate changes into the monitoring requirements of the IHA (if issued) and publish the panel's findings and recommendations in the final IHA notice of issuance or denial document.

Reporting Measures

(1) SSV Report

A report on the preliminary results of the acoustic verification measurements, including as a minimum the measured 190-, 180-, 160-, and 120–dB re 1 μPa (rms) radii of the source vessel(s) and the support vessels, will be submitted within 120 hr after collection and analysis of those measurements at the start of the field season. This report will specify the distances of the safety zones that were adopted for the marine survey activities.

(2) Field Reports

Statoil states that throughout the survey program, the observers will prepare a report each day or at such other interval as the IHA (if issued), or Statoil may require summarizing the recent results of the monitoring program. The field reports will summarize the species and numbers of marine mammals sighted. These reports will be provided to NMFS and to the survey operators.

(3) Technical Reports

The results of Statoil's 2010 open water marine survey monitoring program (i.e., vessel-based, aerial, and acoustic), including estimates of "take" by harassment, will be presented in the "90–day" and Final Technical reports. Statoil proposes that the Technical Reports will include:

(a) summaries of monitoring effort (e.g., total hours, total distances, and marine mammal distribution through the study period, accounting for sea state and other factors affecting visibility and detectability of marine mammals);

(b) analyses of the effects of various factors influencing detectability of marine mammals (e.g., sea state, number of observers, and fog/glare);

(c) species composition, occurrence, and distribution of marine mammal sightings, including date, water depth, numbers, age/size/gender categories (if determinable), group sizes, and ice cover;

(d) analyses of the effects of survey operations;

- sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability), such as:
- initial sighting distances versus airgun activity state;
- closest point of approach versus airgun activity state;
- observed behaviors and types of movements versus airgun activity state;
- numbers of sightings/individuals seen versus airgun activity state;
- distribution around the survey vessel versus airgun activity state; and
- estimates of take by harassment.

This information will be reported for both the vessel-based and aerial monitoring.

(4) Comprehensive Report

Following the 2010 open-water season a comprehensive report describing the

vessel-based, aerial, and acoustic monitoring programs will be prepared. The comprehensive report will describe the methods, results, conclusions and limitations of each of the individual data sets in detail. The report will also integrate (to the extent possible) the studies into a broad based assessment of industry activities, and other activities that occur in the Beaufort and/or Chukchi seas, and their impacts on marine mammals during 2010. The report will help to establish long-term data sets that can assist with the evaluation of changes in the Chukchi and Beaufort sea ecosystems. The report will attempt to provide a regional synthesis of available data on industry activity in offshore areas of northern Alaska that may influence marine mammal density, distribution and behavior.

(5) Notification of Injured or Dead Marine Mammals

In addition to the reporting measures proposed by Statoil, NMFS will require that Statoil notify NMFS' Office of Protected Resources and NMFS' Stranding Network within 48 hours of sighting an injured or dead marine mammal in the vicinity of marine survey operations. Statoil shall provide NMFS with the species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that an injured or dead marine mammal is found by Statoil that is not in the vicinity of the proposed open water marine survey program, Statoil will report the same information as listed above as soon as operationally feasible to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B behavioral harassment is anticipated as a result of the proposed open water marine survey program. Anticipated impacts to marine mammals are associated with noise propagation from the seismic airgun(s) used in the seismic survey.

The full suite of potential impacts to marine mammals was described in detail in the "Potential Effects of the Specified Activity on Marine Mammals" section found earlier in this document. The potential effects of sound from the proposed open water marine survey programs might include one or more of the following: tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.* 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal. For reasons discussed previously in this document, hearing impairment (TTS and PTS) are highly unlikely to occur based on the proposed mitigation and monitoring measures that would preclude marine mammals being exposed to noise levels high enough to cause hearing impairment.

For impulse sounds, such as those produced by airgun(s) used in the seismic survey, NMFS uses the 160 dB re 1 µPa (rms) isopleth to indicate the onset of Level B harassment. Statoil provided calculations for the 160–dB isopleths produced by these active acoustic sources and then used those isopleths to estimate takes by harassment. NMFS used the calculations to make the necessary MMPA preliminary findings. Statoil provided a full description of the methodology used to estimate takes by harassment in its IHA application (see **ADDRESSES**), which is also provided in the following sections.

Statoil has requested an authorization to take 13 marine mammal species by Level B harassment. These 13 marine mammal species are: beluga whale (*Delphinapterus leucas*), narwhal (*Monodon monoceros*), killer whale (*Orcinus orca*), harbor porpoise (*Phocoena phocoena*), bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), fin whale (*B. physalus*), bearded seal (*Erignathus barbatus*), ringed seal (*Phoca hispida*), spotted seal (*P. largha*), and ribbon seal (*Histriophoca fasciata*). However, NMFS consider that narwhals are not likely to occur in the proposed survey area during the time of the proposed marine seismic survey. Therefore, NMFS considers that only the other 12 marine mammal species could be affected by Level B behavioral harassment as a result of the proposed marine surveys.

Basis for Estimating "Take by Harassment"

As stated previously, it is current NMFS policy to estimate take by Level B harassment for impulse sounds at a received level of 160 dB re 1µPa (rms). However, not all animals react to sounds at this low level, and many will not show strong reactions (and in some cases any reaction) until sounds are much stronger. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* (2007)). Tables 7, 9, and 11 in Southall *et al.* (2007) outline the numbers of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water, respectively, reported as having behavioral responses to multi-pulses in 10–dB received level increments. These tables illustrate that the more severe reactions did not occur until sounds were much higher than 160 dB re 1µPa (rms).

As described earlier in the document, the proposed open water marine seismic survey would use two airgun arrays with a total discharge volume of 3,000 in^3. The modeled 160 dB zone of influence reaches to 13 km from the airgun source. The estimated number of animals potentially harassed was calculated by multiplying the expected densities (in number/km^2) by the anticipated area ensonified by levels of µ160 dB re 1µPa. Estimates of the number of animals potentially impacted were conducted separately for the 3D survey area and the 2D survey lines. For the 3D survey area, the anticipated area ensonified by sound levels of µ160 dB was calculated as an area encompassing a 8.1 mi (13 km) radius extending from each point of the survey area perimeter (hereafter called the 160 dB exposed survey area). This approach was taken because closely spaced survey lines and large cross-track distances of the µ160 dB radii result in repeated exposure of the same area of water. Excessive amounts of repeated exposure leads to an overestimation of the number of animals potentially exposed. For the 2D survey lines the area ensonified by sound levels of µ160 dB was calculated as the total line kilometers multiplied by 2 times the 8.1 mi (13 km) µ160 dB safety radius. The following subsections describe in more detail the data and methods used in deriving the estimated number of animals potentially "taken by harassment" during the proposed survey. It provides information on the

expected marine mammal densities, estimated distances to received levels of 190, 180, 160, and 120 dB re 1µPa and the calculation of anticipated areas ensonified by levels of µ160 dB.

It is important to understand that not all published results from visual observations have applied correction factors that account for detectability and availability bias. Detectability bias, quantified in part by f(0), is associated with diminishing sightability with increasing lateral distance from the survey trackline. Availability bias [g(0)] refers to the fact that not all animals are at the surface and that there is therefore <100% probability of sighting an animal that is present along the survey trackline. Some sources below included correction factors in the reported densities (e.g., ringed seals in Bengtson *et al.* 2005) and the best available correction factors were applied to reported results when they had not already been included (e.g., Moore *et al.* 2000b).

(1) Cetaceans

Eight species of cetaceans are known to occur in the Chukchi Sea area of the proposed Statoil project. Only four of these (bowhead, beluga, and gray whales, and harbor porpoise) are likely to be encountered during the proposed survey activities. Three of the eight species (bowhead, fin, and humpback whales) are listed as endangered under the ESA. Of these, only the bowhead is likely to be found within the survey area.

Beluga Whales - Summer densities of beluga in offshore waters are expected to be low. Aerial surveys have recorded few belugas in the offshore Chukchi Sea during the summer months (Moore *et al.* 2000b). Aerial surveys of the Chukchi Sea in 2008–2009 flown by the NMML as part of the Chukchi Offshore Monitoring in Drilling Area project (COMIDA) have only reported 5 beluga sightings during >8,700 mi (>14,000 km) of on-transect effort, only 2 of which were offshore (COMIDA 2009). Additionally, only one beluga sighting was recorded during >37,904 mi (>61,000 km) of visual effort during good visibility conditions from industry vessels operating in the Chukchi Sea in JulyµAugust of 2006µ2008 (Haley *et al.* 2009b). If belugas are present during the summer, they are more likely to occur in or near the ice edge or close to shore during their northward migration. Expected densities were calculated from data in Moore *et al.* (2000b). Data from Moore *et al.* (2000b: Figure 6 and Table 6) used as the average open-water density estimate included two on-transect beluga sightings during 6,639 mi (10,684 km) of on-transect effort in the Chukchi Sea during summer. A mean group size of 7.1 (CV=1.7) was calculated from 10 Chukchi Sea summer sightings present in the BWASP database. A f(0) value of 2.841 and g(0) value of 0.58 from Harwood *et al.* (1996) were also used in the calculation. The CV associated with group size was used to select an inflation factor of 2 to estimate the maximum density that may occur in both open-water and ice-margin habitats. Specific data on the relative abundance of beluga in open-water versus ice-margin habitat during the summer in the Chukchi Sea is not available. However, Moore *et al.* (2000b) reported higher than expected beluga sighting rates in open-water during fall surveys in the Beaufort and Chukchi Seas. This would suggest that densities near ice may actually be lower than open water, but belugas are commonly associated with ice, so an inflation factor of only 2 (instead of 4) was used to estimate the average ice-margin density from the open-water density. Based on the very low densities observed from vessels operating in the Chukchi Sea during non-seismic periods and locations in JulyµAugust of 2006–2008 (0.0001/km^2; Haley *et al.* 2009b), the densities shown in Table 1 are likely biased high.

In the fall, beluga whale densities in the Chukchi Sea are expected to be somewhat higher than in the summer because individuals of the eastern Chukchi Sea stock and the Beaufort Sea stock will be migrating south to their wintering grounds in the Bering Sea (Angliss and Allen 2009). Consistent with this, the number of on-effort beluga sightings reported during COMIDA flights in September-October of 2008–2009 was over 3 times more than during July-August with a very similar amount of on-transect effort (COMIDA 2009). However, there were no beluga sightings reported during >11,185 mi (>18,000 km) of vessel based effort in good visibility conditions during 2006–2008 industry operations in the Chukchi Sea. Densities derived from survey results in the northern Chukchi Sea in Moore *et al.* (2000b) were used as the average density for open-water and ice-margin fall season estimates (see Table 2). Data from Moore *et al.* (2000b: Table 8) used in the average open-water density estimate included 123 beluga sightings and 27,559 mi (44,352 km) of on-transect effort in water depths 118–164 ft (36–50 m). A mean group size of 2.39 (CV=0.92) came from the average group size of 82 Chukchi Sea fall sightings in waters 115–164 ft (35–50 m) deep present in the BWASP database. A f(0) value of 2.841 and g(0) value of 0.58 from Harwood *et al.* (1996) were used in the calculation. The CV associated with group size was used to select an inflation factor of 2 to estimate the maximum density that may occur in both open-water and ice-margin habitats. Moore *et al.* (2000b) reported higher than expected beluga sighting rates in open-water during fall surveys in the Beaufort and Chukchi seas, so an inflation value of only 2 was used to estimate the average ice-margin density from the open-water density. There were no beluga sightings from vessels operating in the Chukchi Sea during non-seismic periods in September-October of 2006–2008 (Haley *et al.* 2009b).

TABLE 1. EXPECTED DENSITIES OF CETACEANS AND SEALS IN AREAS OF THE CHUKCHI SEA, ALASKA, DURING THE PLANNED SUMMER (JULY - AUGUST) PERIOD OF THE SEISMIC SURVEY PROGRAM.

Species	Nearshore Average Density (#/km^2)	Ice Margin Average Density (#/ km^2)
Beluga whale	0.0033	0.0162
Killer whale	0.0001	0.0001
Harbor porpoise	0.0011	0.0011
Bowhead whale	0.0018	0.0018
Fin whale	0.0001	0.0001

TABLE 1. EXPECTED DENSITIES OF CETACEANS AND SEALS IN AREAS OF THE CHUKCHI SEA, ALASKA, DURING THE PLANNED SUMMER (JULY - AUGUST) PERIOD OF THE SEISMIC SURVEY PROGRAM.—Continued

Species	Nearshore Average Density (#/km²)	Ice Margin Average Density (#/ km²)
Gray whale	0.0081	0.0081
Humpback whale	0.0001	0.0001
Minke whale	0.0001	0.0001
Bearded seal	0.0107	0.0142
Ribbon seal	0.0003	0.0003
Ringed seal	0.3668	0.4891
Spotted seal	0.0073	0.0098

TABLE 2. EXPECTED DENSITIES OF CETACEANS AND SEALS IN AREAS OF THE CHUKCHI SEA, ALASKA, DURING THE PLANNED FALL (SEPTEMBER - OCTOBER) PERIOD OF THE SEISMIC SURVEY PROGRAM.

Species	Nearshore Average Density (#/km²)	Ice Margin Average Density (#/ km²)
Beluga whale	0.0162	0.0324
Killer whale	0.0001	0.0001
Harbor porpoise	0.0010	0.0010
Bowhead whale	0.0174	0.0348
Fin whale	0.0001	0.0001
Gray whale	0.0062	0.0062
Humpback whale	0.0001	0.0001
Minke whale	0.0001	0.0001
Bearded seal	0.0107	0.0142
Ribbon seal	0.0003	0.0003
Ringed seal	0.2458	0.3277
Spotted seal	0.0049	0.0065

Bowhead Whales - By July, most bowhead whales are northeast of the Chukchi Sea, within or migrating toward their summer feeding grounds in the eastern Beaufort Sea. No bowheads were reported during 6,639 mi (10,684 km) of on-transect effort in the Chukchi Sea by Moore *et al.* (2000b). Aerial surveys in 2008–2009 by the NMML as part of the COMIDA project reported four sightings during >8,699 mi (>14,000 km) of on-transect effort. Two of the four sightings were offshore, both of which occurred near the end of August. Bowhead whales were also rarely reported in July-August of 2006–2008 during aerial surveys of the Chukchi Sea coast (Thomas *et al.* 2009). This is consistent with movements of tagged whales (see ADFG 2009; Quakenbush 2009), all of which moved through the Chukchi Sea by early May 2009, and tended to travel relatively close to shore, especially in the northern Chukchi Sea.

The estimate of bowhead whale density in the Chukchi Sea was calculated by assuming that there was one bowhead sighting during the 6,639 mi (10,684 km) survey effort in the Chukchi Sea during the summer, although no bowheads were actually observed (Moore *et al.* 2000b). The more recent COMIDA data were not used because the NMML has not released a final report summarizing the data. Only two sightings are present in the BWASP database during July and August in the Chukchi Sea, both of which were of individual whales. The mean group size from combined July-August sightings in the BWASP, COMIDA, and 2006–2008 industry database is 1.33 (CV=0.58). This value, along with a f(0) value of 2 and a g(0) value of 0.07, both from Thomas *et al.* (2002) were used to estimate a summer density of bowhead whales. The CV of group size and standard errors reported in Thomas *et al.* (2002) for f(0) and g(0) correction factors suggest that an inflation factor of 2 is appropriate for deriving a maximum density from the average density. Bowheads are not expected to be encountered in higher densities near ice in the summer (Moore *et al.* 2000b), so the same density estimates are used for open-water and ice-margin habitats. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in July-August of 2006–2008 (Haley *et al.* 2009b) ranged from 0.0001/km² to 0.0005/km² with a

maximum 95 percent confidence interval (CI) of 0.0019 km². This suggests that the densities used in the calculations and shown in Table 1 might be somewhat higher than expected to be observed from vessels near the area of planned operations.

During the fall, bowhead whales migrate west and south from their summer feeding grounds in the Beaufort Sea and Amundsen Gulf to their wintering grounds in the Bering Sea. During this fall migration bowheads are more likely to be encountered in the Chukchi Sea. Moore *et al.* (2000b: Table 8) reported 34 bowhead sightings during 27,560 mi (44,354 km) of on-transect survey effort in the Chukchi Sea during September-October. Thomas *et al.* (2009) also reported increased sightings on coastal surveys of the Chukchi Sea during September and October of 2006–2008. Aerial surveys in 2008–2009 (COMIDA 2009) reported 20 bowhead sightings during 8,803 mi (14,167 km) of on-transect effort, eight of which were offshore. GPS tagging of bowheads show that migration routes through the Chukchi Sea are more variable than through the Beaufort Sea (ADFG 2009; Quakenbush 2009). Some of the routes taken by bowheads remain well north or south of the planned survey activities while others have passed near to or through the area. Kernel densities estimated from GPS locations of whales suggest that bowheads do not spend much time (e.g., feeding or resting) in the north-central Chukchi Sea near the area of planned activities (ADFG 2009). The mean group size from September-October Chukchi Sea bowhead sightings in the BWASP database is 1.59 (CV=1.08). This is slightly below the mean group size of 1.85 from all the preliminary COMIDA sightings during the same months, but above the value of 1.13 from only on-effort COMIDA sightings (COMIDA 2009). The same f(0) and g(0) values that were used for the summer estimates above were used for the fall estimates. As with the summer estimates, an inflation factor of 2 was used to estimate the maximum density from the average density in both habitat types. Moore *et al.* (2000b) found that bowheads were detected more often than expected in association with ice in the Chukchi Sea in September-October, so a density of twice the average open-water density was used as the average ice-margin density. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in SeptemberµOctober of 2006–2008 (Haley *et al.* 2009b) ranged from 0.0001/km² to 0.0050/km² with a maximum 95 percent CI of 0.0480 km². This suggests the densities used in the calculations and shown in Table 2 are somewhat higher than are likely to be observed from vessels near the area of planned operations.

Gray Whales - The average open-water summer density was calculated from effort and sightings in Moore *et al.* (2000b: Table 6) for water depths 118–164 ft (36–50 m) including 4 sightings during 3,901 mi (6,278 km) of on-transect effort. An average group size of 3.11 (CV=0.97) was calculated from all July-August Chukchi Sea gray whale sightings in the BWASP database and used in the summer density estimate. This value was higher than the average group size in the preliminary COMIDA data (1.71; COMIDA 2009) and from coastal aerial surveys in 2006–2008 (1.27; Thomas *et al.* 2009). Correction factors f(0) = 2.49 (Forney and Barlow 1998) and g(0) = 0.30 (Forney and Barlow 1998; Mallonee 1991) were also used in the density calculation. Since the group size used in the average density estimate was relatively high compared to other data sources and the CV was near to one, an inflation factor of 2 was used to estimate the maximum densities from average densities in both habitat types. Gray whales are not commonly associated with sea ice, but may occur close to sea ice, so the densities for open-water habitat were also used for ice-margin habitat. Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in July-August of 2006–2008 (Haley *et al.* 2009b) ranged from 0.0009/km² to 0.0034/km² with a maximum 95 percent CI of 0.0146 km². This suggests that the densities used in the calculations and shown in Table 1 are somewhat higher than are expected to be observed from vessels near the area of planned operations.

Gray whale densities are expected to be much higher in the summer months than during the fall when most whales start their southbound migration. Moore *et al.* (2000b) found that the distribution of gray whales was more widely dispersed through the northern Chukchi Sea and limited to nearshore areas where most whales were observed in water less than 115 ft (35 m) deep. With similar amounts of on-transect effort between summer and fall aerial surveys in 2008–2009, gray whale sightings were three times higher in July-August than in September-October, and five times higher taking into account all effort and sightings (COMIDA 2009). Thomas *et al.* (2009) also reported decreased sighting rates of gray whales in the fall.

The on-transect effort and associated gray whale sightings (27 sightings during 44,352 km of on-transect effort) in water depth of 118–164 ft (36–50 m) during autumn (Moore *et al.* 2000b; 12) was used as the average density estimate for the Chukchi Sea during the fall period. A group size value of 2.49 (CV=1.37) calculated from the BWASP database was used in the density calculation, along with the same f(0) and g(0) values described above. The group size value of 2.49 was again higher than the average group size calculated from preliminary COMIDA data (1.24; COMIDA 2009) and as reported from coastal aerial surveys in 2006–2008 (1.12; Thomas *et al.* 2009). Densities from vessel based surveys in the Chukchi Sea during non-seismic periods and locations in September-October of 2006–2008 (Haley *et al.* 2009b) ranged from 0.0011/km² to 0.0024/km² with a maximum 95 percent CI of 0.0183 km². This suggests the densities used in the calculations and shown in Table 2 are somewhat higher than are likely to be observed from vessels near the area of planned operations.

Harbor Porpoise - Harbor Porpoise densities were estimated from industry data collected during 2006–2008 activities in the Chukchi Sea. Prior to 2006, no reliable estimates were available for the Chukchi Sea and harbor porpoise presence was expected to be very low and limited to nearshore regions. For this reason, the data collected from industry vessels was considered to be the best available data. Observers on industry vessels in 2006–2008, however, recorded sightings throughout the Chukchi Sea during the summer and early fall months. Density estimates from 2006–2008 observations during non-seismic periods and locations in July-August ranged from 0.0009/km² to 0.0016/km² with a maximum 95 percent CI of 0.0016/km² (Haley *et al.* 2009b). The median value from the summer season of those three years (0.0011/km²) was used as the average open-water density estimate while the high value (0.0016/km²) was used as the maximum estimate (Table 1). Harbor porpoise are not expected to be present in higher numbers near ice, so the open-water densities were used for ice-margin habitat in both seasons. Harbor porpoise densities recorded during industry operations in the fall months of 2006–2008 were slightly lower and ranged from 0.0002/km² to 0.0013/km² with a maximum 95 percent CI of 0.0044/km². The median value (0.0010/km²) was again used as the average density estimate and the high value (0.0013/km²) was used as the maximum estimate (Table 2).

Other Cetaceans - The remaining four cetacean species that could be

encountered in the Chukchi Sea during Statoil's planned seismic survey include the humpback whale, killer whale, minke whale, and fin whale. Although there is evidence of the occasional occurrence of these animals in the Chukchi Sea, it is unlikely that more than a few individuals will be encountered during the proposed activities. George and Suydam (1998) reported killer whales, Brueggeman *et al.* (1990) and Haley *et al.* (2009b) reported minke whale, and COMIDA (2009) and Haley *et al.* (2009b) reported fin whales off of Ledyard Bay in the Chukchi Sea.

(2) Pinnipeds

Four species of pinnipeds may be encountered in the Chukchi Sea: ringed seal, bearded seal, spotted seal, and ribbon seal. Each of these species, except the spotted seal, is associated with both the ice margin and the nearshore area. The ice margin is considered preferred habitat (as compared to the nearshore areas) during most seasons.

Ringed and Bearded Seals - Ringed seal and bearded seal average summer ice-margin densities (Table 1) were available in Bengtson *et al.* (2005) from spring surveys in the offshore pack ice zone (zone 12P) of the northern Chukchi Sea. However, corrections for bearded seal availability, g(0), based on haulout and diving patterns were not available. Densities of ringed and bearded seals in open water are expected to be somewhat lower in the summer when preferred pack ice habitat may still be present in the Chukchi Sea. Average and maximum open-water densities have been estimated as 3/4 of the ice margin densities during the summer for both species. The fall density of ringed seals in the offshore Chukchi Sea has been estimated as 2/3 the summer densities because ringed seals begin to reoccupy nearshore fast ice areas as it forms in the fall. Bearded seals may begin to leave the Chukchi Sea in the fall, but less is known about their movement patterns so fall densities were left unchanged from summer densities. For comparison, the ringed seal density estimates calculated from data collected during summer 2006µ2008 industry operations ranged from 0.0082/km^2 to 0.0221/km^2 with a maximum 95 percent CI of 0.0577/km^2 (Haley *et al.* 2009b). These estimates are lower than those made by Bengtson *et al.* (2005) which is not surprising given the different survey methods and timing.

Spotted Seal - Little information on spotted seal densities in offshore areas of the Chukchi Sea is available. Spotted seals are often considered to be predominantly a coastal species except in the spring when they may be found in the southern margin of the retreating sea ice, before they move to shore. However, satellite tagging has shown that they sometimes undertake long excursions into offshore waters during summer (Lowry *et al.* 1994, 1998). Spotted seal densities in the summer were estimated by multiplying the ringed seal densities by 0.02. This was based on the ratio of the estimated Chukchi populations of the two species. Chukchi Sea spotted seal abundance was estimated by assuming that 8% of the Alaskan population of spotted seals is present in the Chukchi Sea during the summer and fall (Rugh *et al.* 1997), the Alaskan population of spotted seals is 59,214 (Angliss and Allen 2009), and that the population of ringed seals in the Alaskan Chukchi Sea is ≤208,000 animals (Bengtson *et al.* 2005). In the fall, spotted seals show increased use of coastal haulouts so densities were estimated to be 2/3 of the summer densities.

Ribbon Seal - Ribbon seals have been reported in very small numbers within the Chukchi Sea by observers on industry vessels (two sightings; Haley *et al.* 2009b). The resulting density estimate of 0.0003/km^2 was used as the average density and a multiplier of 4 was used as the estimated maximum density for both seasons and habitat zones.

Potential Number of Takes by Harassment

This subsection provides estimates of the number of individuals potentially exposed to sound levels µ160 dB re 1 µPa (rms). The estimates are based on a consideration of the number of marine mammals that might be disturbed appreciably by operations in the Chukchi Sea and the anticipated area exposed to rms sound levels of 160 dB.

As described above, marine mammal density estimates for the Chukchi Sea have been derived for two time periods, the summer period (July-August), and the fall period (September-October). Animal densities encountered in the Chukchi Sea during both of these time periods will further depend on the habitat zone within which the source vessel is operating, i.e., open water or ice margin. The seismic source vessel is not an icebreaker and cannot tow survey equipment through pack ice. Under this assumption, densities of marine mammals expected to be observed near ice margin areas have been applied to 10% of the proposed 3D survey area and 2D tracklines in both seasons. Densities of marine mammals expected to occur in open water areas have been applied to the remaining 90% of the 3D survey and 2D tracklines area in both seasons.

The number of individuals of each species potentially exposed to received levels µ160 dB re 1 µPa (rms) within each season and habitat zone was estimated by multiplying

- the anticipated area to be ensonified to the specified level in each season and habitat zone to which that density applies, by
- the expected species density.

The numbers of individuals potentially exposed were then summed for each species across the two seasons and habitat zones. Some of the animals estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to ≥160 dB re 1 µPa (rms). Thus, these calculations actually estimate the number of individuals potentially exposed to µ160 dB that would occur if there were no avoidance of the area ensonified to that level.

(1) 3D Seismic Survey Area

The size of the proposed 3D seismic survey area is 915 mi^2 (2,370 km^2) and located ≤100 mi (160 km) offshore. Approximately 1/4 of the area (~234 mi^2, or ~606 km^2) is expected to be surveyed in August (weather depending). This area, with a 160 dB radius of 8 mi (13 km) along each point of its perimeter equals a total area of ~1,081 mi^2 (~2,799 km^2). Summer marine mammal densities from Table 1 have been applied to this area. The other 3/4 of the survey area (~687 mi^2, or ~1,779 km^2) is expected to be covered in September-October. This area, also with a 160 dB radius of 8 mi (13 km) along each point of its perimeter results in a total area of ~1,813 mi^2 (~4,695 km^2). Fall marine mammal densities from Table 2 have been applied to this area. Based on these assumptions and those described above, the estimates of marine mammals potentially exposed to sounds µ160 dB in the Chukchi Sea from seismic data acquisition in the 3D survey area were calculated in Table 3.

For the common species, the requested numbers were calculated as described above and based on the average and maximum densities reported. For less common species, for which minimum density estimates were assumed, the numbers were set to a minimum to allow for chance encounters. The mitigation gun (60 in^3) will be active during turns extending about 1.6 mi (2.5 km) outside the 3D survey area. The estimated 160 dB radius for the 60 in^3 mitigation gun is 5,906 ft (1,800 m) and therefore falls well within the area expected to be

exposed to received sound levels of ≥160 dB of the 3D survey area.

TABLE 3. SUMMARY OF THE NUMBER OF POTENTIAL EXPOSURES OF MARINE MAMMALS TO RECEIVED SOUND LEVELS IN THE WATER OF >160 DB DURING STATOIL'S PLANNED MARINE SEISMIC SURVEY IN THE CHUKCHI SEA, ALASKA, 2010.

Species	Number of Exposure to Sound Levels >160 dB re 1 μPa (rms) by 3D Seismic Survey	Number of Exposure to Sound Levels >160 dB re 1 μPa (rms) by 2D Seismic Survey	Total Number of Exposure to Sound Levels >160 dB re 1 μPa (rms)
Beluga whale	97	87	184
Killer whale	1	1	2
Harbor porpoise	8	13	21
Bowhead whale	95	63	158
Gray whale	52	92	144
Humpback whale	1	1	2
Fin whale	1	1	2
Minke whale	1	1	2
Bearded seal	82	132	214
Ribbon seal	2	4	6
Ringed seal	2,253	4,234	6,487
Spotted seal	45	85	130

(2) 2D Seismic Survey Lines

Seismic data along the ~420 mi (675 km) of four 2D survey tracklines might be acquired with the full airgun array if access to the 3D survey area is restricted (e.g., ice conditions), or 3D acquisition progress is better than anticipated. Under the assumption that these restrictive weather conditions will mainly be an issue in the early summer season, 80 % of the 2D tracklines are assumed to be acquired during August and 20% during the fall. The total area potentially exposed to μ160 dB from these tracklines was calculated with the trackline sections outside the 3D survey area. Excluding these sections results in a total trackline length of ~285 mi (460 km). With a 160 dB radius of ~8 mi (13 km) this results in a total exposed area of ~7,432 mi^2 (11,960 km^2). Such summer densities were used for 80% of the total area (5,945 mi^2, or 9,568 km^2) and fall densities for the remaining 20% (1,486 mi^2, or 2,392 km^2). Following a similar approach as for the 3D survey area, numbers of more common marine mammal species were calculated based on the average and maximum densities and for less common species the numbers were set to a minimum to allow for chance encounters. The results of estimates of marine mammals potentially exposed to sounds μ160 dB in the Chukchi Sea from seismic data acquisition along the 2D tracklines are presented in Table 3.

Estimated Take Conclusions

Cetaceans - Effects on cetaceans are generally expected to be restricted to avoidance of an area around the seismic survey and short-term changes in behavior, falling within the MMPA definition of "Level B harassment".

Using the 160 dB criterion, the average estimates of the numbers of individual cetaceans exposed to sounds ≥160 dB re 1 μPa (rms) represent varying proportions of the populations of each species in the Beaufort Sea and adjacent waters. For species listed as "Endangered" under the ESA, the estimates include approximately 158 bowheads. This number is approximately 1.11% of the Bering-Chukchi-Beaufort population of >14,247 assuming 3.4% annual population growth from the 2001 estimate of >10,545 animals (Zeh and Punt 2005). For other cetaceans that might occur in the vicinity of the marine seismic survey in the Chukchi Sea, they also represent a very small proportion of their respective populations. The average estimates of the number of belugas, killer whales, harbor porpoises, gray whales, fin whales, humpback whales, and minke whales that might be exposed to ≥160 dB re 1 μPa (rms) are 183, 2, 21, 144, 2, 2, and 2. These numbers represent 4.95%, 0.62%, 0.04%, 0.81%, 0.03%, 0.21%, and 0.19% of these species of their respective populations in the proposed action area.

Seals - A few seal species are likely to be encountered in the study area, but ringed seal is by far the most abundant in this area. The average estimates of the numbers of individuals exposed to sounds at received levels ≥160 dB re 1 μPa (rms) during the proposed seismic survey are as follows: ringed seals (6,487), bearded seals (215), spotted seals (129), and ribbon seals (6). These numbers represent 2.81%, 0.09%, 0.22%, and 0.01% of Alaska stocks of ringed, bearded, spotted, and ribbon seals.

Negligible Impact and Small Numbers Analysis and Preliminary Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) the number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level

B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of Statoil's proposed 2010 open water marine seismic surveys in the Chukchi Seas, and none are proposed to be authorized. Additionally, animals in the area are not expected to incur hearing impairment (i.e., TTS or PTS) or non-auditory physiological effects. Takes will be limited to Level B behavioral harassment. Although it is possible that some individuals of marine mammals may be exposed to sounds from marine survey activities more than once, the expanse of these multi-exposures are expected to be less extensive since both the animals and the survey vessels will be moving constantly in and out of the survey areas.

Most of the bowhead whales encountered during the summer will likely show overt disturbance (avoidance) only if they receive airgun sounds with levels ≥160 dB re 1 μPa (rms). Odontocete reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, probably in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. However, at least when in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 6–12 mi (10–20 km) of seismic vessels during aerial surveys (Miller *et al.* 2005). Belugas will likely occur in small numbers in the Chukchi Sea during the survey period and few will likely be affected by the survey activity. In addition, due to the constant moving of the seismic survey vessel, the duration of the noise exposure by cetaceans to seismic impulse would be brief. For the same reason, it is unlikely that any individual animal would be exposed to high received levels multiple times.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment".

Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the population sizes in the Bering-Chukchi-Beaufort seas, as described above.

The many reported cases of apparent tolerance by cetaceans of seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Mitigation measures such as controlled vessel speed, dedicated marine mammal observers, non-pursuit, and shut downs or power downs when marine mammals are seen within defined ranges will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Some individual pinnipeds may be exposed to sound from the proposed marine surveys more than once during the time frame of the project. However, as discussed previously, due to the constant moving of the survey vessel, the probability of an individual pinniped being exposed to multiple times is much lower than if the source is stationary. Therefore, NMFS has preliminarily determined that the exposure of pinnipeds to sounds produced by the proposed marine seismic survey in the Chukchi Sea is not expected to result in more than Level B harassment and is anticipated to have no more than a negligible impact on the animals.

Of the twelve marine mammal species likely to occur in the proposed marine survey area, only the bowhead, fin, and humpback whales are listed as endangered under the ESA. These species are also designated as "depleted" under the MMPA. Despite these designations, the Bering-Chukchi-Beaufort stock of bowheads has been increasing at a rate of 3.4 percent annually for nearly a decade (Allen and Angliss, 2010). Additionally, during the 2001 census, 121 calves were counted, which was the highest yet recorded. The calf count provides corroborating evidence for a healthy and increasing population (Allen and Angliss, 2010). The occurrence of fin and humpback whales in the proposed marine survey areas is considered very rare. There is no critical habitat designated in the U.S. Arctic for the bowhead, fin, and humpback whale. The bearded and ringed seals are "candidate species" under the ESA, meaning they are currently being considered for listing but are not designated as depleted under the MMPA. None of the other three species that may occur in the project area are listed as threatened or endangered under the ESA or designated as depleted under the MMPA.

Potential impacts to marine mammal habitat were discussed previously in this document (see the "Anticipated Effects on Habitat" section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect rates of recruitment or survival of marine mammals in the area. Based on the vast size of the Arctic Ocean where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere.

The estimated takes proposed to be authorized represent 4.95% of the Eastern Chukchi Sea population of approximately 3,700 beluga whales (Angliss and Allen 2009), 0.62% of Aleutian Island and Bering Sea stock of approximately 340 killer whales, 0.04% of Bering Sea stock of approximately 48,215 harbor porpoises, 0.81% of the Eastern North Pacific stock of approximately 17,752 gray whales, 1.11% of the Bering-Chukchi-Beaufort population of 14,247 individuals assuming 3.4 percent annual population growth from the 2001 estimate of 10,545 animals (Zeh and Punt, 2005), 0.21% of the Western North Pacific stock of approximately 938 humpback whales, 0.03% of the North Pacific stock of approximately 5,700 fin whales, and 0.19% of the Alaska stock of approximately 1,003 minke whales. The take estimates presented for bearded, ringed, spotted, and ribbon seals represent 0.09, 2.81, 0.22, and 0.01 percent of U.S. Arctic stocks of each species, respectively. These estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once. In addition, the mitigation and monitoring measures (described previously in this document) proposed for inclusion in the IHA (if issued) are expected to reduce even further any potential disturbance to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that Statoil's proposed 2010 open water marine seismic survey in the Chukchi Sea may result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine surveys will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Relevant Subsistence Uses

The disturbance and potential displacement of marine mammals by sounds from the proposed marine surveys are the principal concerns related to subsistence use of the area. Subsistence remains the basis for Alaska Native culture and community. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities. Additionally, the animals taken for subsistence provide a significant portion of the food that will last the community throughout the year. The main species that are hunted include bowhead and beluga whales, ringed, spotted, and bearded seals, walruses, and polar bears. (Both the walrus and the polar bear are under the USFWS' jurisdiction.) The importance of each of these species varies among the communities and is largely based on availability.

Subsistence hunting and fishing continue to be prominent in the household economies and social welfare of some Alaskan residents, particularly among those living in small, rural villages (Wolfe and Walker 1987). Subsistence remains the basis for Alaska Native culture and community. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities.

Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives; species hunted include bowhead and beluga whales; ringed, spotted, and bearded seals; walruses, and polar bears. The importance of each of the various species varies among the communities based largely on availability. Bowhead whales, belugas, and walruses are the marine mammal species primarily harvested during the time of the proposed seismic survey. There is little or no bowhead hunting by the community of Point Lay, so beluga and walrus hunting are of more importance there. Members of the Wainwright community hunt bowhead whales in the spring, although bowhead whale hunting conditions there are often more difficult than elsewhere, and they do not hunt bowheads during seasons when Statoil's seismic operation would occur. Depending on the level of success during the spring bowhead hunt, Wainwright residents may be very dependent on the presence of belugas in a nearby lagoon system during July and August. Barrow residents focus hunting efforts on bowhead whales during the spring and generally do not hunt beluga then. However, Barrow residents also hunt in the fall, when Statoil expects to be conducting seismic surveys (though not near Barrow).

(1) Bowhead Whales

Bowhead whale hunting is a key activity in the subsistence economies of northwest Arctic communities. The whale harvests have a great influence on social relations by strengthening the sense of Inupiat culture and heritage in addition to reinforcing family and community ties.

An overall quota system for the hunting of bowhead whales was established by the International Whaling Commission (IWC) in 1977. The quota is now regulated through an agreement between NMFS and the Alaska Eskimo Whaling Commission (AEWC). The AEWC allots the number of bowhead whales that each whaling community may harvest annually (USDI/BLM 2005). The annual take of bowhead whales has varied due to (a) changes in the allowable quota level and (b) year-to-year variability in ice and weather conditions, which strongly influence the success of the hunt.

Bowhead whales migrate around northern Alaska twice each year, during the spring and autumn, and are hunted in both seasons. Bowhead whales are hunted from Barrow during the spring and the fall migration and animals are not successfully harvested every year. The spring hunt along Chukchi villages and at Barrow occurs after leads open due to the deterioration of pack ice; the spring hunt typically occurs from early April until the first week of June. The fall migration of bowhead whales that summer in the eastern Beaufort Sea typically begins in late August or September. Fall migration into Alaskan waters is primarily during September and October.

In the fall, subsistence hunters use aluminum or fiberglass boats with outboards. Hunters prefer to take bowheads close to shore to avoid a long tow during which the meat can spoil, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 50 mi (80 km). The autumn bowhead hunt usually begins in Barrow in mid-September, and mainly occurs in the waters east and northeast of Point Barrow.

The scheduling of this seismic survey has been discussed with representatives of those concerned with the subsistence bowhead hunt, most notably the AEWC, the Barrow Whaling Captains' Association, and the North Slope Borough (NSB) Department of Wildlife Management.

The planned mobilization and start date for seismic surveys in the Chukchi Sea (~20 July and ~1 August) is well after the end of the spring bowhead migration and hunt at Wainwright and Barrow. Seismic operations will be conducted far offshore from Barrow and are not expected to conflict with subsistence hunting activities. Specific concerns of the Barrow whaling captains are addressed as part of the Plan of Cooperation with the AEWC (see below).

(2) Beluga Whales

Beluga whales are available to subsistence hunters along the coast of Alaska in the spring when pack-ice conditions deteriorate and leads open up. Belugas may remain in coastal areas or lagoons through June and sometimes into July and August. The community of Point Lay is heavily dependent on the hunting of belugas in Kasegaluk Lagoon for subsistence meat. From 1983–1992 the average annual harvest was ~40 whales (Fuller and George 1997). In Wainwright and Barrow, hunters usually wait until after the spring bowhead whale hunt is finished before turning their attention to hunting belugas. The average annual harvest of beluga whales taken by Barrow for 1962–1982 was five (MMS 1996). The Alaska Beluga Whale Committee recorded that 23 beluga whales had been harvested by Barrow hunters from 1987 to 2002, ranging from 0 in 1987, 1988 and 1995 to the high of 8 in 1997 (Fuller and George 1997; Alaska Beluga Whale Committee 2002 in USDI/BLM 2005). The seismic survey activities take place well offshore, far away from areas that are used for beluga hunting by the Chukchi Sea communities. It is possible, but unlikely, that accessibility to belugas during the subsistence hunt could be impaired during the survey.

(3) Ringed Seals

Ringed seals are hunted mainly from October through June. Hunting for these smaller mammals is concentrated during winter because bowhead whales, bearded seals and caribou are available through other seasons. In winter, leads and cracks in the ice off points of land and along the barrier islands are used for hunting ringed seals. The average annual ringed seal harvest was 49 seals in Point Lay, 86 in Wainwright, and 394 in Barrow (Braund *et al.* 1993; USDI/BLM 2003, 2005). Although ringed seals are available year-round, the seismic

survey will not occur during the primary period when these seals are typically harvested. Also, the seismic survey will be largely in offshore waters where the activities will not influence ringed seals in the nearshore areas where they are hunted.

(4) Spotted Seals

The spotted seal subsistence hunt peaks in July and August along the shore where the seals haul out, but usually involves relatively few animals. Spotted seals typically migrate south by October to overwinter in the Bering Sea. During the fall migration spotted seals are hunted by the Wainright and Point Lay communities as the seals move south along the coast (USDI/BLM 2003). Spotted seals are also occasionally hunted in the area off Point Barrow and along the barrier islands of Elson Lagoon to the east (USDI/BLM 2005). The seismic survey will remain offshore of the coastal harvest area of these seals and should not conflict with harvest activities.

(5) Bearded Seals

Bearded seals, although generally not favored for their meat, are important to subsistence activities in Barrow and Wainright, because of their skins. Six to nine bearded seal hides are used by whalers to cover each of the skin-covered boats traditionally used for spring whaling. Because of their valuable hides and large size, bearded seals are specifically sought. Bearded seals are harvested during the spring and summer months in the Chukchi Sea (USDI/BLM 2003, 2005). The animals inhabit the environment around the ice floes in the drifting nearshore ice pack, so hunting usually occurs from boats in the drift ice. Most bearded seals are harvested in coastal areas inshore of the proposed survey so no conflicts with the harvest of bearded seals are expected.

In the event that both marine mammals and hunters are near the 3D survey area when seismic surveys are in progress, the proposed project potentially could impact the availability of marine mammals for harvest in a small area immediately around the vessel, in the case of pinnipeds, and possibly in a large area in the case of migrating bowheads. However, the majority of marine mammals are taken by hunters within ~21 mi (~33 km) from shore (Figure 2 in Statoil's IHA application), and the seismic source vessel M/V Geo Celtic will remain far offshore, well outside the hunting areas. Considering the timing and location of the proposed seismic survey activities, as described earlier in the document, the proposed project is not expected to have any significant impacts to the availability of marine mammals for subsistence harvest. Specific concerns of the respective communities are addressed as part of the Plan of Cooperation between Statoil and the AEWC.

Potential Impacts to Subsistence Uses

NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as:

> an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Noise and general activity during Statoil's proposed open water marine seismic survey have the potential to impact marine mammals hunted by Native Alaskans. In the case of cetaceans, the most common reaction to anthropogenic sounds (as noted previously in this document) is avoidance of the ensonified area. In the case of bowhead whales, this often means that the animals divert from their normal migratory path by several kilometers. Additionally, general vessel presence in the vicinity of traditional hunting areas could negatively impact a hunt.

In the case of subsistence hunts for bowhead whales in the Chukchi Sea, there could be an adverse impact on the hunt if the whales were deflected seaward (further from shore) in traditional hunting areas. The impact would be that whaling crews would have to travel greater distances to intercept westward migrating whales, thereby creating a safety hazard for whaling crews and/or limiting chances of successfully striking and landing bowheads.

Plan of Cooperation (POC or Plan)

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

Statoil states that it intends to maintain an open and transparent process with all stakeholders throughout the life-cycle of activities in the Chukchi Sea. Statoil began the stakeholder engagement process in 2009 with meeting Chukchi Sea community leaders at the tribal, city, and corporate level. Statoil will continue to engage with leaders, community members, and subsistence groups, as well as local, state, and federal regulatory agencies throughout the exploration and development process.

As part of stakeholder engagement, Statoil is developing a Plan of Cooperation (POC) for the proposed 2010 seismic acquisition. The POC summarizes the actions Statoil will take to identify important subsistence activities, inform subsistence users of the proposed survey activities, and obtain feedback from subsistence users regarding how to promote cooperation between subsistence activities and the Statoil program.

Statoil has had the opportunity to engage with North Slope subsistence communities on several occasions:

- October 27, 2009, presentation to the NSB Planning Commission in Barrow;
- October 27 through November 5, 2009, Leadership Meetings in Barrow, Wainwright, Point Lay, and Kotzebue. Meetings with Native Village of Point Hope Executive Director;
- December 14, 2009, meeting the NSB Wildlife Department and members of the AEWC to discuss proposed activities, potential impacts, and measures for mitigating impacts;
- January 2010, POC meetings in Barrow, Wainwright, Point Lay, and Point Hope;
- March 22, 2010, Marine Mammal Co-Management Group Meeting; and
- April 13 - 16, 2010, Seminars presenting research work on oil spill contingencies in Arctic environmental conditions. Statoil took part and together with other operators brought Norwegian and international researchers to Anchorage, Barrow, and Kotzebue to present results from this research project (also called the SINTEF JIP study).

Statoil states that consultation, both formal and informal, will continue before, during and after the 2010 seismic survey activities. A final POC that documents all consultations with community leaders, subsistence users groups, individual subsistence users, and community members will be submitted to NMFS, USFWS, and MMS upon completion of consultation. The final POC will include feedback from the Leadership Meetings and POC meetings. Statoil will continue to document all consultation with the communities and subsistence stakeholders.

Subsistence Mitigation Measures

Statoil plans to introduce the following mitigation measures, plans and programs to potentially affected subsistence groups and communities. These measures, plans, and programs have been effective in past seasons of work in the Arctic and were developed in past consultations with these communities. These measures, plans, and programs will be implemented by Statoil during its 2010 open water marine seismic survey in the Chukchi Sea to monitor and mitigate potential impacts to subsistence users and resources. The mitigation measures Statoil has adopted and will implement during 2010 are listed and discussed below.

Statoil will not be entering the Chukchi Sea until early August, so there will be no potential conflict with spring bowhead whale or beluga subsistence whaling in the polynya zone. Statoil's seismic survey area is ~100 mi (~ 161 km) northwest of Wainwright which reduces the potential impact to subsistence hunting activities occurring along the Chukchi Sea coast.

The communication center in Wainwright will be jointly funded by Statoil and other operators, and Statoil will routinely call the communication center according to the established protocol while in the Chukchi Sea. Statoil plans to have one major crew change which will take place in Nome, AK, and will not involve the use of helicopters. Statoil does have a contingency plan for a potential transfer of a small number of crew via ship-to-shore vessel at Wainwright. If this should become necessary, the Wainwright communications center will be contacted to determine the appropriate vessel route and timing to avoid potential conflict with subsistence users.

Unmitigable Adverse Impact Analysis and Preliminary Determination

NMFS has preliminarily determined that Statoil's proposed 2010 open water marine seismic survey in the Chukchi Sea will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses. This preliminary determination is supported by information contained in this document and Statoil's draft POC. Statoil has adopted a spatial and temporal strategy for its Chukchi Sea operations that should minimize impacts to subsistence hunters. Statoil will enter the Chukchi Sea far offshore, so as to not interfere with July hunts in the Chukchi Sea villages. After the close of the July beluga whale hunts in the Chukchi Sea villages, very little whaling occurs in Wainwright, Point Hope, and Point Lay. Although the fall bowhead whale hunt in Barrow will occur while Statoil is still operating (mid- to late September to October), Barrow is approximately 150 mi (241 km) east of the eastern boundary of the proposed marine seismic survey site. Based on these factors, Statoil's Chukchi Sea seismic survey is not expected to interfere with the fall bowhead harvest in Barrow. In recent years, bowhead whales have occasionally been taken in the fall by coastal villages along the Chukchi coast, but the total number of these animals has been small.

Adverse impacts are not anticipated on sealing activities since the majority of hunts for seals occur in the winter and spring, when Statoil will not be operating. Additionally, most sealing activities occur much closer to shore than Statoil's proposed marine seismic survey area.

Based on the measures described in Statoil's Draft POC, the proposed mitigation and monitoring measures (described earlier in this document), and the project design itself, NMFS has determined preliminarily that there will not be an unmitigable adverse impact on subsistence uses from Statoil's open water marine seismic survey in the Chukchi Sea.

Endangered Species Act (ESA)

There are three marine mammal species listed as endangered under the ESA with confirmed or possible occurrence in the proposed project area: the bowhead, humpback, and fin whales. NMFS' Permits, Conservation and Education Division has initiated consultation with NMFS' Protected Resources Division under section 7 of the ESA on the issuance of an IHA to Statoil under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

NMFS is currently preparing an Environmental Assessment, pursuant to NEPA, to determine whether or not this proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of the IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to authorize the take of marine mammals incidental to Statoil's 2010 open water seismic survey in the Chukchi Sea, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 2, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–13753 Filed 6–7–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT25

Taking of Marine Mammals Incidental to Specified Activities; U.S. Marine Corps Training Exercises at Air Station Cherry Point

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

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Marine Corps (USMC) requesting authorization to take marine mammals incidental to various training exercises at Marine Corps Air Station (MCAS) Cherry Point Range Complex, North Carolina. The USMC's activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act (NDAA) for Fiscal Year 2004. Pursuant to the MMPA, NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to the USMC to take bottlenose dolphins (*Tursiops truncatus*), by Level B harassment only, from specified activities.

DATES: Comments and information must be received no later than July 8, 2010.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *PR1.0648–XT25@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and may be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* The following associated document is also available at the same Internet address: *Environmental Assessment MCAS Cherry Point Range Operations* (USMC 2009). Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as: "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

The NDAA (Pub. L. 108–136) removed the "small numbers" and "specified geographical region" limitations and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On August 6, 2009, NMFS received an application from the USMC requesting an IHA for the harassment of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to air-to-surface and surface-to-surface training exercises conducted around two bombing targets (BTs) within southern Pamlico Sound, North Carolina, at MCAS Cherry Point. NMFS requested additional information regarding the specified activities and received responses from the USMC on October 29, 2009, completing the application.

Weapon delivery training would occur at two BTs: Brant Island Target (BT–9) and Piney Island Bombing Range (BT–11). Training at BT–9 would involve air-to-surface (from aircraft to in-water targets) and surface-to-surface (from vessels to in-water targets) warfare training, including bombing, strafing, special (laser systems) weapons; surface fires using non-explosive and explosive ordnance; and mine laying exercises (inert). Training at BT–11 would involve air-to-surface exercises to provide training in the delivery of conventional (non-explosive) and special (laser systems) weapons. Surface-to-surface training by small military watercraft would also be executed here. The types of ordnances proposed for use at BT–9 and BT–11 include small arms, large arms, bombs, rockets, missiles, and pyrotechnics. All munitions used at BT–11 are inert, practice rounds. No live firing occurs at BT–11. Training for any activity may occur year-round. Active sonar is not a component of these specified training exercises; therefore, discussion of marine mammal harassment from active sonar operations is not included within this notice.

Description of the Specified Activity

The USMC is requesting authorization to harass bottlenose dolphins from ammunition firing conducted at two BTs within MCAS Cherry Point. The BTs are located at the convergence of the Neuse River and Pamlico Sound, North Carolina. BT–9 is a water-based target located approximately 52 km (28 nautical miles [nm]) northeast of MCAS Cherry Point. The BT–9 target area ranges in depth from 1.2 m to 6.1 m, with the shallow areas concentrated along the Brandt Island Shoal (which runs down the middle of the restricted area in a northwest to southeast orientation). The target itself consists of three ship hulls grounded on Brant Island Shoals, located approximately 4.8 km (3 miles [mi]) southeast of Goose Creek Island. Inert (non-explosive) ordnance up to 454 kilograms (kg) (1,000 lbs) and live (explosive) ordnance up to 45.4 kg (100 lbs) TNT equivalent, including ordnance released during strafing, are authorized for use at this target range. The target is defined by a 6 statute-mile (SM) diameter prohibited area designated by the U.S. Army Corps of Engineers, Wilmington District (33 CFR 334.420). Non-military vessels are not permitted within the prohibited area, which is delineated by large signs located on pilings surrounding the perimeter of the BT. BT–9 also provides a mining exercise area; however, all mine exercises are simulation only and do not involve detonations. BT–9 standard operating procedures limit live ordnance deliveries to a maximum explosive weight of 100 lbs TNT equivalent. Based on 2007 data, the USMC would conduct approximately 1,539 aircraft-based and 165 vessel-based sorties, annually, at BT–9. The standard sortie consists of two aircraft per bombing run or an average of two and maximum of six vessels.

BT–11 is a 50.6 square kilometers (sq km) (19.5 square miles [sq mi]) complex of land- and water-based targets on Piney Island. The BT–11 target area ranges in depth from 0.3 m along the shoreline to 3.1 m in the center of Rattan Bay (BA 2001). The in-water stationary targets of BT–11 consist of a barge and patrol (PT) boat located in roughly the center of Rattan Bay. The barge target is approximately 135 ft by 40 ft in dimension. The PT boat is approximately 110 ft by 35 ft in

dimension. Water depths in the center of Rattan Bay are estimated as 2.4 to 3 m (8 to 10 ft) with bottom depths ranging from 0.3 to 1.5 m (1 to 5 ft) adjacent to the shoreline of Piney Island. A shallow ledge, with substrate expected to be hard-packed to hard bottom, surrounds Piney Island. No live firing occurs at BT–11; all munitions used are inert, non-explosive practice rounds. Only 36 percent of all munitions fired at BT–11 occur over water; the remaining munitions are fired to land based targets on Piney Island. Based on 2007 data, the USMC would conduct approximately 6,727 aircraft-based and 51 vessel-based sorties, annually, at BT–11.

All inert and live-fire exercises at MCAS Cherry Point ranges are conducted so that all ammunition and other ordnances strike and/or fall on the land or water based target or within the existing danger zones or water restricted areas. A danger zone is a defined water area that is closed to the public on an intermittent or full-time basis for use by military forces for hazardous operations such as target practice and ordnance firing. A water restricted area is a defined water area where public access is prohibited or limited in order to provide security for Government property and/or to protect the public from the risks of injury or damage that could occur from the government's use of that area (33 CFR 334.2). Surface danger zones are designated areas of rocket firing, target practice, or other hazardous operations (33 CFR 334.420). The surface danger zone (prohibited area) for BT–9 is a 4.8 km radius centered on the south side of Brant Island Shoal. The surface danger zone for BT–11 is a 2.9 km radius centered on a barge target in Rattan Bay.

According to the application, the USMC is requesting take of marine mammals incidental to specified activities at MCAS Cherry Point Range Complex, located within Pamlico Sound, North Carolina. These activities include gunnery; mine laying; bombing; or rocket exercises and are classified into two categories here based on delivery method: (1) Surface-to-surface gunnery and (2) air-to-surface bombing. Exercises may occur year round, day or night (approximately 15 percent of training occurs at night).

Surface-to-Surface Gunnery Exercises

Surface-to-surface fires are fires from boats at sea to targets at sea. These can be direct (targets are within sight) or indirect (targets are not within sight). Gunnery exercise employing only direct fire is the only category of surface-to-surface activity currently conducted within the MCAS Cherry Point BTs. An average of two and maximum of six small boats (24–85 ft), or fleet of boats, typically operated by Special Boat Team personnel, use a machine gun to attack and disable or destroy a surface target that simulates another ship, boat, swimmer, floating mine or near shore land targets. Vessels travel between 0–20 kts with an average of two vessels actually conducting surface-to-surface firing activities. Typical munitions are 7.62 millimeter (mm) or .50 caliber (cal) machine guns; and/or 40 mm Grenade machine guns. This exercise is usually a live-fire exercise, but at times blanks may be used so that the boat crews can practice their ship handling skills. The goal of training is to hit the targets; however, some munitions may bounce off the targets and land in the water or miss the target entirely. Additionally, G911 Concussion hand grenades (inert and live) are used; however, these are not aimed at targets, as the goal is to learn how to throw them into the water.

The estimated amount of munitions expended at BT–9 and BT–11 during this training can be found in Table 1 below. In 2007, a total of 216 boat sorties were conducted at BT–9 and BT–11 year round with equal distribution of training effort throughout the seasons. Live fires constitute approximately 90 percent of all surface-to-surface gunnery events. The majority of sorties originated and practiced at BT–9 as no live fire is conducted at BT–11. The USMC has indicated a comparable number of sorties would occur throughout the IHA timeframe. There is no specific schedule associated with the use of ranges by the small boat teams. However, exercises tend to be scheduled for 5-day blocks with exercises at various times throughout that timeframe. There is no specific time of year or month training occurs as variables such as deployment status, range availability, and completion of crew specific training requirements influence schedules.

A number of different types of boats are used during surface-to-surface exercises depending on the unit using the boat and their mission and include versions of Small Unit River Craft, Combat Rubber Raiding Craft, Rigid Hull Inflatable Boats, Patrol Craft. They are inboard or outboard, diesel or gasoline engines with either propeller or water jet propulsion. Boat crews approach, at a maximum of 20 kts, and engage targets simulating other boats, swimmers, floating mines, or near shore land targets with 7.62 mm or .50 cal machine guns; 40 mm grenade machine guns; or M3A2 Concussion hand grenades (approximately 200, 800, 10, and 10 rounds respectively). Vessels typically travel in linear paths and do not operate erratically. Other vessels may be located within the BTs; however, these are support craft and do not participate in munitions expenditures. The purpose of the support craft is to remotely control High Speed Maneuvering Surface Targets (HSMSTs) or to conduct maintenance on electronic equipment located in the towers at BT–9. Support craft are typically anchored or tied to marker pilings during HSMST operations or tied to equipment towers. When underway, vessels do not typically travel faster than 12–18 kts or in an erratic manner.

TABLE 1—TYPE AND AMOUNT OF MUNITIONS EXPENDED AT BT–9 AND BT–11 DURING SURFACE-TO-SURFACE EXERCISES

Range	Annual No. of sorties [1]	Munitions type	Munitions expended annually
BT–9	165	5.56 mm	1,468
		7.62 mm	218,500
		.50 cal	166,900
		40 mm Grenade—Inert	15,734
		40 mm Grenade—Live (HE)	9,472
		G911 Grenade	144
BT–11	51	7.62 mm	44,100
		.40 cal	4,600
		40 mm Grenade—Inert	1,517

TABLE 1—TYPE AND AMOUNT OF MUNITIONS EXPENDED AT BT–9 AND BT–11 DURING SURFACE-TO-SURFACE EXERCISES—Continued

Range	Annual No. of sorties [1]	Munitions type	Munitions expended annually
		40 mm Illumination—Inert	9

[1] Sorties are from FY 2007 CURRS data.

Air-to-Surface

Air-to-surface training involves ordnance delivered from aircraft and aimed at targets on the water's surface or on land in the case of BT–11. A description of the types of targets used at MCAS Cherry Point is provided in the section on BTs above. There are four types of air-to-surface activities conducted within the MCAS Cherry Point BTs: Mine laying; bombing; gunnery or rocket exercises which are carried out via fixed wing or rotary wing aircraft.

Mine Laying Exercises

Mine Warfare (MIW) includes the strategic, operational, and tactical use of mines and mine countermine measures. MIW is divided into two basic subdivisions: (a) The laying of mines to degrade the enemy's capabilities to wage land, air, and maritime warfare, and (b) the countering of enemy-laid mines to permit friendly maneuver or use of selected land or sea areas (DoN, 2007). MCAS Cherry Point would only engage in mine laying exercises as described below. No detonations of any mine device are involved with this training.

During mine laying, a fixed-wing or maritime patrol aircraft (P–3 or P–8) typically drops a series of about four inert mine shapes in an offensive or defensive pattern, making multiple passes along a pre-determined flight azimuth, and dropping one or more shapes each time. Mine simulation shapes include MK76, MK80 series, and BDU practice bombs ranging from 25 to 2,000 pounds in weight. There is an attempt to fly undetected to the area where the mines are laid with either a low or high altitude tactic flight. The shapes are scored for accuracy as they enter the water and the aircrew is later debriefed on their performance. The training shapes are inert (no detonations occur) and expendable. Mine laying operations are regularly conducted in the water in the vicinity of BT–9.

Bombing Exercises

The purpose of bombing exercises is to train pilots in destroying or disabling enemy ships or boats. During training, fixed wing or rotary wing aircraft deliver bombs against surface maritime targets at BT–9 or BT–11, day or night, using either unguided or precision-guided munitions. Unguided munitions include MK–76 and BDU–45 inert training bombs, and MK–80 series of inert bombs (no cluster munitions authorized). Precision-guided munitions consist of laser-guided bombs (inert) and laser-guided training rounds (inert). Typically, two aircraft approach the target (principally BT–9) from an altitude of approximately 914 m (3,000 ft) up to 4,572 m (15,000 ft) and, when on an established range, the aircraft adhere to designated ingress and egress routes. Typical bomb release altitude is 914 m (3,000 ft) for unguided munitions or above 4,572 m (15,000 ft) and in excess of 1.8 km (1 nm) for precision-guided munitions. However, the lowest minimum altitude for ordnance delivery (inert bombs) would be 152 m (500 ft).

Onboard laser designators or laser designators from a support aircraft or ground support personnel are used to illuminate certified targets for use when using laser guided weapons. Due to target maintenance issues, live bombs have not been dropped at the BT–9 targets for the past few years although these munitions are authorized for use. For the effective IHA timeframe, no live bombs would be utilized. Live rockets and grenades; however, have been expended at BT–9.

Air-to-Surface bombing exercises have the potential to occur on a daily basis. The standard sortie consists of two aircraft per bombing run. The frequency of these exercises is dependent on squadron level training requirements, deployment status, and range availability; therefore, there is no set pattern or specific time of year or month when this training occurs. Normal operating hours for the range are 0800–2300, Monday through Friday; however, the range is available for use 365 days per year.

Rocket Exercises

Rocket exercises are carried out similar to bombing exercises. Fixed- and rotary-wing aircraft crews launch rockets at surface maritime targets, day and night, to train for destroying or disabling enemy ships or boats. These operations employ 2.75-inch and 5-inch rockets.

The average number of rockets delivered per sortie is approximately 14. As with the bombing exercise, there is no set level or pattern of amount of sorties conducted.

Gunnery Exercises

During gunnery training, fixed- and rotary-wing aircraft expend smaller munitions targeted at the BTs with the purpose of hitting them. However, some small arms may land in the water. Rotary wing exercises involve either CH–53, UH–1, CH–46, MV–22, or H–60 rotary-wing aircraft with mounted 7.62 mm or .50 cal machine guns. Each gunner expends approximately 800 rounds of 7.62 mm and 200 rounds of .50 cal ammunition in each exercise. These may be live or inert.

Fixed wing gunnery exercises involve the flight of two aircraft that begin to descend to the target from an altitude of approximately 914 meters (m) (3,000 feet [ft]) while still several miles away. Within a distance of 1,219 m (4,000 ft) from the target, each aircraft fires a burst of approximately 30 rounds before reaching an altitude of 305 m (1,000 ft), then breaks off and repositions for another strafing run until each aircraft expends its exercise ordnance allowance of approximately 250 rounds. In total, about 8–12 passes are made by each aircraft per exercise. Typically these fixed wing exercise events involve an F/A–18 and AH–1 with Vulcan M61A1/A2, 20 mm cannon; AV–8 with GAU–12, 25 mm cannon.

Munition Descriptions

A complete list of the ordnance authorized for use at BT–9 and BT–11 can be found in Tables 2 and 3, respectively. There are several varieties and net explosive weights (for live munition used at BT–9) can vary according to the variety. All practice bombs are inert and used to simulate the same ballistic properties of service type bombs. They are manufactured as either solid cast metal bodies or thin sheet metal containers. Since practice bombs contain no explosive filler, a practice bomb signal cartridge (smoke) is used for visual observation of weapon target

impact. Practice bombs provide a low cost training device for pilot and ground handling crews. Due to the relatively small amount of explosive material in practice bombs (small signal charge), the availability of ranges for training is greatly increased.

When a high explosive detonates, it is converted almost instantly into a gas at very high pressure and temperature. Under the pressure of the gases thus generated, the weapon case expands and breaks into fragments. The air surrounding the casing is compressed and shock (blast) wave is transmitted into it. Typical initial values for a high-explosive weapon are 200 kilobars of pressure (1 bar = 1 atmosphere) and 5,000 degrees Celsius. There are five types of explosive sources used at BT–9: 2.75″ Rocket High Explosives, 5″ Rocket High Explosives, 30 mm High Explosives, 40 mm High Explosives, and G911 grenades. No live munitions are used at BT–11.

TABLE 2—DESCRIPTION OF MUNITIONS USED AT BT–9

Ordnance	Description	Net explosive weight
MK 76 Practice Bomb (inert)	25-pound teardrop-shaped cast metal bomb, with a bore tube for installation of a signal cartridge.	(of signal cartridge) varies, maximum 0.083800 lbs.
BDU 33 Practice Bomb (inert)	Air Force MK 76 practice bomb	same as above.
BDU 48 Practice Bomb (inert)	10-pound metal cylindrical bomb body with a bore tube for installation of a signal cartridge.	same as above.
BDU 45 Practice Bomb (inert)	500-pound metal bomb either sand or water filled. Two signal cartridges.	(of signal cartridges) total 0.1676 lbs.
BDU 50 Practice Bomb (inert)	500-pound metal bomb either sand or water filled. Two signal cartridges.	same as above.
MK 81 Practice Bomb (inert)	250-pound bomb	0
MK 82 Practice Bomb (inert)	500-pound bomb	0
MK 83 Practice Bomb (inert)	1000-pound bomb configured like BDU 45	0.1676 lbs.
MK 84 Practice Bomb (inert) (special exception use only).	2000-pound bomb configured like BDU 45	0.1676 lbs.
2.75-inch (inert)	Unguided 2.75 inch diameter rocket	0
5-inch Zuni (inert)	Unguided 5 inch diameter rocket	0
5-inch Zuni (live)	Unguided 5-inch diameter rocket	15 lbs.
2.75wp (inert)	2.75-inch rocket containing white phosphorous	0
2.75HE	High Explosive, 2.75 inch rocket	4.8 lbs.
0.50 cal (inert)	Machine gun rounds	0
7.62 mm (inert)		
20 mm (inert)		
25 mm (inert)		
30 mm (inert)		
40 mm (inert)		
25 mm HE (live)	High Explosive Incendiary, Live machine gun rounds	0.269 lbs.
Self Protection Flare	Aerial flare	0
Chaff	18-pound chaff canister	0
LUU–2	30-pound high intensity illumination flare	0
Laser Guided Training Round (LGTR) (inert)	89-pound inert training bomblet	0

TABLE 3—DESCRIPTION OF MUNITIONS USED AT BT–11

Ordnance	Description
MK 76 Practice Bomb	25-pound teardrop-shaped cast metal bomb body, with a bore tube for installation of a signal cartridge.
BDU 33 Practice Bomb	Air Force designation for MK 76 practice bomb.
BDU 48 Practice Bomb	10-pound metal cylindrical bomb body with a bore tube for installation of a signal cartridge.
BDU 45 Practice Bomb	500-pound metal bomb body either sand or water filled. Configured with either low drag conical tail fins or high drag tail fins for retarded weapons delivery. Two signal cartridges installed.
MK 81 Practice Bomb	250-pound inert bomb.
MK 82 Practice Bomb	500-pound inert bomb.
2.75-inch	Unguided 2.75 inch diameter rocket.
5-inch Zuni	5 inch diameter rocket.
WP-2.75-inch	White phosphorous 7-pound rocket.
0.50 cal	Inert machine gun rounds.
7.62 mm	
5.56 mm	
20 mm	
30 mm	
40 mm	
TOW	Wire guided 56-pound anti-tank missile.
Self Protection Flare	Aerial flare.
SMD SAMS	1.5-pound smoking flare.
LUU–2	30-pound high-intensity illumination flare.
Laser Guided Training Round (LGTR).	89-pound inert training bomblet.

The amounts of all ordnance to be expended at BT–9 and BT–11 (both surface-to-surface and air-to-surface) are 897,932 and 1,109,955 rounds, respectively (*see* Table 4 and 5 below).

TABLE 4—AMOUNT OF LIVE AND INERT MUNITIONS EXPENDED AT BT–9 PER YEAR

Proposed munitions [1]	Proposed total number of rounds	Proposed number of explosive rounds having an impact on the water	Net explosive weight (lb)
Small Arms Rounds Excluding .50 cal	525,610	N/A	N/A
.50 Cal	257,067	N/A	N/A
Large Arms Rounds—Live	12,592	30 mm HE: 3,120	0.1019
		40 mm HE: 9,472	0.1199
Large Arms Rounds—Inert	93,024	N/A	N/A
Rockets—Live	241	2.75″ Rocket: 184	4.8
		5″ Rocket: 57	15.0
Rockets—Inert	703	N/A	N/A
Bombs and Grenades—Live	144	G911 Grenade: 144	0.5
Bombs and Grenades—Inert	4,055	N/A	N/A
Pyrotechnics	4,496	N/A	N/A
Total	897,932	12,977	N/A

[1] Munitions may be expended from aircraft or small boats.

TABLE 5—AMOUNT OF INERT MUNITIONS EXPENDED AT BT–11

Proposed munitions [1]	Proposed total number of rounds [2]
Small Arms Rounds Excluding .50 Cal	507,812
.50 Cal	326,234
Large Arms Rounds	240,334
Rockets	4,549
Bombs and Grenades	22,114
Pyrotechnics	8,912
Total	1,109,955

[1] Munitions may be expended from aircraft or small boats.

[2] Munitions estimated using FY 2007 CURRS data on a per sortie-operation basis.

Description of Marine Mammals in the Area of the Specified Activity

Forty marine mammal species occur within the nearshore and offshore waters of North Carolina; however, the majority of these species are solely oceanic in distribution. Only one marine mammal species, the bottlenose dolphin, has been repeatedly sighted in Pamlico Sound, while an additional species, the endangered West Indian manatee (*Trichechus manatus*), has been sighted rarely (Lefebvre *et al.,* 2001; DoN 2003). The U.S. Fish and Wildlife Service oversees management of the manatee; therefore, authorization to harass manatees would not be included in any NMFS' authorization and will not be discussed further.

No sightings of the endangered North Atlantic right whale (*Eubalaena glacialis*) or other large whales have been observed within Pamlico Sound or in vicinity of the BTs (Kenney 2006). No suitable habitat exists for these species in the shallow Pamlico Sound or BT vicinity; therefore, whales would not be affected by the specified activities and will not be discussed further. Other dolphins, such as Atlantic spotted (*Stenella frontalis*) and common dolphins (*Delphinus delphis*), are oceanic in distribution and do not venture into the shallow, brackish waters of southern Pamlico Sound. Therefore, the specified activity has the potential to affect one marine mammal species under NMFS' jurisdiction: the bottlenose dolphin.

Coastal (or nearshore) and offshore stocks of bottlenose dolphins in the Western North Atlantic can be distinguished by genetics, diet, blood characteristics, and outward appearance (Duffield *et al.,* 1983; Hersh and Duffield, 1990; Mead and Potter, 1995; Curry and Smith, 1997). Initially, a single stock of coastal morphotype bottlenose dolphins was thought to migrate seasonally between New Jersey (summer months) and central Florida based on seasonal patterns in strandings during a large scale mortality event occurring during 1987–1988 (Scott *et al.,* 1988). However, re-analysis of stranding data (McLellan *et al.,* 2003) and extensive analysis of genetic, photo-identification, satellite telemetry, and stable isotope studies demonstrate a complex mosaic of coastal bottlenose dolphin stocks (NMFS 2001) which may be migratory or resident (they do not migrate and occur within an area year round). Four out of the seven designated coastal stocks may occur in North Carolina waters at some part of the year: the Northern Migratory stock (NM; winter); the Southern Migratory stock (SM; winter); the Northern North Carolina Estuarine stock (NNCE; resident, year round); and the more recently identified Southern North Carolina stock (SNC; resident, year round). Stable isotope depleted oxygen signature (hypoxic conditions routinely develops during summer in North Carolina waters) (Cortese, 2000), satellite telemetry, and photo-identification (NMFS, 2001) support stock structure analysis. Dolphins encountered at the BTs likely belong to the NNCE and SNC stock; however, this may not always be the case. NMFS' 2008 stock assessment report provides further detail on stock delineation. All stocks discussed here are considered depleted under the MMPA (Waring *et al.,* 2007).

NMFS provides abundance estimates for the four aforementioned migratory and resident coastal stocks in its 2008 stock assessment report; however, these estimates are based solely from summer aerial surveys. The size of the NNCE stock is technically considered "unknown"; however, Read *et al.,* (2003) provided a population estimate of 919 (95 percent CI 730–1,190) (Waring *et al.,* 2009). The population estimate for the SNC stock is 4,818, respectively. From July 2004 through April 2006, the NMFS' SEFSC conducted 41 aerial surveys to document the seasonal distribution and estimated density of sea turtles and dolphins within Core Sound and portions of Pamlico Sound, and coastal waters extending one mile offshore (Goodman *et al.,* 2007). Pamlico Sound was divided into two survey areas: western (encompassing BT–9 and BT–11) and eastern (including Core Sound and the eastern portion of restricted air space R–5306). In total, 281 dolphins were sighted in the western range. To account for animals likely missed during sightings (*i.e.,*

those below the surface), Goodman *et al.* (2007) estimate that, in reality, 415 dolphins were present. Densities for bottlenose dolphins in the western part of Pamlico Sound were calculated to be 0.0272/km² in winter; 0.2158/km² in autumn; 0.0371/km² in summer; and 0.0946/km² in summer (Goodman *et al.,* 2007). Dolphins were sighted throughout the entire range when mean sea surface temperature (SST) was 7.60 °C to 30.82 °C, with fewer dolphins sighted as water temperatures increased. Like in Mayer (2003), dolphins were found in higher numbers around BT–11, a range where no live firing occurs.

In 2000, Duke University Marine Lab (DUML), conducted a boat-based mark-recapture survey throughout the estuaries, bays and sounds of North Carolina (Read *et al.,* 2003). This summer survey yielded a dolphin density of 0.183/km² (0.071 mi;²) based on an estimate of 919 dolphins for the northern inshore waters divided by an estimated 5,015 km² (1,936 mi²) survey area. Additionally, from July 2002–June 2003, the USMC supported DUML to conduct dolphin surveys specifically in and around BT–9 and BT–11. During these surveys, one sighting in the restricted area surrounding BT–9 and two sightings in proximity to BT–11 were observed, as well as seven sightings in waters adjacent to the BTs. In total, 276 bottlenose dolphins were sighted ranging in group size from two to 70 animals with mean dolphin density in BT–11 more than twice as large as the density of any of the other areas; however, the daily densities were not significantly different (Maher, 2003). Estimated dolphin density at BT–9 and BT–11 based on these surveys were calculated to be 0.11 dolphins/km², and 1.23 dolphins/km², respectively, based on boat surveys conducted from July 2002 through June 2003 (excluding April, May, Sept. and Jan.). However, the USMC choose to estimate take of dolphins based on the higher density reported from the summer 2000 surveys (0.183/km²). Although the aerial surveys were conducted year round and therefore provide for seasonal density estimates, the average year-round density from the aerial surveys is 0.0936, lower than the 0.183/km² density chosen to calculate take for purposes of this MMPA authorization. Additionally, Goodman *et al.* (2007) acknowledged that boat based density estimates may be more accurate than the uncorrected estimates derived from the aerial surveys.

In Pamlico Sound, bottlenose dolphins concentrate in shallow water habitats along shorelines, and few, if any, individuals are present in the central portions of the sounds (Gannon, 2003; Read *et al.,* 2003a, 2003b). The dolphins utilize shallow habitats, such as tributary creeks and the edges of the Neuse River, where the bottom depth is less than 3.5 m (Gannon, 2003). Fine-scale distribution of dolphins seems to relate to the presence of topography or vertical structure, such as the steeply-sloping bottom near the shore and oyster reefs, which may be used to facilitate prey capture (Gannon, 2003). Results of a passive acoustic monitoring effort conducted from 2006–2007 by Duke University researchers validated this information. Vocalizations of dolphins in the BT–11 vicinity were higher in August and September than vocalization detection at BT–9, an open water area (Read *et al.,* 2007). Additionally, detected vocalizations of dolphins were more frequent at night for the BT–9 area and during early morning hours at BT–11.

Unlike migrating whales which display strong temporal foraging and mating/birthing periods, many bottlenose dolphins in Pamlico Sound are residents and mate year round. However, dolphins in the southeast U.S. do display some reproductive seasonality. Based on neonate stranding records, sighting data, and births by known females, the populations of dolphins that frequent the North Carolina estuarine waters have calving peaks in spring but calving continues throughout the summer and is followed by a smaller number of fall births (Thayer *et al.,* 2003).

Bottlenose dolphins can typically hear within a broad frequency range of 0.04 to 160 kHz (Au, 1993; Turl, 1993). Electrophysiological experiments suggest that the bottlenose dolphin brain has a dual analysis system: one specialized for ultrasonic clicks and another for lower-frequency sounds, such as whistles (Ridgway, 2000). Scientists have reported a range of highest sensitivity between 25 and 70 kHz, with peaks in sensitivity at 25 and 50 kHz (Nachtigall *et al.,* 2000). Recent research on the same individuals indicates that auditory thresholds obtained by electrophysiological methods correlate well with those obtained in behavior studies, except at some lower (10 kHz) and higher (80 and 100 kHz) frequencies (Finneran and Houser, 2006).

Sounds emitted by bottlenose dolphins have been classified into two broad categories: pulsed sounds (including clicks and burst-pulses) and narrow-band continuous sounds (whistles), which usually are frequency modulated. Clicks have a dominant frequency range of 110 to 130 kiloHertz (kHz) and a source level of 218 to 228 dB re 1 µPa (peak-to-peak) (Au, 1993) and 3.4 to 14.5 kHz at 125 to 173 dB re 1 µPa (peak-to-peak) (Ketten, 1998). Whistles are primarily associated with communication and can serve to identify specific individuals (*i.e.,* signature whistles) (Caldwell and Caldwell, 1965; Janik *et al.,* 2006). Up to 52 percent of whistles produced by bottlenose dolphin groups with mother-calf pairs can be classified as signature whistles (Cook *et al.,* 2004). Sound production is also influenced by group type (single or multiple individuals), habitat, and behavior (Nowacek, 2005). Bray calls (low-frequency vocalizations; majority of energy below 4 kHz), for example, are used when capturing fish, specifically sea trout (Salmo trutta) and Atlantic salmon (Salmo salar), in some regions (*i.e.,* Moray Firth, Scotland) (Janik, 2000). Additionally, whistle production has been observed to increase while feeding (Acevedo-Gutiérrez and Stienessen, 2004; Cook *et al.,* 2004).

Potential Effects on Marine Mammals

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines "harassment" as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

According the application, the USMC has concluded that harassment to marine mammals may occur incidental to munitions firing noise and pressure at the BTs. These military readiness activities would result in increased noise levels, explosions, and munition debris within bottlenose dolphin habitat. NMFS also considered the potential for harassment from vessel and aircraft operation. The USMC's and NMFS' analysis of potential impacts from these factors are outlined below.

Anthropogenic Sound

Marine mammals respond to various types of anthropogenic sounds introduced in the ocean environment. Responses are highly variable and depend on a suite of internal and external factors which in turn results in varying degrees of significance (NRC, 2003; Southall *et al.,* 2007). Internal

factors include: (1) Individual hearing sensitivity, activity pattern, and motivational and behavioral state (*e.g.,* feeding, traveling) at the time it receives the stimulus; (2) past exposure of the animal to the noise, which may lead to habituation or sensitization; (3) individual noise tolerance; and (4) demographic factors such as age, sex, and presence of dependent offspring. External factors include: (1) Non-acoustic characteristics of the sound source (*e.g.,* if it is moving or stationary); (2) environmental variables (*e.g.,* substrate) which influence sound transmission; and (3) habitat characteristics and location (*e.g.,* open ocean vs. confined area). To determine whether an animal perceives the sound, the received level, frequency, and duration of the sound are compared to ambient noise levels and the species' hearing sensitivity range. That is, if the frequency of an introduced sound is outside of the species' frequency hearing range, it can not be heard. Similarly, if the frequency is on the upper or lower end of the species hearing range, the sound must be louder in order to be heard.

Marine mammal responses to anthropogenic noise are typically subtle and can include visible and acoustic reactions such as avoidance, altered dive patterns and cessation of pre-exposure activities and vocalization reactions such as increasing or decreasing call rates or shifting call frequency. Responses can also be unobservable, such as stress hormone production and auditory trauma or fatigue. It is not always known how these behavioral and physiological responses relate to significant effects (*e.g.,* long-term effects or individual/population consequences); however, individuals and populations can be monitored to provide some insight into the consequences of exposing marine mammals to noise. For example, Haviland-Howell *et al* (2007) compared sighting rates of bottlenose dolphins within the Wilmington, NC stretch of the Atlantic Intracoastal Waterway (ICW) on weekends, when recreational vessel traffic was high, to weekdays, when vessel traffic was relatively minimal. The authors found that dolphins were less often sighted in the ICW during times of increased boat traffic (*i.e.,* on weekends) and theorized that because vessel noise falls within the frequencies of dolphin communication whistles and primary energy of most fish vocalizations, the continuous vessel traffic along that stretch of the ICW could result in social and foraging impacts. However, the extent to which these impacts affect individual health and population structure is unknown.

A full assessment of marine mammal responses and disturbances when exposed to anthropogenic sound can be found in NMFS' proposed rulemaking for the Navy Cherry Point Range Complex (74 FR 11057, March 16, 2009). In summary, sound exposure may result in physiological impacts, stress responses, and behavioral responses which could affect proximate or ultimate life functions. Proximate life history functions are the functions that the animal is engaged in at the time of acoustic exposure. The ultimate life functions are those that enable an animal to contribute to the population (or stock, or species, *etc.*).

I. Physiology-Hearing Threshold Shift

In mammals, high-intensity sound may rupture the eardrum, damage the small bones in the middle ear, or over stimulate the electromechanical hair cells that convert the fluid motions caused by sound into neural impulses that are sent to the brain. Lower level exposures may cause a loss of hearing sensitivity, termed a threshold shift (TS) (Miller, 1974). Incidence of TS may be either permanent, referred to as permanent threshold shift (PTS), or temporary, referred to as temporary threshold shift (TTS). The amplitude, duration, frequency, and temporal pattern, and energy distribution of sound exposure all affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, generally, so does the amount of TS and recovery time. Human non-impulsive noise exposure guidelines are based on exposures of equal energy (the same SEL) producing equal amounts of hearing impairment regardless of how the sound energy is distributed in time (NIOSH 1998). Until recently, previous marine mammal TTS studies have also generally supported this equal energy relationship (Southall *et al.,* 2007). Three newer studies, two by Mooney *et al.* (2009a, 2009b) on a single bottlenose dolphin either exposed to playbacks of Navy MFAS or octave-band noise (4–8 kHz) and one by Kastak *et al.* (2007) on a single California sea lion exposed to airborne octave-band noise (centered at 2.5 kHz), concluded that for all noise exposure situations the equal energy relationship may not be the best indicator to predict TTS onset levels. Generally, with sound exposures of equal energy, those that were quieter (lower sound pressure level [SPL]) with longer duration were found to induce TTS onset more than those of louder (higher SPL) and shorter duration (more similar to noise from AS Cherry Point exercises). For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between exposures) (Kryter *et al.,* 1966; Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). However, these studies highlight the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts.

PTS consists of non-recoverable physical damage to the sound receptors in the ear, which can include total or partial deafness, or an impaired ability to hear sounds in specific frequency ranges; PTS is considered Level A harassment. TTS is recoverable and is considered to result from temporary, non-injurious impacts to hearing-related tissues; TTS is considered Level B harassment.

Permanent Threshold Shift

Auditory trauma represents direct mechanical injury to hearing related structures, including tympanic membrane rupture, disarticulation of the middle ear ossicles, and trauma to the inner ear structures such as the organ of Corti and the associated hair cells. Auditory trauma is irreversible and considered to be an injury that could result in PTS. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and result in changes in the chemical composition of the inner ear fluids. In some cases, there can be total or partial deafness across all frequencies, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. There is no empirical data for onset of PTS in any marine mammal, and therefore, PTS- onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥ 40 dB (*i.e.,* 40 dB of TTS). Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals.

Temporary Threshold Shift

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS as Level B Harassment, not Level A Harassment (injury); however, NMFS does not consider the onset of TTS to be the lowest level at which Level B Harassment may occur (see *III. Behavior* section below).

Southall *et al.* (2007) considers a 6 dB TTS (*i.e.,* baseline hearing thresholds are elevated by 6 dB) sufficient to be recognized as an unequivocal deviation and thus a sufficient definition of TTS onset. TTS in bottlenose dolphin hearing have been experimentally induced. For example, Finneran *et al.* (2002) exposed a trained captive bottlenose dolphin to a seismic watergun simulator with a single acoustic pulse. No TTS was observed in the dolphin at the highest exposure condition (peak: 207 kPa [30psi]; peak-to-peak: 228 dB re: 1 microPa; SEL: 188 dB re 1 microPa^2-s). Schludt *et al.* (2000) demonstrated temporary shifts in masked hearing thresholds in five bottlenose dolphins occurring generally between 192 and 201 dB rms (192 and 201 dB SEL) after exposure to intense, non-pulse, 1–s tones at, 3kHz, 10kHz, and 20 kHz. TTS onset occurred at mean sound exposure level of 195 dB rms (195 dB SEL). At 0.4 kHz, no subjects exhibited threshold shifts after SPL exposures of 193dB re: 1 microPa (192 dB re: 1 microPa^2-s). In the same study, at 75 kHz, one dolphin exhibited a TTS after exposure at 182 dB SPL re: 1 microPa but not at higher exposure levels. Another dolphin experienced no threshold shift after exposure to maximum SPL levels of 193 dB re: 1 microPa at the same frequency. Frequencies of explosives used at MCAS Cherry Point range from 1–25 kHz; the range where dolphin TTS onset occurred at 195 dB rms in the Schludt *et al.* (2000) study.

Preliminary research indicates that TTS and recovery after noise exposure are frequency dependent and that an inverse relationship exists between exposure time and sound pressure level associated with exposure (Mooney *et al.,* 2005; Mooney, 2006). For example, Nachtigall *et al.* (2003) measured TTS in a bottlenose dolphin and found an average 11 dB shift following a 30 minute net exposure to OBN at a 7.5 kHz center frequency (max SPL of 179 dB re: 1 microPa; SEL: 212- 214 dB re:1 microPa^2-s). No TTS was observed after exposure to the same duration and frequency noise with maximum SPLs of 165 and 171 dB re:1 microPa. After 50 minutes of exposure to the same 7.5 kHz frequency OBN, Natchigall *et al.* (2004) measured a 4 -8 dB shift (max SPL: 160dB re 1microPa; SEL: 193–195 dB re:1 microPa^2-s). Finneran *et al.* (2005) concluded that a sound exposure level of 195 dB re 1 μPa^2-s is a reasonable threshold for the onset of TTS in bottlenose dolphins exposed to mid-frequency tones.

II. Stress Response

An acoustic source is considered a potential stressor if, by its action on the animal, via auditory or non-auditory means, it may produce a stress response in the animal. Here, the stress response will refer to an increase in energetic expenditure that results from exposure to the stressor and which is predominantly characterized by either the stimulation of the sympathetic nervous system (SNS) or the hypothalamic-pituitary-adrenal (HPA) axis (Reeder and Kramer, 2005). The SNS response to a stressor is immediate and acute and is characterized by the release of the catecholamine neurohormones norepinephrine and epinephrine (*i.e.,* adrenaline). These hormones produce elevations in the heart and respiration rate, increase awareness, and increase the availability of glucose and lipids for energy. The HPA response is ultimately defined by increases in the secretion of the glucocorticoid steroid hormones, predominantly cortisol in mammals. The presence and magnitude of a stress response in an animal depends on a number of factors. These include the animal's life history stage (*e.g.,* neonate, juvenile, adult), the environmental conditions, reproductive or developmental state, and experience with the stressor. Not only will these factors be subject to individual variation, but they will also vary within an individual over time. The stress response may or may not result in a behavioral change, depending on the characteristics of the exposed animal. However, provided a stress response occurs, we assume that some contribution is made to the animal's allostatic load. Any immediate effect of exposure that produces an injury is assumed to also produce a stress response and contribute to the allostatic load. Allostasis is the ability of an animal to maintain stability through change by adjusting its physiology in response to both predictable and unpredictable events (McEwen and Wingfield, 2003). If the acoustic source does not produce tissue effects, is not perceived by the animal, or does not produce a stress response by any other means, we assume that the exposure does not contribute to the allostatic load. Additionally, without a stress response or auditory masking, it is assumed that there can be no behavioral change.

III. Behavior

Changes in marine mammal behavior in response to anthropogenic noise may include altered travel directions, increased swimming speeds, changes in dive, surfacing, respiration and feeding patterns, and changes in vocalizations. As described above, lower level physiological stress responses could also co-occur with altered behavior; however, stress responses are more difficult to detect and fewer data exist relative to specific received levels of sound.

Acoustic Masking

Anthropogenic noise can interfere with, or mask, detection of acoustic signals such as communication calls, echolocation, and environmental sounds important to marine mammals. Southall *et al.* (2007) defines auditory masking as the partial or complete reduction in the audibility of signals due to the presence of interfering noise with the degree of masking depending on the spectral, temporal, and spatial relationships between signals and masking noise, as well as the respective received levels. Masking of sender communication space can be considered as the amount of change in a sender's communication space caused by the presence of other sounds, relative to a pre-industrial ambient noise condition (Clark *et al., in press*).

Unlike auditory fatigue, which always results in a stress response because the sensory tissues are being stimulated beyond their normal physiological range, masking may or may not result in a stress response, depending on the degree and duration of the masking effect. Masking may also result in a unique circumstance where an animal's ability to detect other sounds is compromised without the animal's knowledge. This could conceivably result in sensory impairment and subsequent behavior change; in this case, the change in behavior is the lack of a response that would normally be made if sensory impairment did not occur. For this reason, masking also may lead directly to behavior change without first causing a stress response.

Projecting noise into the marine environment which causes acoustic masking is considered Level B harassment as it can disrupt natural behavioral patterns by interrupting or limiting the marine mammal's receipt or transmittal of important information or environmental cues. To compensate for masking, marine mammals, including bottlenose dolphins, are known to increase their levels of vocalization as a function of background noise by increasing call repetition and amplitude, shifting calls higher frequencies, and/or changing the structure of call content (Lesage *et al.,* 1999; Scheifele *et al.,* 2005; McIwem, 2006).

While it may occur temporarily, NMFS does not expect auditory masking to result in detrimental impacts to an individual's or population's survival, fitness, or reproductive success. Dolphins are not confined to the BT ranges; allowing for movement out of area to avoid masking impacts. The USMC would also conduct visual sweeps of the area before any training exercise and implement training delay mitigation measures if a dolphin is sighted within designated zones *(see Proposed Mitigation Measures* section below). As discussed previously, the USMC has been working with DUML to collect baseline information on dolphins in Pamlico Sound, specifically dolphin abundance and habitat use around the BTs. The USMC has also recently accepted a DUML proposal to investigate methods of dolphin acoustic detection around the BTs. NMFS would encourage the USMC to expand acoustic investigations to include the impacts of training exercises on vocalization properties (*e.g.,* call content, duration, frequency) and masking (*e.g.,* communication and foraging impairment) of the affected population of dolphins in Pamlico Sound.

Assessment of Marine Mammal Impacts From Explosive Ordnances

MCAS Cherry Point plans to use five types of explosive sources during its training exercises: 2.75″ Rocket High Explosives, 5″ Rocket High Explosives, 30 mm High Explosives, 40 mm High Explosives, and G911 grenades. The underwater explosions from these weapons would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. In general, potential impacts from explosive detonations can range from brief effects (such as short term behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to death of the animal (Yelverton *et al.,* 1973; O'Keeffe and Young, 1984; DoN, 2001).

Explosives produce significant acoustic energy across several frequency decades of bandwidth (*i.e.,* broadband). Propagation loss is sufficiently sensitive to frequency as to require model estimates at several frequencies over such a wide band. The effects of an underwater explosion on a marine mammal depend on many factors, including the size, type, and depth of both the animal and the explosive charge; the depth of the water column; and the standoff distance between the charge and the animal, as well as the sound propagation properties of the environment. The net explosive weight (or NEW) of an explosive is the weight of TNT required to produce an equivalent explosive power. The detonation depth of an explosive is particularly important due to a propagation effect known as surface-image interference. For sources located near the sea surface, a distinct interference pattern arises from the coherent sum of the two paths that differ only by a single reflection from the pressure-release surface. As the source depth and/or the source frequency decreases, these two paths increasingly, destructively interfere with each other, reaching total cancellation at the surface (barring surface-reflection scattering loss). USMC conservatively estimates that all explosives would detonate at a 1.2 m (3.9 ft) water depth. This is the worst case scenario as the purpose of training is to hit the target, resulting in an in-air explosion.

The firing sequence for some of the munitions consists of a number of rapid bursts, often lasting a second or less. The maximum firing time is 10–15 second bursts. Due to the tight spacing in time, each burst can be treated as a single detonation. For the energy metrics, the impact area of a burst is computed using a source energy spectrum that is the source spectrum for a single detonation scaled by the number of rounds in a burst. For the pressure metrics, the impact area for a burst is the same as the impact area of a single round. For all metrics, the cumulative impact area of an event consisting of a certain number of bursts is merely the product of the impact area of a single burst and the number of bursts, as would be the case if the bursts are sufficiently spaced in time or location as to insure that each burst is affecting a different set of marine wildlife.

Physical damage of tissues resulting from a shock wave (from an explosive detonation) is classified as an injury. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000) and gas containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible to damage (Goertner, 1982; Hill 1978; Yelverton *et al.,* 1973). Nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Severe damage (from the shock wave) to the ears can include tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear.

Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sublethal injuries (DoN, 2001). Immediate lethal injury would be a result of massive combined trauma to internal organs as a direct result of proximity to the point of detonation (DoN, 2001). Exposure to distance explosions could result only in behavioral changes. Masked underwater hearing thresholds in two bottlenose dolphins and one beluga whale have been measured before and after exposure to impulsive underwater sounds with waveforms resembling distant signatures of underwater explosions (Finneran *et al.,* 2000). The authors found no temporary shifts in masked-hearing thresholds (MTTSs), defined as a 6–dB or larger increase in threshold over pre-exposure levels, had been observed at the highest impulse level generated (500 kg at 1.7 km, peak pressure 70 kPa); however, disruptions of the animals' trained behaviors began to occur at exposures corresponding to 5 kg at 9.3 km and 5 kg at 1.5 km for the dolphins and 500 kg at 1.9 km for the beluga whale.

Generally, the higher the level of impulse and pressure level exposure, the more severe the impact to an individual. While, in general, dolphins could endure injury or mortality if within very close proximity to in-water explosion, monitoring and mitigation measures employed by the USMC before and during training exercises, as would be required under any ITA issued, are designed to avoid any firing if a marine mammal is sighted within designated BT zones (see Proposed Mitigation and Monitoring section below). No marine mammal injury or death has been attributed to the specified activities described in the application. As such,

and due to implementation of the proposed mitigation and monitoring measures, bottlenose dolphin injury or mortality is not anticipated nor would any be authorized.

Inert Ordnances

The potential risk to marine mammals from non-explosive ordnance entails two possible sources of impacts: Elevated sound levels or the ordnance physically hitting an animal. The latter is discussed below in the *Munition Presence* section below. The USMC provided information that the noise fields generated in water by the firing of non-explosive ordnance indicate that the energy radiated is about 1 to 2 percent of the total kinetic energy of the impact. This energy level (and likely peak pressure levels) is well below the TTS-energy threshold, even at 1–m from the impact and is not expected to be audible to marine mammals. As such, the noise generated by the in-water impact of non-explosive ordnance will not result in take of marine mammals.

Training Debris

In addition to behavioral and physiological impacts from live fire and ammunition testing, NMFS has preliminarily analyzed impacts from presence of munition debris in the water, as described in the USMC's application and 2009 EA. These impacts include falling debris, ingestion of expended ordnance, and entanglement in parachute debris.

Ingestion of marine debris by marine mammals can cause digestive tract blockages or damage the digestive system (Gorzelany, 1998; Stamper *et al.,* 2006). Debris could be either the expended ordnance or non-munition related products such as chaff and self protection flares. Expended ordnance would be small and sink to the bottom. Chaff is composed of either aluminum foil or aluminum-coated glass fibers designed to act as a visual smoke screen; hiding the aircraft from enemy radar. Chaff also serves as a decoy for radar detection, allowing aircraft to maneuver or egress from the area. The foil type currently used is no longer manufactured, although it remains in the inventory and is used primarily by B–52 bombers. Both types of chaff are cut into dipoles ranging in length from 0.3 to over 2.0 inches. The aluminum foil dipoles are 0.45 mils (0.00045 inches) thick and 6 to 8 mils wide. The glass fiber dipoles are generally 1 mil (25.4 microns) in diameter, including the aluminum coating. Chaff is packed into about 4-ounce bundles. The major components of chaff are silica, aluminum, and stearic acid; all naturally prevalent in the environment.

Based on the dispersion characteristics of chaff, concentrations around the BTs would be low. For example, Hullar *et al.* (1999) calculated that a 4.97-mile by 7.46-mile area (37.1 km^2) would be affected by deployment of a single cartridge containing 150 grams of chaff; however, concentration would only be about 5.4 grams per square nautical mile. This corresponds to fewer than 179,000 fibers per square nautical mile or fewer than 0.005 fibers per square foot.

Self-protection flares are deployed to mislead or confuse heat-sensitive or heat-seeking anti-aircraft systems. The flares are magnesium pellets that, when ignited, burn for a short period of time (less than 10 seconds) at 2,000 degrees Fahrenheit. Air-deployed LUU–2 high-intensity illumination flares are used to illuminate targets, enhancing a pilot's ability to see targets while using Night Vision Goggles. The LUU–2B Flare has a light output rating of $1.8 \times 10(6)$ candlepower and at 1,000 feet altitude illuminates a circle on the ground of 500 meters. The LUU–2 is housed in a pod or canister and is deployed by ejection. The mechanism has a timer on it that deploys the parachute and ignites the flare candle. The flare candle burns magnesium at high temperature, emitting an intense bright white light. The LUU–2 has a burn time of approximately 5 minutes while suspended from a parachute. The pyrotechnic candle consumes the flare housing, reducing flare weight, which in turn slows the rate of fall during the last 2 minutes of burn time. At candle burnout an explosive bolt is fired, releasing one parachute support cable, which causes the parachute to collapse.

Ingestion of debris by dolphins is not likely, as dolphins typically eat fish and other moving prey items. NMFS solicited information on evidence of debris ingestion from two marine mammal veterinarians who have performed many necropsies on the protected species of North Carolina's waters. In their experience, no necropsies of bottlenose dolphins have revealed evidence of munition, parachute, or chaff ingestion (pers. comm., Drs. C. Harms and D. Rostein, November 14, 2009). However, it was noted evidence of chaff ingestion would be difficult to detect. In the chance that dolphins do ingest chaff, the filaments are so fine they would likely pass through the digestive system without complication. However, if the chaff is durable enough, it might act as a linear foreign body. In such case, the intestines bunch up on the line restricting movement of the line resulting in an obstruction. The peristalsis on an immovable thin line can cause intestinal lacerations and perforations (pers. comm., C. Harms, November 14, 2009. This is a well known complication in cats when they ingest thread and which occurs occasionally with sea turtles ingesting fishing line. The longevity of chaff filaments, based upon dispersion rates, is unclear. Chaff exposed to synthetic seawater and aqueous environments in the pH range of 4–10 exhibited varying levels of degradation suggesting a short lifespan for the outer aluminum coating (Farrell and Siciliano, 1998). The underlying filament is a flexible silica core and composed of primarily silica dioxide. While no studies have been conducted to evaluate the effects of chaff ingestion on marine mammals, the effects are expected to be negligible based upon chaff concentration in the environment, size of fibers, and available toxicity data on fiberglass and aluminum. Given that the size of chaff fibers are no more than 2 inches long, tidal flushing reduces concentration in the environment, and chaff degradation rate, the chance of chaff ingestions is unlikely; however, if swallowed, impacts would be negligible.

Given that there is no evidence that dolphins ingest military debris; dolphins in the Sound forage on moving prey suspended in the water column while expended munition would sink; the property and dispersion characteristics of chaff make potential for ingestion discountable; and that Pamlico Sound is a tidal body of water with continuing flushing, NMFS has preliminarily determined that the presence of training debris would not have an effect on dolphins in Pamlico Sound.

Although sometimes large, expended parachutes (*e.g.,* those from the flares) are flimsy and structurally simple and NMFS has determined that the probability of entanglement with a dolphin is low. There are no known reports of live or stranded dolphins entangled in parachute gear; fishing gear is usually the culprit of reported entanglements. The NMFS' Marine Mammal Stranding Network (Network) has established protocol for reporting marine mammals in peril. Should any injured, stranded or entangled marine mammal be observed by USMC personnel during training exercises, the sighting would be reported to the Network within 24 hours of the observation.

Vessel and Aircraft Presence

The marine mammals most vulnerable to vessel strikes are slow-moving and/or spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* right whales, fin whales, sperm whales). Smaller marine mammals such as bottlenose dolphins (the only marine mammal that would be encountered at the BTs) are agile and move more quickly through the water, making them less susceptible to ship strikes. NMFS is not aware of any vessel strikes of bottlenose dolphins in Pamlico Sound. Therefore, NMFS does not anticipate that USMC vessels engaged in the specified activity would strike any marine mammals and no take from ship strike would be authorized in the proposed IHA.

Behaviorally, marine mammals may or may not respond to the operation of vessels and associated noise. Responses to vessels vary widely among marine mammals in general, but also among different species of small cetaceans. Responses may include attraction to the vessel (Richardson *et al.,* 1995); altering travel patterns to avoid vessels (Constantine, 2001; Nowacek *et al.,* 2001; Lusseau, 2003, 2006); relocating to other areas (Allen and Read, 2000); cessation of feeding, resting, and social interaction (Baker *et al.,* 1983; Bauer and Herman, 1986; Hall, 1982; Krieger and Wing, 1984; Lusseau, 2003; Constantine *et al.,* 2004); abandoning feeding, resting, and nursing areas (Jurasz and Jurasz 1979; Dean *et al.,* 1985; Glockner-Ferrari and Ferrari 1985, 1990; Lusseau, 2005; Norris *et al.,* 1985; Salden, 1988; Forest, 2001; Morton and Symonds, 2002; Courbis, 2004; Bejder, 2006); stress (Romano *et al.,* 2004); and changes in acoustic behavior (Van Parijs and Corkeron, 2001). However, in some studies marine mammals display no reaction to vessels (Watkins 1986; Nowacek *et al.,* 2003) and many odontocetes show considerable tolerance to vessel traffic (Richardson *et al.,* 1995). Dolphins may actually reduce the energetic cost of traveling by riding the bow or stern waves of vessels (Williams *et al.,* 1992; Richardson *et al.,* 1995).

Dolphins within Pamlico Sound are continually exposed to recreational, commercial, and military vessels. Richardson *et al.* (1995) addresses in detail three responses that marine mammals may experience when exposed to anthropogenic activities: Tolerance; habituation; and sensitization. More recent publications provide variations on these themes rather than new data (NRC 2003). Marine mammals are often seen in regions with much human activity; thus, certain individuals or populations exhibit some tolerance of anthropogenic noise and other stimuli. Animals will tolerate a stimulus they might otherwise avoid if the benefits in terms of feeding, mating, migrating to traditional habitats, or other factors outweigh the negative aspects of the stimulus (NRC, 2003). In many cases, tolerance develops as a result of habituation. The NRC (2003) defines habituation as a gradual waning of behavioral responsiveness over time as animals learn that a repeated or ongoing stimulus lacks significant consequences for the animals. Contrarily, sensitization occurs when an animal links a stimulus with some degree of negative consequence and as a result increases responsiveness to that human activity over time (Richardson *et al.,* 1995). For example, seals and whales are known to avoid previously encountered vessels involved in subsistence hunts (Walker, 1949; Ash 1962; Terhune, 1985) and bottlenose dolphins that had previously been captured and released from a 7.3 m boat involved in health studies were documented to flee when that boat approached closer than 400 m, whereas dolphins that had not been involved in the capture did not display signs of avoidance of the vessel (Irvine *et al.,* 1981). Because dolphins in Pamlico Sound are continually exposed to vessel traffic that does not present immediate danger to them, it is likely animals are both tolerant and habituated to vessels.

The specified activities also involve aircraft, which marine mammals are known to react (Richardson *et al.,* 1995). Aircraft produce noise at frequencies that are well within the frequency range of cetacean hearing and also produce visual signals such as the aircraft itself and its shadow (Richardson *et al.,* 1995, Richardson & Würsig, 1997). A major difference between aircraft noise and noise caused by other anthropogenic sources is that the sound is generated in the air, transmitted through the water surface and then propagates underwater to the receiver, diminishing the received levels to significantly below what is heard above the water's surface. Sound transmission from air to water is greatest in a sound cone 26 degrees directly under the aircraft.

Reactions of odontocetes to aircraft have been reported less often than those of pinnipeds. Responses to aircraft include diving, slapping the water with pectoral fins or tail fluke, or swimming away from the track of the aircraft (Richardson *et al.,* 1995). The nature and degree of the response, or the lack thereof, are dependent upon nature of the flight (*e.g.,* type of aircraft, altitude, straight vs. circular flight pattern). Würsig *et al.* (1998) assessed the responses of cetaceans to aerial surveys in the northcentral and western Gulf of Mexico using a DeHavilland Twin Otter fixed-wing airplane. The plane flew at an altitude of 229 m at 204 km/hr. A minimum of 305 m straight line distance from the cetaceans was maintained. Water depth was 100–1000m. Bottlenose dolphins most commonly responded by diving (48percent), while 14percent responded by moving away. Other species (*e.g.,* beluga whale, sperm whale) show considerable variation in reactions to aircraft but diving or swimming away from the aircraft are the most common reactions to low flights (less than 500 m).

Anticipated Effects on Habitat

Detonations of live ordnance would result in temporary modification to water properties. As described above, an underwater explosion from these weapon would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. However, these would be temporary and not expected to last more than a few seconds. Because dolphins are not expected to be in the area during live firing, due to monitoring and mitigation measure implementation, they would not be subject to any short term habitat alterations.

Similarly, no long term impacts with regard to hazardous constituents are expected to occur. MCAS Cherry Point has an active Range Environmental Vulnerability Assessment (REVA) program in place to monitor impacts to habitat from its activities. One goal of REVA is to determine the horizontal and vertical concentration profiles of heavy metals, explosives constituents, perchlorate nutrients, and dissolved salts in the sediment and seawater surrounding BT–9 and BT–11. The preliminary results of the sampling indicate that explosive constituents (*e.g.,* trinitrotoluene (TNT), cyclotrimethylenetrinitramine (RDX), and hexahydro-trinitro-triazine (HMX), as described in Hazardous Constituents [Subchapter 3.2.7.2] of the MCAS Cherry Point Range Operations EA), were not detected in any sediment or water sample surrounding the BTs. Metals were not present above toxicity screening values. Perchlorate was detected in a few sediment samples above the detection limit (0.21 ppm), but below the reporting limit (0.6 ppm). The ongoing REVA would continue to

evaluate potential munitions constituent migration from operational range areas to off-range areas and MCAS Cherry Point.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the "permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance." The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that "least practicable adverse impact" shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. The training activities described in the USMC's application are considered military readiness activities.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The USMC, in collaboration with NMFS, has worked to identify potential practicable and effective mitigation measures, which include a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the "military-readiness activity". These proposed mitigation measures are listed below.

(1) *Range Sweeps:* The VMR–1 squadron, stationed at MCAS Cherry Point, includes three specially equipped HH–46D helicopters. The primary mission of these aircraft, known as PEDRO, is to provide search and rescue for downed 2d Marine Air Wing aircrews. On-board are a pilot, co-pilot, crew chief, search and rescue swimmer, and a medical corpsman. Each crew member has received extensive training in search and rescue techniques, and is therefore particularly capable at spotting objects floating in the water.

PEDRO crew would conduct a range sweep the morning of each exercise day prior to the commencement of range operations. The primary goal of the pre-exercise sweep is to ensure that the target area is clear of fisherman, other personnel, and protected species. The sweep is flown at 100–300 meters above the water surface, at airspeeds between 60–100 knots. The path of the sweep runs down the western side of BT–11, circles around BT–9 and then continues down the eastern side of BT–9 before leaving. The sweep typically takes 20–30 minutes to complete. The Pedro crew is able to communicate directly with range personnel and can provide immediate notification to range operators. The Pedro aircraft would remain in the area of a sighting until clear if possible or as mission requirements dictate.

If marine mammals are sighted during a range sweep, sighting data will be collected and entered into the U.S. Marine Corps sighting database, web-interface, or report generator and this information would be relayed to the training Commander. Sighting data includes the following (collected to the best of the observer's ability): (1) Species identification; (2) group size; (3) the behavior of marine mammals (*e.g.,* milling, travel, social, foraging); (4) location and relative distance from the BT; (5) date, time and visual conditions (*e.g.,* Beaufort sea state, weather) associated with each observation; (6) direction of travel relative to the BT; and (7) duration of the observation.

(2) *Cold Passes:* All aircraft participating in an air-to-surface exercise would be required to perform a "cold pass" immediately prior to ordnance delivery at the BTs both day and night. That is, prior to granting a "First Pass Hot" (use of ordnance), pilots would be directed to perform a low, cold (no ordnance delivered) first pass which serves as a visual sweep of the targets prior to ordnance delivery to determine if unauthorized civilian vessels or personnel, or protected species, are present. The cold pass is conducted with the aircraft (helicopter or fixed-winged) flying straight and level at altitudes of 200–3,000 feet over the target area. The viewing angle is approximately 15 degrees. A blind spot exists to the immediate rear of the aircraft. Based upon prevailing visibility, a pilot can see more than one mile forward upon approach. The aircrew and range personnel make every attempt to ensure clearance of the area via visual inspection and remotely operated camera operations (*see* Proposed Monitoring and Reporting section below). The Range Controller may deny or approve the First Pass Hot clearance as conditions warrant.

(3) *Delay of Exercises:* An active range would be considered "fouled" and not available for use if a marine mammal is present within 1,000 yards (914 m) of the target area at BT–9 or anywhere within Rattan Bay (BT–11). Therefore, if a marine mammal is sighted within 1,000 yards (914 m) of the target at BT–9 or anywhere within Rattan Bay at BT–11 during the cold pass or from range camera detection, training would be delayed until the marine mammal moves beyond and on a path away from 1,000 yards (914 m) from the BT–9 target or out of Rattan Bay at BT–11. This mitigation applies to both air-to-surface and surface-to-surface exercises.

(4) *Range Camera Use:* To increase the safety of persons or property near the targets, Range Operation and Control personnel monitor the target area through tower mounted safety and surveillance cameras. The remotely operated range cameras are high resolution and, according to range personnel, allow a clear visual of a duck floating near the target. The cameras allow viewers to see animals at the surface and breaking the surface, but not underwater.

A new, enhanced camera system has been purchased and will be installed on BT–11 towers 3 and 7, and on both towers at BT–9. The new camera system has night vision capabilities with resolution levels near those during daytime. Lenses on the camera system have focal lengths of 40 mm to 2,200 mm (56x), with view angles of 18°10′ and 13°41′, respectively. The field of view when zoomed in on the Rattan Bay targets will be 23′ wide by 17′ high, and on the mouth of Rattan Bay itself 87′ wide by 66′ high.

Again, in the event that a marine mammal is sighted within 1,000 yards

(914 m) of the BT–9 target, or anywhere within Rattan Bay, the target is declared fouled. Operations may commence in the fouled area after the animal(s) have moved 1,000 yards (914 m) from the BT–9 target and/or out of Rattan Bay.

(4) *Vessel Operation:* All vessels used during training operations would abide by the NMFS' Southeast Regional Viewing Guidelines designed to prevent harassment to marine mammals *(http://www.nmfs.noaa.gov/pr/education/southeast/).*

(5) *Stranding Network Coordination:* The USMC shall coordinate with the local NMFS Stranding Coordinator for any unusual marine mammal behavior and any stranding, beached live/dead, or floating marine mammals that may occur at any time during training activities or within 24 hours after completion of training.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present. Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals: (a) An increase in our understanding of how many marine mammals are likely to be exposed to munition noise and explosions that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS; (b) an increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to gunnery and bombing exercises (at specific received levels) expected to result in take; (c) an increase in our understanding of how anticipated takes of individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival); (d) an increased knowledge of the affected species; (e) an increase in our understanding of the effectiveness of certain mitigation and monitoring measures; (f) a better understanding and record of the manner in which the authorized entity complies with the incidental take authorization; (g) an increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to better achieve the above goals.

Proposed Monitoring

The suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals expected to be present within the action area are as follows:

(1) *Marine Mammal Observer Training:* Pilots, operators of small boats, and other personnel monitoring for marine mammals would be required to take the Marine Species Awareness Training (Version 2.), maintained and promoted by the Department of the Navy. This training will make personnel knowledgeable of marine mammals, protected species, and visual cues related to the presence of marine mammals and protected species.

(2) *Weekly and Post-Exercise Monitoring:* Post-exercise monitoring shall be conducted concomitant to the next regularly scheduled pre-exercise sweep. Weekly monitoring events would include a maximum of five pre-exercise and four post-exercise sweeps. The maximum number of days that would elapse between pre- and post-exercise monitoring events would be approximately 3 days, and would normally occur on weekends. If marine mammals are observed during this monitoring, sighting data identical to those collected by PEDRO crew would be recorded.

(3) *Long-term Monitoring:* The USMC has awarded DUML duties to obtain abundance, group dynamics (*e.g.,* group size, age census), behavior, habitat use, and acoustic data on the bottlenose dolphins which inhabit Pamlico Sound, specifically those around BT–9 and BT–11. DUML began conducting boat-based surveys and passive acoustic monitoring of bottlenose dolphins in Pamlico Sound in 2000 (Read *et al.,* 2003) and specifically at BT–9 and BT–11 in 2003 (Mayer, 2003). To date, boat-based surveys indicate that bottlenose dolphins may be resident to Pamlico Sound and use BT restricted areas on a frequent basis. Passive acoustic monitoring (PAM) is providing more detailed insight into how dolphins use the two ranges, by monitoring for their vocalizations year-round, regardless of weather conditions or darkness. In addition to these surveys, DUML scientists are testing a real-time passive acoustic monitoring system at BT–9 that will allow automated detection of bottlenose dolphin whistles, providing yet another method of detecting dolphins prior to training operations. Although it is unlikely this PAM system would be active for purposes of implementing mitigation measures before an exercise prior to expiration of the proposed IHA, it would be operational for future MMPA incidental take authorizations.

(4) *Reporting:* The USMC would submit a report to NMFS within 90 days after expiration of the IHA or, if a subsequent incidental take authorization is requested, within 120 days prior to expiration of the IHA. The report would summarize the type and amount of training exercises conducted, all marine mammal observations made during monitoring, and if mitigation measures were implemented. The report would also address the effectiveness of the monitoring plan in detecting marine mammals.

Estimated Take by Incidental Harassment

The following provides the USMC's model for take of dolphins from explosives (without consideration of mitigation and the conservative assumption that all explosives would land in the water and not on the targets or land) and potential for direct hits and NMFS' analysis of potential harassment from small vessel and aircraft operations.

Acoustic Take Criteria

For the purposes of an MMPA incidental take authorization, three levels of take are identified: Level B harassment; Level A harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into harassment categories were described previously in this notice. A method to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the proposed action has been derived. To this end, NMFS uses acoustic criteria that estimate at what received level Level B harassment, Level A harassment, and mortality of marine mammals would occur. The acoustic criteria for underwater detonations are comprehensively explained in NMFS' recent proposed rule **Federal Register** notice to the U.S. Navy (74 FR 11057, March 16, 2009) and are summarized here:

Criteria and thresholds for estimating the exposures from a single explosive activity on marine mammals were established for the Seawolf Submarine Shock Test Final Environmental Impact Statement (FEIS) ("Seawolf") and

subsequently used in the USS Winston S. Churchill (DDG 81) Ship Shock FEIS ("Churchill") (DoN, 1998 and 2001). NMFS adopted these criteria and thresholds in its final rule on the unintentional taking of marine animals occurring incidental to the shock testing which involved large explosives (65 FR 77546; December 12, 2000). Because no large explosives (≤ 1000 lbs NEW) would be used at Cherry Point during the specified activities, a revised acoustic criterion for small underwater explosions (*i.e.,* 23 pounds per square inch [psi] instead of previous acoustic criteria of 12 psi for peak pressure over all exposures) has been established to predict onset of TTS.

I.1. Thresholds and Criteria for Injurious Physiological Impacts

I.1.a. Single Explosion

For injury, NMFS uses dual criteria, eardrum rupture (*i.e.* tympanic-membrane injury) and onset of slight lung injury, to indicate the onset of injury. The threshold for tympanic-membrane (TM) rupture corresponds to a 50 percent rate of rupture (*i.e.,* 50 percent of animals exposed to the level are expected to suffer TM rupture). This value is stated in terms of an Energy Flux Density Level (EL) value of 1.17 inch pounds per square inch (in-lb/in^2), approximately 205 dB re 1 microPa^2-sec.

The threshold for onset of slight lung injury is calculated for a small animal (a dolphin calf weighing 26.9 lbs), and is given in terms of the "Goertner modified positive impulse," indexed to 13 psi-msec (DoN, 2001). This threshold is conservative since the positive impulse needed to cause injury is proportional to animal mass, and therefore, larger animals require a higher impulse to cause the onset of injury. This analysis assumed the marine species populations were 100 percent small animals. The criterion with the largest potential impact range (most conservative), either TM rupture (energy threshold) or onset of slight lung injury (peak pressure), will be used in the analysis to determine Level A exposures for single explosive events.

For mortality, NMFS uses the criterion corresponding to the onset of extensive lung injury. This is conservative in that it corresponds to a 1 percent chance of mortal injury, and yet any animal experiencing onset severe lung injury is counted as a lethal exposure. For small animals, the threshold is given in terms of the Goertner modified positive impulse, indexed to 30.5 psi-msec. Since the Goertner approach depends on propagation, source/animal depths, and animal mass in a complex way, the actual impulse value corresponding to the 30.5 psi-msec index is a complicated calculation. To be conservative, the analysis used the mass of a calf dolphin (at 26.9 lbs) for 100 percent of the populations.

I.1.b. Multiple Explosions

For multiple explosions, the Churchill approach had to be extended to cover multiple sound events at the same training site. For multiple exposures, accumulated energy over the entire training time is the natural extension for energy thresholds since energy accumulates with each subsequent shot (detonation); this is consistent with the treatment of multiple arrivals in Churchill. For positive impulse, it is consistent with the Churchill final rule to use the maximum value over all impulses received.

I.2. Thresholds and Criteria for Non-Injurious Physiological Effects

To determine the onset of TTS (non-injurious harassment)—a slight, recoverable loss of hearing sensitivity, there are dual criteria: an energy threshold and a peak pressure threshold. The criterion with the largest potential impact range (most conservative), either the energy or peak pressure threshold, will be used in the analysis to determine Level B TTS exposures. The thresholds for each criterion are described below.

I.2.a. Single Explosion—TTS-Energy Threshold

The TTS energy threshold for explosives is derived from the Space and Naval Warfare Systems Center (SSC) pure-tone tests for TTS (Schlundt *et al.,* 2000; Finneran and Schlundt, 2004). The pure-tone threshold (192 dB as the lowest value) is modified for explosives by (a) interpreting it as an energy metric, (b) reducing it by 10 dB to account for the time constant of the mammal ear, and (c) measuring the energy in 1/3-octave bands, the natural filter band of the ear. The resulting threshold is 182 dB re 1 microPa^2-sec in any 1/3-octave band.

I.2.b. Single Explosion—TTS-Peak Pressure Threshold

The second threshold applies to all species and is stated in terms of peak pressure at 23 psi (about 225 dB re 1 microPa). This criterion was adopted for Precision Strike Weapons (PSW) Testing and Training by Eglin Air Force Base in the Gulf of Mexico (NMFS, 2005). It is important to note that for small shots near the surface (such as in this analysis), the 23-psi peak pressure threshold generally will produce longer impact ranges than the 182-dB energy metric. Furthermore, it is not unusual for the TTS impact range for the 23-psi pressure metric to actually exceed the without-TTS (behavioral change without onset of TTS) impact range for the 177-dB energy metric.

I.3. Thresholds and Criteria for Behavioral Effects

I.3.a. Single Explosion

For a single explosion, to be consistent with Churchill, TTS is the criterion for Level B harassment. In other words, because behavioral disturbance for a single explosion is likely to be limited to a short-lived startle reaction, use of the TTS criterion is considered sufficient protection and therefore behavioral effects (Level B behavioral harassment without onset of TTS) are not expected for single explosions.

I.3.b. Multiple Explosions—Without TTS

For multiple explosions, the Churchill approach had to be extended to cover multiple sound events at the same training site. For multiple exposures, accumulated energy over the entire uninterrupted firing time is the natural extension for energy thresholds since energy accumulates with each subsequent shot (detonation); this is consistent with the treatment of multiple arrivals in Churchill. Because multiple explosions could occur within a discrete time period, a new acoustic criterion-behavioral disturbance without TTS is used to account for behavioral effects significant enough to be judged as harassment, but occurring at lower noise levels than those that may cause TTS.

The threshold is based on test results published in Schlundt *et al.* (2000), with derivation following the approach of the Churchill FEIS for the energy-based TTS threshold. The original Schlundt *et al.* (2000) data and the report of Finneran and Schlundt (2004) are the basis for thresholds for behavioral disturbance without TTS. During this study, instances of altered behavior sometimes began at lower exposures than those causing TTS; however, there were many instances when subjects exhibited no altered behavior at levels above the onset-TTS levels. Regardless of reactions at higher or lower levels, all instances of altered behavior were included in the statistical summary. The behavioral disturbance without TTS threshold for tones is derived from the SSC tests, and is found to be 5 dB below

the threshold for TTS, or 177 dB re 1 microPa^2-sec maximum energy flux density level in any 1/3-octave band at frequencies above 100 Hz for cetaceans.

II. Summary of Thresholds and Criteria for Impulsive Sounds

The effects, criteria, and thresholds used in the assessment for impulsive sounds are summarized in Table 6. The criteria for behavioral effects without physiological effects used in this analysis are based on use of multiple explosives from live, explosive firing at BT–9 only; no live firing occurs at BT–11.

TABLE 6—EFFECTS, CRITERIA, AND THRESHOLDS FOR IMPULSIVE SOUNDS

Effect	Criteria	Metric	Threshold	Effect
Mortality	Onset of Extensive Lung Injury.	Goertner modified positive impulse	indexed to 30.5 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Mortality.
Injurious Physiological	50 percent Tympanic Membrane Rupture.	Energy flux density	1.17 in-lb/in^2 (about 205 dB re 1 microPa^2-sec).	Level A.
Injurious Physiological	Onset Slight Lung Injury	Goertner modified positive impulse	indexed to 13 psi-msec (assumes 100 percent small animal at 26.9 lbs).	Level A.
Non-injurious Physiological.	TTS	Greatest energy flux density level in any 1/3-octave band (> 100 Hz for toothed whales and > 10 Hz for baleen whales)—for total energy over all exposures.	182 dB re 1 microPa^2-sec.	Level B.
Non-injurious Physiological.	TTS	Peak pressure over all exposures	23 psi	Level B.
Non-injurious Behavioral	Multiple Explosions Without TTS.	Greatest energy flux density level in any 1/3-octave (> 100 Hz for toothed whales and > 10 Hz for baleen whales)—for total energy over all exposures (multiple explosions only).	177 dB re 1 microPa^2-sec.	Level B.

Take From Explosives

The USMC conservatively modeled that all explosives would detonate at a 1.2 m (3.9 ft) water depth despite the training goal of hitting the target, resulting in an above water or on land explosion. For sources that are detonated at shallow depths, it is frequently the case that the explosion may breech the surface with some of the acoustic energy escaping the water column. The source levels presented in the table above have not been adjusted for possible venting nor does the subsequent analysis take this into account. Properties of explosive sources used at BT–9, including NEW, peak one-third-octave (OTO) source level, the approximate frequency at which the peak occurs, and rounds per burst are described in Table 7. Distances to NMFS harassment threshold levels from these sources are outlined in Table 8.

TABLE 7—SOURCE WEIGHTS AND PEAK SOURCE LEVELS

Source type	NEW	Peak OTO SL	Frequency of peak OTO SL	Rounds per burst
2.75″ Rocket	4.8 lbs	223.9 dB re: 1μPa	~1500 Hertz (Hz)	1
5″ Rocket	15.0 lbs	228.9 dB re: 1μPa	~1000 Hz	1
30 mm	0.1019 lbs	212.1 dB re: 1μPa	~2500 Hz	30
40 mm	0.1199 lbs	227.8 dB re: 1μPa	~1100 Hz	5
G911 Grenade	0.5	213.9 dB re: 1 μPa	~2500 Hz	1

TABLE 8—DISTANCES TO NMFS HARASSMENT THRESHOLDS FROM EXPLOSIVE ORDNANCES

	Behavioral disturbance (177 dB energy)	TTS (23 psi)	Level A (13 psi-msec)	Mortality (31 psi-ms)
2.75″ Rocket HE	N/A	172 m (564 ft)	47 m (154 ft)	27 m (89 ft).
5″ Rocket HE	N/A	255 m (837 ft)	61 m (200 ft)	39 m (128 ft).
30 mm HE	209 m (686 ft)	N/A	10 m (33 ft)	5 m (16 ft).
40 mm HE	144 m (472 ft)	N/A	10 m (33 ft)	5 m (16 ft).
G911 Grenade	N/A	83 m (272 ft)	21 m (33 ft)	10 m (33 ft).

To calculate take, the distances to which animals may be harassed were considered along with dolphin density. The density estimate from Read *et al* (2003) was used to calculate take from munition firing. As described in the *Description of Marine Mammals in the Area of the Specified Activity* section above, this density, 0.183/km^2, was derived from boat based surveys in 2000 which covered all inland North Carolina waters. Note that estimated density of dolphins at BT–9 and BT–11, specifically, were calculated to be 0.11 dolphins/km^2, and 1.23 dolphins/km^2

respectively (Maher 2003), based on boat surveys conducted from July 2002 through June 2003 (excluding April, May, Sept. and Jan.). However, the USMC chose to estimate take of dolphins based on the higher density reported from the summer 2000 surveys (0.183/km^2). Additionally, take calculations for munition firing are based on 100 percent water detonation, although the goal of training is to hit the targets, and no pre-exercise monitoring or mitigation. Therefore, take estimates can be considered conservative.

Based on dolphin density and amount of munitions expended, there is very low potential for Level A harassment and mortality and monitoring and mitigation measures are anticipated to further negate this potential. Accordingly, NMFS is not proposing to issue these levels of take. As portrayed in Table 8 above, the largest harassment zone (Level B) is within 209 m of a detonation in water; however, the USMC has implemented a 1000 m "foul" zone for BT–9 and anywhere within Raritan Bay for BT–11. In total, from firing of explosive ordnances, the USMC is requesting, and NMFS is proposing to issue, the incidental take of 25 bottlenose dolphins from Level B harassment (Table 9).

TABLE 9—NUMBER OF DOLPHINS POTENTIALLY TAKEN FROM EXPOSURE TO EXPLOSIVES BASED ON THRESHOLD CRITERIA

Ordnance type	Level B—behavioral (177dB re 1 microPa^2-s)	Level B—TTS (23 psi)	Level A—Injurious (205 dB re 1 microPa^2-s or 13 psi)	Mortality (30.5 psi)
2.75″ Rocket HE	N/A	4.97	0.17	0.06
5″ Rocket HE	N/A	3.39	0.09	0.03
30 mm HE	2.55	N/A	0.05	0.00
40 mm HE	12.60	N/A	0.16	0.01
G911 Grenade	N/A	0.87	0.03	0.01
Total	15.15	9.23	0.5	0.11

Take From Direct Hit

The potential risk of a direct hit to an animal in the target area is estimated to be so low it is discountable. A Range Air Installation Compatible Use Zone (RAICUZ) study generated the surface area or footprints of weapon impact areas associated with air-to-ground ordnance delivery (USMC 2001). Statistically, a weapon safety footprint describes the area needed to contain 99.99 percent of initial and ricochet impacts at the 95-percent confidence interval for each type of aircraft and ordnance utilized on the BTs. At both BT–9 and BT–11 the probability of deployed ordnance landing in the impact footprint is essentially 1.0, since the footprints were designed to contain 99.99 percent of impacts, including ricochets. However, only 36 percent of the weapon footprint for BT–11 is over water in Rattan Bay, so the likelihood of a weapon striking an animal at the BT in Rattan Bay is 64 percent less. Water depths in Rattan Bay range from 3 m (10 ft) in the deepest part of the bay to 0.5 m (1.6 m) close to shore, so that nearly the entire habitat in Rattan Bay is suitable for marine mammal use (or 36 percent of the weapon footprint).

The estimated potential risk of a direct hit to an animal in the target area is extremely low. The probability of hitting a bottlenose dolphin at the BTs can be derived as follows: Probability = dolphin's dorsal surface area * density of dolphins. The estimated dorsal surface area of a bottlenose dolphin is 1.425 m^2 (or the average length of 2.85 m times the average body width of 0.5 m). Thus, using Read *et al.* (2003)'s density estimate of 0.183 dolphins/km^2, without consideration of mitigation and monitoring implementation, the probability of a dolphin being hit in the waters of BT–9 is 2.61×10^{-7} and of BT–11 is 9.4×10^{-8}. Using the proposed levels of ordnance expenditures at each in-water BT (Tables 4 and 5) and taking into account that only 36 percent of the ordnance deployed at BT–11 is over water, as described in the application, the estimated potential number of ordnance strikes on a marine mammal per year is 0.263 at BT–9 and 0.034 at BT–11. It would take approximately three years of ordnance deployment at the BTs before it would be likely or probable that one bottlenose dolphin would be struck by deployed inert ordnance. Again, these estimates are without consideration to proposed monitoring and mitigation measures.

Take From Vessel and Aircraft Presence

Vessel movement is associated with surface-to-surface exercises, as described in the *Specified Activities* section above, which primarily occurs within BT–11. The USMC is not requesting takes specific to the act of maneuvering small boats within the BTs; however, NMFS has analyzed the potential for take from this activity.

The potential impacts from exposure to vessels are described in the *Vessel and Aircraft Presence* section above. Interactions with vessels are not a new experience for bottlenose dolphins in Pamlico Sound. Pamlico Sound is heavily used by recreational, commercial (fishing, daily ferry service, tugs, *etc.*), and military (including the Navy, Air Force, and Coast Guard) vessels year-round. The NMFS' Southeast Regional Office has developed marine mammal viewing guidelines to educate the public on how to responsibly view marine mammals in the wild and avoid causing a take (*http://www.nmfs.noaa.gov/pr/education/southeast*). The guidelines recommend that vessels should remain a minimum of 50 yards from a dolphin, operate vessels in a predictable manner, avoid excessive speed or sudden changes in speed or direction in the vicinity of animals, and not to pursue, chase, or separate a group of animals. The USMC would abide by these guidelines to the fullest extent practicable. The USMC would not engage in high speed exercises should a marine mammal be detected within the immediate area of the BTs prior to training commencement and would never closely approach, chase, or pursue dolphins. Detection of marine mammals would be facilitated by personnel monitoring on the vessels and those marking success rate of target hits and monitoring of remote camera on the BTs (see Proposed Monitoring and Reporting section).

Based on the description of the action, the other activities regularly occurring in the area, the species that may be exposed to the activity and their observed behaviors in the presence of vessel traffic, and the implementation of measures to avoid vessel strikes, NMFS believes it is unlikely that the operation

of vessels during surface-to-surface maneuvers will result in the take of any marine mammals, in the form of either behavioral harassment or injury.

Aircraft would move swiftly through the area and would typically fly approximately 914 m from the water's surface before dropping unguided munitions and above 4,572 m for precision-guided munition bombing. While the aircraft may approach as low as 152 m (500 ft) to drop a bomb this is not the norm and would never been done around marine mammals. Regional whale watching guidelines advise aircraft to maintain a minimum altitude of 300 m (1,000 ft) above all marine mammals, including small odontocetes, and to not circle or hover over the animals to avoid harassment. NMFS' approach regulations limit aircraft from flying below 300 m (1,000 ft) over a humpback whale (*Megaptera novaeangliae*) in Hawaii, a known calving ground, and limit aircraft from flying over North Atlantic right whales closer than 460 m (1509 ft). Given USMC aircraft would not fly below 300 m on the approach, would not engage in hovering or circling the animals, and would not drop to the minimal altitude of 152 m if a marine mammal is in the area, NMFS believes it is unlikely that the operation of aircraft, as described above, will result in take of bottlenose dolphins in Pamlico Sound.

Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be "taken" by the specified activities (*i.e.,* takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a "negligible impact" on the species or stock. NMFS has defined "negligible impact" in 50 CFR 216.103 as: "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number and manner of takes, alone, is not enough information on which to base a negligible impact determination. NMFS must also consider other factors, such as the likely nature of any responses (their intensity, duration, *etc.*), the context of any responses (critical reproductive time or location, migration, *etc.*), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The USMC has been conducting gunnery and bombing training exercises at BT–9 and BT–11 for years and, to date, no dolphin injury or mortality has been attributed these military training exercises. The USMC has a history of notifying the NMFS stranding network when any injured or stranded animal comes ashore or is spotted by personnel on the water. Therefore, stranded animals have been examined by stranding responders, further confirming that it is unlikely training contributes to marine mammal injuries or deaths. Due to the implementation of the aforementioned mitigation measures, no take by Level A harassment or serious injury or mortality is anticipated nor would any be authorized in the IHA. NMFS is proposing; however, to authorize 25 Level B harassment takes associated with training exercises.

The USMC has proposed a 1000-yard (914 m) safety zone around BT–9 despite the fact that the distance to NMFS explosive Level B harassment threshold is 228 yards (209 m). They also would consider an area fouled if any dolphins are spotted within Raritan Bay (where BT–11 is located). The Level B harassment takes allowed for in the IHA would be of very low intensity and would likely result in dolphins being temporarily behaviorally affected by bombing or gunnery exercises. In addition, takes may be attributed to animals not using the area when exercises are occurring; however, this is difficult to calculate. Instead, NMFS looks to if the specified activities occur during and within habitat important to vital life functions to better inform its negligible impact determination.

Read *et al.* (2003) concluded that dolphins rarely occur in open waters in the middle of North Carolina sounds and large estuaries, but instead are concentrated in shallow water habitats along shorelines. However, no specific areas have been identified as vital reproduction or foraging habitat. Scientific boat based surveys conducted throughout Pamlico Sound conclude that dolphins use the areas around the BTs more frequently than other portions of Pamlico Sound (Maher, 2003) despite the USMC actively training in a manner identical to the specified activities described here for years.

As described in the *Affected Species* section of this notice, bottlenose dolphin stock segregation is complex with stocks overlapping throughout the coastal and estuarine waters of North Carolina. It is not possible for the USMC to determine to which stock any individual dolphin taken during training activities belong as this can only be accomplished through genetic testing. However, it is likely that many of the dolphins encountered would belong to the NNCE or SNC stock. These stocks have a population estimate of 919 and 4,818, respectively. NMFS is proposing to authorize 25 takes of bottlenose dolphins in total; therefore, this number represents 2.72 and 0 percent, respectively, of those populations.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that the specified USMC AS Cherry Point BT–9 and BT–11 training activities will result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from will have a negligible impact on the affected species or stocks.

Subsistence Harvest of Marine Mammals

Marine mammals are not taken for subsistence use within Pamlico Sound; therefore, issuance of an IHA to the USMC for MCAS Cherry Point training exercises would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence use.

Endangered Species Act (ESA)

No ESA-listed marine mammals are known to occur within the action area. Therefore, there is no requirement for NMFS to consult under Section 7 of the ESA on the issuance of an IHA under section 101(a)(5)(D) of the MMPA. However, ESA-listed sea turtles may be present within the action area.

On September 27, 2002, NMFS issued a Biological Opinion (BiOp) on *Ongoing Ordnance Delivery at Bombing Target 9 (BT–9) and Bombing Target 11 (BT–11) at Marine Corps Air Station, Cherry Point, North Carolina.* The BiOp concluded that that the USMC's proposed action will not result in adverse impacts to any ESA-listed marine mammals and is not likely to jeopardize the continued existence of the endangered green turtle (*Chelonia mydas*), leatherback turtle (*Dermochelys coriacea*), Kemp's ridley turtle (*Lepidochelys kempii*), or threatened loggerhead turtle (*Caretta caretta*). No critical habitat has been designated for

these species in the action area; therefore, none will be affected. On April 9, 2009, the USMC requested subsequent Section 7 consultation as the aforementioned BiOp was written in 2002. That consultation request is currently being examined by NMFS' Endangered Species Division.

National Environmental Policy Act (NEPA)

On February 11, 2009, the USMC issued a Finding of No Significant Impact for its Environmental Assessment (EA) on MCAS Cherry Point Range Operations. Based on the analysis of the EA, the USMC determined that the proposed action will not have a significant impact on the human environment. If adequate and appropriate, NMFS intends to adopt the USMC's EA to allow NMFS to meet its responsibilities under NEPA for the issuance of an IHA. If the USMC's EA is not adequate, NMFS will supplement the existing analysis and documents to ensure that we comply with NEPA prior to the issuance of the IHA.

Dated: June 1, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–13748 Filed 6–7–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense (DoD).

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on the Survivability of DoD Systems and Assets to Electromagnetic Pulse (EMP) and other Nuclear Weapons Effects will meet in closed session on July 15 and 16, 2010, at Fort Belvoir, Virginia. The Task Force will receive, review and discuss presentations on: findings and recommendations of the Congressional EMP Commission, the Defense Science Board Threat Reduction Advisory Committee (TRAC) Task Force findings, recommendations and progress; implementation to date of DoD Instruction 3150.09; the SECDEF 2009 Report to Congress on EMP Survivability; 2010 Strategic Test Resource Management Center Plan for Nuclear Weapons Effects test & evaluation resources; DTRA–NNSA MOU and Joint Program Plan; DoD component updates; and discussion of future activities.

DATES: The meeting will be held on July 15 and 16, 2010.

ADDRESSES: The meeting will be held at the Defense Threat Reduction Agency (DTRA), Defense Threat Reduction Center Building, Brittigan Conference Room, 1252, 8725 John J. Kingman Road, Fort Belvoir, Virginia 22060–6201.

FOR FURTHER INFORMATION CONTACT: LTC Karen Walters, USA, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *karen.walters@osd.mil,* or via phone at (703) 571–0082.

SUPPLEMENTARY INFORMATION: The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will act as an independent sounding board to the Joint IED organization by providing feedback at quarterly intervals; and develop strategic and operational plans, examining the goals, process and substance of the plans.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the July 15–16, 2010, meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official (*see* **FOR FURTHER INFORMATION CONTACT**), at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: June 3, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–13770 Filed 6–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0075]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense (DoD).

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary of Defense is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on July 8, 2010, unless comments are received that would 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. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense 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 Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

The specific changes to the records system being amended is set forth below followed by the notice, as amended, published in its entirety. The proposed

amendment 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: June 3, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

WUSU 07

SYSTEM NAME:

USUHS Grievance Records (August 9, 1993; 58 FR 42304).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Uniformed Services University of the Health Sciences, Civilian Human Resources Directorate (CHR), 4301 Jones Bridge Road, Bethesda, MD 20814–4712."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 7121, Grievance Procedures; DoD 1400.25–M, Subchapter 771, Administrative Grievance System; and E.O. 9397 (SSN) as amended."

PURPOSE(S):

Delete entry and replace with "To track, analyze and mitigate informal grievances filed by Uniformed Services University on employees covered by a collective bargaining agreement. Utilizing this information allows Uniformed Services University civilian personnel employer relations officers to track grievances, to analyze findings from an investigation, and to research the success and/or failure of mitigation efforts. The information is collected and used by Civilian Personnel Employee Relations Officers."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Pending. Until approved by the National Archives & Records Administration (NARA). All data must be retained indefinitely until scheduled with NARA."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director, Civilian Human Resources Directorate, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4712."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Civilian Human Resources Directorate, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4712.

The request should contain the full name, address and the signature of the subject individual."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Freedom of Information Act Requester Service, 16401 Centretech Parkway, Aurora, CO 80011–9066.

The request should contain the full name, address and the signature of the subject individual."

* * * * *

WUSU 07

SYSTEM NAME:

USUHS Grievance Records.

SYSTEM LOCATION:

Uniformed Services University of the Health Sciences, Civilian Human Resources Directorate (CHR), 4301 Jones Bridge Road, Bethesda, MD 20814–4712.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian Federal employees that have submitted grievances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual name, address, date of birth, all documents related to the alleged grievance, including statements of witnesses, reports of interviews and hearings, examiners findings and recommendations, a copy of the original and final decisions, and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7121, Grievance Procedures; DoD 1400.25–M, Subchapter 771, Administrative Grievance System; and E.O. 9397 (SSN) as amended.

PURPOSE(S):

To track, analyze and mitigate informal grievances filed by Uniformed Services University on employees covered by a collective bargaining agreement. Utilizing this information allows Uniformed Services University civilian personnel employer relations officers to track grievances, to analyze findings from an investigation, and to research the success and/or failure of mitigation efforts. The information is collected and used by Civilian Personnel Employee Relations Officers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3).

The DoD "Blanket Routine Uses" set forth at the beginning of the Office of the Secretary of Defense/Joint Staff compilation of the systems of record notices apply to this system.

STORAGE:

Paper file folders.

RETRIEVABILITY:

Individual's last name.

SAFEGUARDS:

Records are maintained in locked file cabinets, with access restricted to authorized Uniformed Services University of the Health Sciences employees who have a demonstrated need-to-know.

RETENTION AND DISPOSAL:

Pending. Until approved by the National Archives & Records Administration (NARA). All data must be retained indefinitely until scheduled with NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Civilian Human Resources Directorate, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4712.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Civilian Human Resources Directorate, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4712.

The request should contain the full name, address and the signature of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Freedom of Information Act Requester Service, 16401 Centretech Parkway, Aurora, CO 80011–9066.

The request should contain the full name, address and the signature of the subject individual.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the individual on whom the record is maintained; testimony of witnesses; agency officials; and related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–13657 Filed 6–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Grant Partially Exclusive License of the United States Patent Application No. 12/243,084, Filed October 01, 2008, Entitled: Soluble Salt Produced From a Biopolymer and a Process for Producing the Salt

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective exclusive license of the following U.S. Patent Application 12/243,084 Filed October 1, 2008.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: United States Army Engineer Research and Development Center, ATTN: CEERD–ZA–T (Ms. Bea Shahin), 2902 Newmark Drive, Champaign, IL 6182–1076.

FOR FURTHER INFORMATION CONTACT: Ms. Bea Shahin (217) 373–7234, FAX (217) 373–7210, e-mail: *Bea.S.Shahin@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This patent application claims a method by which a biologically natural material can be produced in bioreactors and transformed for use as a dry solid. The resulting biopolymer material can be used in place of synthetic, petroleum-based polymers for soil amendment applications to achieve increased soil strength, reduced air transport, and decreased soil erosion. During processing, the biopolymer also can be functionalized to improve its adsorption of heavy metals.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–13668 Filed 6–7–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The Chief of Naval Operations (CNO) Executive Panel will report on the findings and recommendations of "The Navy's Future Role in the Middle East" Subcommittee to the Chief of Naval Operations. The meeting will consist of discussions of current and future Navy strategy; plans, and policies in support of U.S. deterrence planning; crisis management; and conflict escalation and control.

DATES: The meeting will be held on June 28, 2010, from 1:30 p.m. to 4 p.m.

ADDRESSES: The meeting will be held in the Boardroom at CNA, 4825 Mark Center Drive, Alexandria, VA 22311–1846.

FOR FURTHER INFORMATION CONTACT: CDR Eric Taylor, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311–1846, 703–681–4909.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), these matters constitute classified information that are specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Individuals or interested groups may submit written statements for consideration by the CNO Executive Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this meeting notice then the statement, if it is to be considered by the Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the CNO Executive Panel Chairperson, and ensure they are provided to members of the CNO Executive Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to Executive Director, CNO Executive Panel (N00K), 4825 Mark Center Drive, 2nd Floor, Alexandria, VA 22311–1846.

Dated: June 2, 2010.

A.M. Vallandingham,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–13647 Filed 6–7–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the summer meeting of the Board of Visitors (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). The Board's charter was renewed on March 18, 2010 in compliance with the requirements set forth in Title 10 U.S.C. 2166.

Date: Thursday, June 17, 2010.

Time: 8 a.m. to 4 p.m.

Location: 2212 Rayburn House Office Building, Washington, DC.

Proposed Agenda: The WHINSEC BoV will be briefed on activities at the Institute since the last Board meeting on December 4, 2009 as well as receive other information appropriate to its interests.

FOR FURTHER INFORMATION CONTACT: WHINSEC Board of Visitors Secretariat at (703) 692–7373 or (913) 526–0377.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Pursuant to the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140(c), members of the public or interested groups may submit written statements to the advisory committee for consideration by the committee members. Written statements should be no longer than two type-written pages and sent via fax to (703) 614–8920 by

5 p.m. EST on Monday, June 14, 2010 for consideration at this meeting. In addition, public comments by individuals and organizations may be made from 2 to 2:30 p.m. during the meeting. Public comments will be limited to three minutes each. Anyone desiring to make an oral statement must register by sending a fax to (703) 614–8920 with their name, phone number, e-mail address, and the full text of their comments (no longer than two type-written pages) by 5 p.m. EST on Monday, June 14, 2010. The first ten requestors will be notified by 5 p.m. EST on Tuesday, June 15, 2010 of their time to address the Board during the public comment forum. All other comments will be retained for the record. Public seating is limited and will be available on a first come, first serve basis.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–13661 Filed 6–7–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Solicitation of Applications for Stakeholder Representative Members of the Missouri River Recovery Implementation Committee

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Commander of the Northwestern Division of the U.S. Army Corps of Engineers (Corps) is soliciting applications to fill vacant stakeholder representative member positions on the Missouri River Recovery Implementation Committee (MRRIC). Members are sought to fill vacancies on a committee to represent various categories of interests within the Missouri River basin. The MRRIC was formed to advise the Corps on a study of the Missouri River and its tributaries and to provide guidance to the Corps with respect to the Missouri River recovery and mitigation activities currently underway. The Corps established the MRRIC as required by the U.S. Congress through the Water Resources Development Act of 2007 (WRDA), Section 5018.

DATES: The agency must receive completed applications no later than July 30, 2010.

ADDRESSES: Mail completed applications to U.S. Army Corps of Engineers, Omaha District (Attn: MRRIC), 1616 Capitol Avenue, Omaha, NE 68102–4901 or e-mail completed applications to *info@mrric.org.* Please put "MRRIC" in the subject line.

FOR FURTHER INFORMATION CONTACT: Mary S. Roth, 402–995–2919.

SUPPLEMENTARY INFORMATION: The operation of the MRRIC is in the public interest and provides support to the Corps in performing its duties and responsibilities under the Endangered Species Act, 16 U.S.C. 1531 *et seq.;* Sec. 601(a) of the Water Resources Development Act (WRDA) of 1986, Public Law 99–662; Section 334(a) of WRDA 1999, Public Law 106–53, and Section 5018 of WRDA 2007, Public Law 110–114. The Federal Advisory Committee Act, 5 U.S.C. App. 2, does not apply to the MRRIC.

A Charter for the MRRIC has been developed and should be reviewed prior to applying for a stakeholder representative membership position on the Committee. The Charter, operating procedures, and stakeholder application forms are available electronically at *http://www.MRRIC.org.*

Purpose and Scope of the Committee. The duties of the MRRIC cover two areas:

1. The Committee provides guidance to the Corps, and affected Federal agencies, State agencies, or Native American Indian Tribes on a study of the Missouri River and its tributaries to determine the actions required to mitigate losses of aquatic and terrestrial habitat, to recover federally listed species protected under the Endangered Species Act, and to restore the river's ecosystem to prevent further declines among other native species. This study is identified in Section 5018 (a) of the WRDA. It will result in a single, comprehensive plan to guide the implementation of mitigation, recovery, and restoration activities in the Missouri River Basin. This plan is referred to as the Missouri River Ecosystem Restoration Plan (MRERP). For more information about the MRERP go to *http://www.MRERP.org.*

2. The MRRIC also provides guidance to the Corps with respect to the Missouri River recovery and mitigation plan currently in existence, including recommendations relating to changes to the implementation strategy from the use of adaptive management; coordination of the development of consistent policies, strategies, plans, programs, projects, activities, and priorities for the Missouri River recovery and mitigation plan. Information about the Missouri River Recovery Program is available at *http://www.MoRiverRecovery.org.*

3. Other duties of MRRIC include exchange of information regarding programs, projects, and activities of the agencies and entities represented on the Committee to promote the goals of the Missouri River recovery and mitigation plan; establishment of such working groups as the Committee determines to be necessary to assist in carrying out the duties of the Committee, including duties relating to public policy and scientific issues; facilitating the resolution of interagency and intergovernmental conflicts between entities represented on the Committee associated with the Missouri River recovery and mitigation plan; coordination of scientific and other research associated with the Missouri River recovery and mitigation plan; and annual preparation of a work plan and associated budget requests.

Administrative Support. To the extent authorized by law and subject to the availability of appropriations, the Corps provides funding and administrative support for the Committee.

Committee Membership. Federal agencies with programs affecting the Missouri River may be members of the MRRIC through a separate process with the Corps. States and Federally recognized Native American Indian tribes, as described in the Charter, are eligible for Committee membership through an appointment process. Interested State and Tribal government representatives should contact the Corps for information about the appointment process.

This Notice is for individuals interested in serving as a stakeholder member on the Committee. In accordance with the Charter for the MRRIC, stakeholder membership is limited to 28 people, with each member having an alternate. Members and alternates must be able to demonstrate that they meet the definition of "stakeholder" found in the Charter of the MRRIC. Applications are currently being accepted for representation in the stakeholder interest categories listed below:

a. Conservation Districts;
b. Fish and Wildlife;
c. Flood Control;
d. Hydropower;
e. Irrigation;
f. Major Tributaries;
g. Navigation;
h. Recreation;
i. Water Quality; and
j. Waterways Industries.

Terms of stakeholder representative members of the MRRIC are three years. There is no limit to the number of terms a member may serve. Incumbent Committee members seeking

reappointment do not need to re-submit an application. However, they must submit a renewal letter and related materials as outlined in the "Streamlined Process for Existing Members" portion of the document *Process for Filling MRRIC Stakeholder Vacancies* (*http://www.MRRIC.org*).

Members and alternates of the Committee will not receive any compensation from the federal government for carrying out the duties of the MRRIC. Travel expenses incurred by members of the Committee will not be reimbursed by the federal government.

Application for Stakeholder Membership. Persons who believe that they are or will be affected by the Missouri River recovery and mitigation activities and are not employees of federal agencies, tribes, or state agencies, may apply for stakeholder membership on the MRRIC. Applications for stakeholder membership may be obtained electronically at *http://www.MRRIC.org.* Applications may be e-mailed or mailed to the location listed (*see* **ADDRESSES**). In order to be considered, each application must include:

1. The name of the applicant and the primary stakeholder interest category that person wishes to represent;

2. A written statement describing how the applicant meets the criteria for membership (described below) and how their contributions will fulfill the roles and responsibilities of MRRIC;

3. Evidence, in the form of a written endorsement letter, which demonstrates that the applicant represents an interest group(s) in the Missouri River basin.

To be considered, the application must be complete and received by the close of business on July 30, 2010, at the location indicated (*see* **ADDRESSES**). Full consideration will be given to all complete applications received by the specified due date.

Persons wishing to apply as stakeholder members are strongly encouraged to identify an appropriate individual to serve as his/her alternate. Alternates should apply with the individual seeking membership in the same interest area. Alternates must apply in the same manner as stakeholder members and should include a recommendation from a member applicant as well as the interest group(s) they represent.

Application Review Process. Committee stakeholder applications will be forwarded to the current members of the MRRIC. The MRRIC will provide membership recommendations to the Corps as described in Attachment A of the *Process for Filling MRRIC Stakeholder Vacancies* document (*http://www.MRRIC.org*). The Corps is responsible for appointing stakeholder members. The Corps will consider applications using the following criteria:

- Ability to commit the time required.
- Commitment to make a good faith (as defined in the Charter) effort to seek balanced solutions that address multiple interests and concerns.
- Agreement to support and adhere to the approved MRRIC Charter and Operating Procedures.
- Demonstration of a formal designation or endorsement by an organization, local government, or constituency as its preferred representative.
- Demonstrations of an established communication network to keep constituents informed and efficiently seek their input when needed.
- Ability to contribute to the overall balance of representation on MRRIC.

All applicants will be notified in writing as to the final decision about their application.

Certification. I hereby certify that the establishment of the MRRIC is necessary and in the public interest in connection with the performance of duties imposed on the Corps by the Endangered Species Act and other statutes.

Mary S. Roth,

Project Manager for the Missouri River Recovery Implementation Committee (MRRIC).

[FR Doc. 2010–13665 Filed 6–7–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.007, 84.032, 84.033, 84.038, 84.063, 84.069, 84.268, 84.375, 84.376, and 84.37]

Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, William D. Ford Federal Direct Loan, Academic Competitiveness Grant, National Science and Mathematics Access To Retain Talent Grant, and Teacher Education Assistance for College and Higher Education Programs

Correction

In notice document 2010–12558 beginning on page 29524 in the issue of Wednesday, May 26, 2010, make the following correction:

On page 29526, in the first column, after the signature block insert the following graphics.

BILLING CODE 1301–00–D

Table A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	Free Application for Federal Student Aid (FAFSA)--"FAFSA on the Web" (original or renewal)	Electronically to the Department's Central Processing System (CPS)	June 30, 2010[1]
	Signature Page (if required)	To the address printed on the signature page	September 21, 2010
Student through an Institution	An electronic FAFSA (original or renewal)	Electronically to the Department's CPS	June 30, 2010[1]
Student	A paper original FAFSA	To the address printed on the FAFSA or envelope provided with the form	June 30, 2010
Student	Electronic corrections to the FAFSA using "Corrections on the Web"	Electronically to the Department's CPS	September 21, 2010[1]
	Signature Page (if required)	To the address printed on the signature page	September 21, 2010
Student through an Institution	Electronic corrections to the FAFSA	Electronically to the Department's CPS	September 21, 2010[1]
Student	Paper corrections to the FAFSA using a SAR, including change of mailing and e-mail addresses or institutions	To the address printed on the SAR	September 21, 2010
Student	Change of mailing and e-mail addresses, change of institutions, or requests for a duplicate SAR	To the Federal Student Aid Information Center by calling 1-800-433-3243	September 21, 2010
Student	SAR with an official expected family contribution (EFC) calculated by the Department's CPS (except for Parent PLUS)	To the institution	The earlier of: - the student's last date of enrollment; or - September 28, 2010[2]
Student through CPS	ISIR with an official EFC calculated by the Department's CPS (except for Parent PLUS)	To the institution from the Department's CPS	The earlier of: - the student's last date of enrollment; or - September 28, 2010[2]

Student	Valid SAR (Pell, ACG, and National SMART Grant Only)	To the institution	Except for a student meeting the conditions for a late disbursement under 34 CFR 668.164(g), the earlier of: - the student's last date of enrollment; or - September 28, 2010[2] For a student receiving a late disbursement under 34 CFR 668.164(g)(4)(i), the earlier of: - 180 days after the date of the institution's determination that the student withdrew or otherwise became ineligible; or - September 28, 2010[2]
Student through CPS	Valid ISIR (Pell, ACG, and National SMART Grant Only)	To the institution from the Department's CPS	
Student	Verification documents	To the institution	The earlier of:[3] - 120 days after the student's last date of enrollment; or - September 28, 2010[2]

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its SAIG mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for a Federal Pell Grant, ACG, and National SMART Grant, the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs, the FFEL Program, and the Federal Direct Loan Program. Students completing verification and submitting a valid SAR or valid ISIR while no longer enrolled will be paid based on the higher of the two EFCs.

Table B. Federal Pell Grant, ACG, and National SMART Grant Programs Submission Dates for Disbursement Information by Institutions			
Who submits?	What is submitted?	Where is it submitted?	What are the earliest disbursement, submission, and deadline dates for receipt?
Institutions	At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient, ACG recipient, and National SMART Grant recipient at the institution.	To the Common Origination and Disbursement (COD) System using either: - the COD Web site at: www.cod.ed.gov; or - the Student Aid Internet Gateway (SAIG)	Earliest Disbursement Date: February 20, 2009 Earliest Submission Dates: An institution may submit anticipated disbursement information as early as March 28, 2009. An institution may submit actual disbursement information as early as June 1, 2009, but no earlier than: (a) Under the advance payment method: (1) 30 calendar days prior to the disbursement date of a Federal Pell Grant; or (2) 7 calendar days prior to the disbursement date of an ACG or National SMART Grant; (b) 7 calendar days prior to the disbursement date under the Cash Monitoring #1 payment method; or (c) The date of disbursement under the Reimbursement or Cash Monitoring #2 payment methods. Deadline Submission Dates: Except as provided below, an institution is required to submit disbursement information no later than the earlier of: (a) 30 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data; or (b) September 30, 2010.[1] An institution may submit disbursement information after September 30, 2010, only: (a) for a downward adjustment of a previously reported award or disbursement; (b) based upon a program review or initial audit finding per 34 CFR 690.83 or 691.83;

			(c) for reporting a late disbursement under 34 CFR 668.164(g); or (d) for reporting disbursements previously blocked as a result of another institution failing to post a downward adjustment.
Institutions	Request for administrative relief based on a natural disaster or other unusual circumstances, or an administrative error made by the Department	Via COD Web site at: www.cod.ed.gov	The earlier of: - a date designated by the Secretary after consultation with the institution; or - February 1, 2011
Institutions	Request for administrative relief if a student reenters the institution within 180 days after initially withdrawing and the institution is reporting a disbursement for the student within 30 days of the student's reenrollment but after September 30, 2010[2]	Via COD Web site at: www.cod.ed.gov	The earlier of: - 30 days after the student reenrolls; or - May 3, 2011

[1] The deadline for electronic transactions is 11:59 p.m. (Eastern Time) on September 30, 2010. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

NOTE: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

Table C. Federal Pell Grant Disbursement Information for a Payment Period that Occurs in Two Award Years (Crossover Payment Period)			
Who submits?	What is submitted?	Where is it submitted?	What are the applicable deadlines?
Institutions	An acceptable disbursement record for a Federal Pell Grant recipient for a 2010 crossover payment period that occurs in the 2009-2010 and 2010-2011 award years if an institution must reassign the crossover payment period to the award year in which the student would receive the greater payment. [1]	To the Common Origination and Disbursement (COD) System using either: - the COD Web site at: www.cod.ed.gov; or - the Student Aid Internet Gateway (SAIG)	An institution must take into account any information that: (a) is received by September 10, 2010; and (b) changes the award year assignment of a student's Federal Pell Grant for the 2010 crossover payment period. The institution must report any changed disbursement information in accordance with the deadlines in Table B. An institution may take into account any information that: (a) is received subsequent to September 10, 2010; and (b) changes the award year assignment of a student's Federal Pell Grant for the 2010 crossover payment period. The institution must report any changed disbursement information not later than February 1, 2011. [2]

[1] An institution is not required to award a student from the award year that will provide the greater payment if the institution established its written crossover payment period policy prior to July 1, 2010 and under that policy a student would be awarded a Federal Pell Grant from the 2009-2010 award year without applying 34 CFR 690.64, as amended by the final regulations published on October 29, 2009, and effective on July 1, 2010 (74 FR 55904, 55951). Otherwise, an institution must consider a 2010 crossover payment period subject to the deadlines in Table C regardless of whether it is assigned to the 2009-2010 or 2010-2011 award year.

[2] This action is not considered administrative relief subject to approval by the Department, but it is considered a request for "Extended Processing." Specific information on using this process will be provided in an upcoming Electronic Announcement entitled "ACG, National SMART Grant, and Pell Grant 2009-2010 Award Year Processing Deadline" that is expected to be published in early September 2010 on the Information for Financial Aid Professionals (IFAP) Web site at: www.ifap.ed.gov .

[FR Doc. C1-2010-12558 Filed 6-7-10; 8:45 am]
BILLING CODE 1301-00-C

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 8, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 2, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: School Improvement Grants.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:

Responses: 3,102.
Burden Hours: 229,800.

Abstract: On December 10, 2009, the U.S. Department of Education (Department) published final requirements and a State educational agency (SEA) application for School Improvement Grants (SIG) authorized under section 1003(g) of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended, and funded through the Department of Education Appropriations Act, 2009 (FY 2009) and the American Recovery and Reinvestment Act of 2009 (ARRA). On January 21, 2010, the Department published interim final requirements and a revised SEA application, which amended the final requirements and application issued in December. Together, these requirements are referred to in this document as "final requirements."

The final requirements define the criteria that an SEA must use to award ARRA and FY 2009 SIG funds to local educational agencies (LEAs). In awarding these funds, an SEA must give priority to the LEAs with the lowest-achieving schools that demonstrate the greatest need for the funds and the strongest commitment to using the funds to provide adequate resources to their lowest-achieving schools eligible to receive services provided through SIG funds in order to raise substantially the achievement of the students attending those schools.

The final requirements also include information collection activities covered under the Paperwork Reduction Act (PRA). The activities consist of: (1) A new application for an SEA to submit to the Department to apply for FY 2009 and ARRA SIG funds; (2) the reporting of specific school-level data on the use of SIG funds and specific interventions implemented in LEAs receiving SIG funds that the Department currently does not collect through EDFacts; (3) an application for an LEA to submit to its SEA to receive SIG funds; and (4) the SEA posting its LEAs' applications.

The Department received emergency approval of the information collection activities through June 30, 2010 at the same time it issued the final requirements. The Office of Management and Budget (OMB) also approved a change to the collection at the time the Department issued the interim requirements in January. These approvals permitted the SEA application process to begin so that students in the lowest-achieving schools will begin receiving the assistance they need as soon as possible. The information collection activities in the final requirements will continue past June 30th, however. Therefore, the Department is requesting regular approval of the information collection activities.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4242. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–13719 Filed 6–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of

1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 3, 2010.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: NCES Cognitive, Pilot, and Field Test Studies System Clearance.

Frequency: Once.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 45,000
Burden Hours: 9,000

Abstract: This is a request for a 3-year renewal of the generic clearance for the National Center for Education Statistics (NCES) that will allow it to continue to develop, test, and improve its survey and assessment instruments and methodologies. The procedures utilized to this effect include but are not limited to experiments with levels of incentives for various types of survey operations, focus groups, cognitive laboratory activities, pilot testing, exploratory interviews, experiments with questionnaire design, and usability testing of electronic data collection instruments.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4319. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–13717 Filed 6–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by June 15, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: June 2, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for Grants under the Training Program for Federal TRIO Programs.

Abstract: This application is needed to conduct a national competition for new grant awards under the Training Program for Federal TRIO Programs for Fiscal Year 2010. The Training Program for Federal TRIO programs is mandated by statute to provide training for leadership personnel and staff emoloyed in, participating in, or preparing for employment in Federal TRIO Program projects designed to indentify individuals from disadvantaged backgrounds, prepare them for a program of postsecondary education, and provide special services for such students pursuing programs of postsecondary education.

Additional Information: Without the granting of the emergency clearance, the Department will miss a statutory deadline and harm to the public would be caused due to lack of training needed to operate Federal TRIO Program's grants. All staff employed by Federal TRIO Programs' grants provide support and esnure high school completion, college entrance and competion among first generation and low income students and individuals with disabilities. Without funding these activities would go unsupported by training.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 60
Burden Hours: 2,040

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4331. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–13713 Filed 6–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Full-Service Community Schools Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215J.

Applications Available: June 8, 2010.

Deadline of Notice of Intent to Apply: June 23, 2010.

Date of Pre-Application Meeting: June 17, 2010.

Deadline for Transmittal of Applications: July 23, 2010.

Deadline for Intergovernmental Review: September 21, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Fund for the Improvement of Education (FIE), which is authorized by section 5411 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), supports nationally significant programs to improve the quality of elementary and secondary education at the State and local levels and help all children meet challenging academic content and academic achievement standards. The Full-Service Community Schools (FSCS) program, which is funded under FIE, encourages coordination of academic, social, and health services through partnerships between (1) Public elementary and secondary schools; (2) the schools' local educational agencies (LEAs); and (3) community-based organizations, nonprofit organizations, and other public or private entities. The purpose of this collaboration is to provide comprehensive academic, social, and health services for students, students' family members, and community members that will result in improved educational outcomes for children. The Full-Service Community Schools program is a "place-based" program (see *http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-28.pdf*) that can leverage investments by focusing resources in targeted places, drawing on the compounding effects of well-coordinated actions. Place-based approaches can also streamline otherwise redundant and disconnected programs.

Program Authority: 20 U.S.C. 7243–7243b.

Priorities:

These priorities are from the notice of final priorities, selection criteria, definitions, and requirements for this program, published elsewhere in this issue of the **Federal Register.**

Absolute Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applications, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Projects That Establish or Expand Full-Service Community Schools

Background: In order for children to be ready and able to learn, they need academic, social, and health supports. The National Research Council has cited the presence of these supports as important predictors of future adult success.[1] Students' needs are better met when academic, social, and health services are delivered to them in a well-coordinated, results-focused, and integrated manner.

A full-service community school, as defined in this notice, is a public elementary or secondary school that works with its local educational agency and community-based organizations, nonprofit organizations, and other public or private entities to provide a coordinated and integrated set of comprehensive academic, social, and health services that respond to the needs of its students, students' family members, and community members, as defined in this notice. These results-focused partnerships, as defined in this notice, are based on identified needs and organized around a set of mutually defined results and outcomes.

Full-service community schools recognize that schools do not operate in total isolation from the communities in which they are located. Community challenges such as poverty, violence, poor physical health, and family instability can become education issues when left unaddressed. When schools and community partners collaborate to address these issues and align their resources to achieve common results, children are more likely to succeed

[1] Committee on Community-Level Programs for Youth (2002). *Community Programs to Promote Youth Development.* Edited by J.S. Eccles and J. Gootman. Washington, DC: National Research Council, Institute of Medicine, and National Academy Press.

academically, socially, and physically. Full-service community schools seek to address these challenges by connecting students, students' family members, and community members with available services and opportunities, creating the conditions for students to achieve in school and beyond.

The Department recognizes that in order for students and the members of the communities in which they reside to thrive, their schools must be effective. Effective schools create learning environments that support student academic success and foster student engagement. When characterized by stable leadership and a strong instructional program, full-service community schools have been associated with improved attendance and student achievement,[2] increased family and community engagement,[3] and improved student behavior and youth development.[4] In addition, system-wide support should be present for developing, implementing, and sustaining effective full-service community schools. There is greater potential impact when full-service community schools have a strong infrastructure in place to support sustaining the overall effort and expanding the number of FSCS sites throughout an LEA.

In this and other programs, it is imperative that we pay close attention to our most educationally disadvantaged, persistently lowest-achieving schools, as defined in this notice. These are the schools that continue to challenge our country's system of public education and fail to adequately educate our Nation's youth. Persistently lowest-achieving schools can be transformed into schools that enable all students to meet high standards when these schools implement school intervention models, as defined in this notice, that are aligned with a well-coordinated system of comprehensive academic, social, and health services. The Department believes that the full-service community school model can create the needed synergy to bolster efforts to transform persistently lowest-achieving schools into schools that enable all students to meet high standards.

This absolute priority supports projects that propose to establish or expand (through collaborative efforts among local educational agencies, community-based organizations, nonprofit organizations, and other public and private entities) full-service community schools, as defined in this notice, offering a range of services. To meet this priority, an applicant must propose a project that is based on scientifically based research—as defined in section 9101(37) of the ESEA—and that establishes or expands a full-service community school. Each applicant must propose to provide at least three of the following eligible services at each participating full-service community school included in its proposed project:

1. High-quality early learning programs and services.
2. Remedial education, aligned with academic supports and other enrichment activities, providing students with a comprehensive academic program.
3. Family engagement, including parental involvement, parent leadership, family literacy, and parent education programs.
4. Mentoring and other youth development programs.
5. Community service and service learning opportunities.
6. Programs that provide assistance to students who have been chronically absent, truant, suspended, or expelled.
7. Job training and career counseling services.
8. Nutrition services and physical activities.
9. Primary health and dental care.
10. Activities that improve access to and use of social service programs and programs that promote family financial stability.
11. Mental health services.
12. Adult education, including instruction of adults in English as a second language.

Competitive Preference Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award an additional 2 points to an application, depending on how well the application meets this priority.

This priority is:

Strategies That Support Turning Around Persistently Lowest-Achieving Schools

We give competitive preference to applications that propose to serve persistently lowest-achieving schools, as defined in this notice, and are currently implementing or plan to implement one of three school intervention models, as defined in this notice, to enable these schools to become full-service community schools. Applicants seeking to receive this priority must describe (a) The school intervention model that would be or is being implemented to improve academic outcomes for students; (b) the academic, social, and/or health services that would be provided and why; and (c) how the academic, social and/or health services provided would align with and support the school intervention model implemented.

Application Requirements:

The following requirements are from the NFP for this program, published elsewhere in this issue of the **Federal Register.**

Background: Children, particularly those living in poverty, need a variety of family and community resources, including intellectual, social, physical, and emotional supports, to have the opportunity to attain academic success. Many children live in communities that lack not only high-performing schools, but also the supports needed to be ready and able to learn when they start school. School-community partnerships can be key strategies for providing resources to these individual students. A variety of organizations can help provide the missing resources for children living in poverty and, therefore, begin to transform struggling schools and communities. These organizations can be public or private, community-based or faith-based, governmental or non-governmental, or a combination thereof, but they must work together with clearly articulated and mutually agreed upon goals, target populations, roles, and desired results and outcomes. Partnerships between schools and organizations may take many forms and should be based on overlapping vital interests. For example, a telecommunications firm might provide internships to high school students to foster real-world connections to the school's science curriculum. Or, a local police department might provide mentors for troubled youth in order to keep students in school. Such results-focused partnerships, as defined in this notice, can transform the capacity of both the school and its partners to better serve students' and families' diverse needs and improve their outcomes.

A full-service community school coordinator, as defined in this notice, is often central to the effective facilitation of these partnerships, as well as the coordination and integration of services,

[2] Krenichyn, Kira, Helene Clark, and Lymari Benitez (2008). Children's Aid Society 21st Century Community Learning Centers After-School Programs at Six Middle Schools: Final Report of a Three-Year Evaluation, 2004–2007. New York: ActKnowledge.

[3] Quinn, Jane, and Joy Dryfoos (2009). Freeing teachers to teach: Students in full-service community schools are ready to learn. *American Educator,* Summer 2009:16–21.

[4] Whalen, Samuel (2007). Three Years Into Chicago's Community Schools Initiative (CSI): Progress, Challenges, and Emerging Lessons. Chicago: University of Illinois at Chicago. Retrieved April 9, 2010, from *http://www.aypf.org/documents/CSI_ThreeYearStudy.pdf.*

programs, supports, and available opportunities. The FSCS coordinator's main responsibility is to work closely and plan jointly with the school's principal to drive, develop, and implement the community school effort. The FSCS coordinator convenes a cross-section of school staff, parents, and community organizations to develop systems with which to coordinate new and existing programs that respond to the needs of the school and community through ongoing needs assessments. The FSCS coordinator adds capacity to the principal's leadership of the school and is essential to ensuring that all programs, supports, services, opportunities, and the mutually defined results and outcomes are fully aligned.

In order to receive funding, an applicant must include the following in its application:

1. A description of the needs of the students, students' family members, and community members to be served, including information about (a) The basic demographic characteristics of the students, students' family members, and community members; (b) the magnitude or severity of the needs to be addressed by the project; and (c) the extent to which specific gaps or weaknesses in services, infrastructures, or opportunities have been identified and will be addressed by the proposed project.

2. A list of entities that will partner with the applicant to coordinate existing services or to provide additional services that promote successful student, family, and community results and outcomes. The applicant must describe how existing resources and services will be coordinated and integrated with new resources and services.

3. A memorandum of understanding between the applicant and all partner entities, describing the role each partner will assume, the services or resources each one will provide, and the desired results and outcomes.

4. A description of the organizational capacity of the applicant to provide and coordinate eligible services at a full-service community school that will support increased student achievement. The description must include the applicant's experience partnering with the target school(s) and other partner entities; examples of how the applicant has responded to challenges working with these schools and entities; lessons learned from similar work or previous community-school efforts, and a description of the existing or proposed infrastructure to support the implementation and sustainability of the full-service community school. Applicants must also describe their past experience (a) building relationships and community support to achieve results; and (b) collecting and using data for decision-making and continuous improvement.

5. A comprehensive plan based on results-focused partnerships, as defined in this notice, that includes a description of well-aligned goals, services, activities, objectives, performance measures, and project results and outcomes. In addition, the plan must include the estimated total number of individuals to be served, disaggregated by the number of students, students' family members, and community members, and the type and frequency of services to be provided to each group.

6. A list and description of the eligible services to be provided or coordinated by the applicant and the partner entities; a description of the applicant's approach to integrating new and existing programs and services with the school's (or schools') core instructional program; and identification of the intended results and outcomes.

7. A description of how the applicant will use data to drive decisionmaking and measure success. This includes a description of the applicant's plans to monitor and assess outcomes of the eligible services provided and coordinated by the FSCS project, as well as the number of individuals served, while complying with Federal, State, and other privacy laws and requirements.

8. A description of the roles and responsibilities of a full-time FSCS coordinator and the proposed approach to ensuring that the FSCS coordinator engages in joint planning with the principal and key community stakeholders to guide the proposed full-service community school.

Applications that do not meet these requirements will not be read and will not be considered for funding.

Definitions: The following definitions are from the NFP for this program, published elsewhere in this issue of the **Federal Register.**

These definitions are:

Community member means an individual who is not a student or a student's family member, as defined in this notice, but who lives in the community served by the FSCS grant.

Full-service community school means a public elementary or secondary school that works with its local educational agency and community-based organizations, nonprofit organizations, and other public or private entities to provide a coordinated and integrated set of comprehensive academic, social, and health services that respond to the needs of its students, students' family members, and community members. In addition, a full-service community school promotes family engagement by bringing together many partners in order to offer a range of supports and opportunities for students, students' family members, and community members.

Full-service community school coordinator means an individual who works closely and plans jointly with the school's principal to drive the development and implementation of the FSCS effort and who, in that capacity, facilitates the partnerships and coordination and integration of service delivery.

Persistently lowest-achieving school means, as determined by the State under the School Improvement Grants program (pursuant to the final requirements for the School Improvement Grants program, 74 FR 65618, published in the **Federal Register** on December 10, 2009)—

(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

Results-focused partnership means a partnership between a full-service community school and one or more nonprofit organizations (including community-based organizations) that is based on identified needs and organized around a set of mutually defined results and outcomes for increasing student success and improving access to family and community services.

School intervention model means one of the following three specific interventions described in the final requirements for the School

Improvement Grants program, 74 FR 65618, published in the **Federal Register** on December 10, 2009 and summarized as follows:

(1) Turnaround model, which includes, among other actions, replacing the principal and rehiring no more than 50 percent of the school's staff, adopting a new governance structure, and implementing an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with a State's academic standards.

(2) Restart model, in which a local educational agency converts the school or closes and reopens it under the management of a charter school operator, a charter management organization, or an education management organization that has been selected through a rigorous review process.

(3) Transformation model, which addresses four specific areas critical to transforming persistently lowest-achieving schools: (i) Replace the principal and take steps to increase teacher and school effectiveness; (ii) institute comprehensive instructional reforms; (iii) increase learning time and create community-oriented schools; (iv) provide operational flexibility and sustained support.

Student means a child enrolled in a public elementary or secondary school served by the FSCS grant.

Student's family member means the student's parents/guardians, siblings, and any other related individuals living in the same household as the student and not enrolled in the school served by the FSCS grant.

Program Authority: 20 U.S.C. 7243–7243b.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria (NFP) for this program, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $5,000,000.

Estimated Range of Awards: $275,000–$500,000.

Estimated Average Size of Awards: $415,000.

Maximum Award: The maximum award amount is $500,000 per year. We may choose not to further consider or review applications with budget requests for any 12-month budget period that exceed this amount, if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount.

Estimated Number of Awards: 8–12.

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 for a grant under this competition, an applicant must be a consortium consisting of a local educational agency and one or more community-based organizations, nonprofit organizations, or other public or private entities. Consortia must comply with the provisions governing group applications in 34 CFR 75.127 through 75.129 of EDGAR.

2. *Cost Sharing or Matching:* To be eligible for an award, a portion of the services provided by the applicant must be supported through non-Federal contributions, either in cash or in-kind donations. The applicant must propose the amount of cash or in-kind resources to be contributed for each year of the grant.

3. *Planning:* Interagency collaborative efforts are highly complex undertakings that require extensive planning and communication among partners and key stakeholders. Partnerships should be based on identified needs and organized around a set of mutually-defined results and outcomes. Applicants under this program may devote funds received during the first year of the project period to comprehensive program planning, establishing results-focused partnerships, and capacity building. Funding received by grantees during the remainder of the project period must be devoted to program implementation.

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://www2.ed.gov/programs/communityschools/applicant.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 or competition as follows: CFDA number 84.215J.

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 competition.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. This e-mail notification should be sent to *FSCS@ed.gov* with "INTENT TO APPLY" in the subject line by June 23, 2010. Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application.

You should limit the application narrative [Part III] to the equivalent of no more than 35 pages, using the following standards:

- A "page" is 8.5″ × 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, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

3. *Submission Dates and Times:*

Applications Available: June 8, 2010.

Deadline for Notice of Intent to Apply: June 23, 2010.

Date of Pre-Application Meeting: The Department will hold a pre-application meeting for prospective applicants on June 17, 2010 from 1:30 p.m. to 3:30 p.m. at the U.S. Department of Education, Barnard Auditorium, 400 Maryland Avenue, SW., Washington, DC. Interested parties are invited to participate in this meeting to discuss the purpose of the FSCS program, absolute and competitive priorities, application requirements, definitions, selection criteria, application content, submission requirements, and reporting requirements. Interested parties may participate in this meeting either by conference call or in person. This site is accessible by Metro on the Blue, Orange, Green, and Yellow lines at the Seventh Street and Maryland Avenue exit of the L'Enfant Plaza station.

Individuals interested in attending this meeting must register no later than June 11, 2010 by e-mailing their name, organization, and contact information with "PRE-APPLICATION MEETING" in the subject line to *FSCS@ed.gov.* There is no registration fee for attending this meeting. For further information contact Jill Staton, U.S. Department of Education, Office of Innovation and Improvement, room 4W245, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: (202) 401–2091 or by e-mail: *FSCS@ed.gov.*

Assistance to Individuals With Disabilities at the Pre-Application Meeting

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Deadline for Transmittal of Applications: July 23, 2010.

Applications for grants under this competition 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.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 21, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) You must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Full-Service Community Schools program—CFDA Number 84.215J 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 competition 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: Jill Staton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W245, Washington, DC 20202. FAX: (202) 205–5630.

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 84.215J), 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 84.215J), 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

Selection Criteria: The selection criteria for this competition are from the NFP for this program, published elsewhere in this issue of the **Federal Register.** These selection criteria are listed in the application package as well as this notice. We may apply one or more of these criteria in any year in which this program is in effect. The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion. The selection criteria are as follows:

(a) *Quality of the Project Design (up to 25 points).*

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project consists of a comprehensive plan that includes a description of—

(i) The project objectives;

(ii) The students, students' family members, and community to be served, including information about the demographic characteristics and needs of the students, students' family members, and other community members and the estimated number of individuals to be served; and

(iii) The eligible services (as listed in the Absolute Priority described elsewhere in this notice) to be provided or coordinated by the applicant and its partner entities, how those services will meet the needs of students, students' family members, and other community members, and the frequency with which those services will be provided to students, students' family members, and community members.

(b) *Adequacy of Resources (up to 20 points).*

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources to be provided by the applicant and consortium partners;

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

(iii) The extent to which costs are reasonable in relation to the number of persons to be served and services to be provided.

(c) *Quality of the Management Plan (up to 25 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project consists of a comprehensive plan that includes a description of planning, coordination, management, and oversight of the eligible services (as listed in the Absolute Priority described elsewhere in this notice) to be provided at each school to be served, including the role of the school principal, the FSCS coordinator, partner entities, parents, and community members;

(ii) The qualifications, including relevant training and experience, of the FSCS coordinator and other key project personnel including prior performance of the applicant on similar or related efforts; and

(iii) The extent to which the time commitments of the project director, the FSCS coordinator, and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(d) *Quality of Project Services (up to 20 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the project services, the Secretary considers the following:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice; and

(ii) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(e) *Quality of the Project Evaluation (up to 10 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the extent to which the proposed evaluation—

(i) Sets out methods of evaluation that include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(ii) Will provide timely and valid information on the management, implementation, or efficiency of the project; and

(iii) Will provide guidance on or strategies for replicating or testing the project intervention in multiple settings.

Factors Applicants May Wish To Consider in Developing an Evaluation Plan

The quality of the evaluation plan is one of the selection criteria by which applications in this competition will be judged. A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the project period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established one performance indicator for this program: The percentage of individuals targeted for services who receive services during each year of the project period. All grantees will be required to submit an annual performance report documenting their contribution in assisting the Department in measuring the performance of the program against this indicator, as well as performance on project-specific indicators.

VII. Agency Contact

For Further Information Contact: Jill Staton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W245, Washington, DC 20202. Telephone: (202) 401–2091 or by e-mail: *FSCS@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: June 3, 2010.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–13781 Filed 6–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance on Data Collection—General Supervision Enhancement Grants: Alternate Academic Achievement Standards; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.373X.

Dates:

Applications Available: June 8, 2010.

Deadline for Transmittal of Applications: July 23, 2010.

Deadline for Intergovernmental Review: September 21, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under section 616(i)(2) of the Individuals with Disabilities Education Act, as amended (IDEA), the Department may make awards to provide technical assistance to improve the capacity of States to meet data collection requirements.

Priority: This priority is from the notice of final priorities for this program, published in the **Federal Register** on July 9, 2007 (72 FR 37212).

Absolute Priority: For FY 2010 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technical Assistance on Data Collection—General Supervision Enhancement Grants-Alternate Academic Achievement Standards (GSEG)

Background:

On April 9, 2010, the Department issued a notice inviting applications for new awards under the Race to the Top (RTT) Assessment Program (75 FR 18171),[1] indicating its intention to support States in developing new alternate assessments based on alternate academic achievement standards. This notice announces a separate competition for GSEG grants through which States may receive funding for the development of new alternate assessments for students with the most significant cognitive disabilities. Through the invitational priority announced in this notice, we are encouraging States to develop alternate assessments that fit coherently with the assessment systems to be developed under the RTT Assessment Program.

Under section 1111(b)(1) of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), a State is required to adopt challenging student academic achievement standards and to apply the same standards "to all schools and children in the State." In developing the Title I ESEA regulations implementing this provision, the Department acknowledged that, although all children can learn challenging content, evaluating that learning through the use of alternate academic achievement standards is appropriate for a small, limited percentage of students who are within one or more of the existing categories of disability under IDEA (*e.g.,* autism, multiple disabilities, traumatic brain injury, mental retardation), and whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction. Accordingly, the Department adopted regulations, in 34 CFR 200.1(d), permitting States to measure the achievement of a limited percentage of students—those with the most significant cognitive disabilities—against challenging, but alternate, academic achievement standards.

[1] The following Web site provides more information on the RTT Assessment Program: *http://www2.ed.gov/programs/racetothetop-assessment/index.html.*

The Title I, Part A regulations in 34 CFR 200.6(a)(2)(ii)(B) also permit a State to develop alternate assessments based on alternate academic achievement standards. Alternate assessments that are used by States and local educational agencies (LEAs) under the ESEA must be designed to generate valid data that can be used for purposes of school, district, and State accountability. They must meet the requirements in 34 CFR 200.2 (State Responsibilities for Assessment) and 34 CFR 200.3 (Designing State Academic Assessment Systems) and fit coherently in the State's overall assessment system under 34 CFR 200.2. Under the provisions of 34 CFR 200.2(b), an alternate assessment must, among other things, be: (1) Aligned with a State's alternate academic achievement standards and provide coherent information about student attainment of those standards; (2) valid and reliable for the purposes for which the assessment is used; (3) consistent with relevant, nationally-recognized professional and technical standards; and (4) supported by evidence from test publishers or other relevant sources that the assessment is of adequate technical quality for each purpose required under the ESEA.

States that adopt alternate academic achievement standards are required under IDEA, as reflected in 34 CFR 300.160(c), to develop and implement alternate assessments that are aligned with the State's challenging academic content standards and that measure the achievement of children with the most significant cognitive disabilities. States must include alternate assessment data in their State Performance Plan and Annual Performance Reports relative to performance and participation of children with disabilities on State assessments under IDEA.

Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for grants to support States with one or more of the following activities: (1) Development of alternate academic achievement standards aligned with the State's academic content standards; (2) development of high-quality alternate assessments using universal design principles, to the extent possible, that measure the achievement of students with the most significant cognitive disabilities based on those standards; (3) reporting on the participation and performance of students with disabilities on alternate assessments based on alternate academic achievement standards; and (4) development of clear and appropriate guidelines for IEP Teams to use in determining which students should be assessed based on alternate academic achievement standards, and the development and implementation of training on those guidelines for IEP Teams.

Applicants must include information in their applications on how they will work with experts in large-scale assessment and special education to ensure that they are designing alternate academic achievement standards, and assessments based on those standards, that: (1) Address the needs of students with the most significant cognitive disabilities; (2) validly, reliably, and accurately measure student performance; and (3) result in high-quality data for use in evaluating the performance of schools, districts, and States. The experts selected should represent the range of skills needed to develop assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities that will meet the peer review guidelines for assessments published by the Department that are available at: *http://www2.ed.gov/policy/elsec/guid/saaprguidance.pdf.* Skill sets for experts must include experience with one or more of the following: (1) Large scale assessment; (2) standards-setting techniques; (3) assessment and measurement of children with disabilities; (4) accommodations and supports to assess grade-level content; (5) working with States to develop assessments; (6) development of criterion-referenced tests and instruments; (7) psychometric evaluation; (8) conducting studies of the technical adequacy of assessment instruments; (9) research and publishing in the area of assessment and psychometrics; and (10) applying the principles of universal design to large-scale assessments.

Projects funded under this priority also must—

(a) Budget to attend a three-day Project Directors' meeting in Washington, DC;

(b) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility; and

(c) Provide a written assurance that the State's Assessment Office (*i.e.,* the office that addresses accountability under Title I of the ESEA) was given the opportunity to contribute to the formulation of the application.

Under this competition we are particularly interested in applications that address the following priority.

Invitational Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

Background:

The RTT Assessment Program supports the development of new assessment systems that are to be used by multiple States; are valid, reliable, and fair; and measure student knowledge and skills against a common set of college- and career-ready standards in English/language arts (ELA) and mathematics in grades 3 to 8 and at least once in high school. The RTT Assessment Program requires that the Comprehensive Assessment Systems developed under the program include all students who have been identified as students with disabilities under IDEA who are not eligible to participate in alternate assessments based on alternate academic achievement standards.

The assessment systems developed under the RTT Assessment Program must also produce student achievement data and student growth data that can be used to determine whether individual students are college- and career-ready.

Information gathered from the RTT assessments should be useable in informing—

(i) Determinations of school effectiveness for purposes of accountability under Title I of the ESEA;

(ii) Determinations of individual principal and teacher effectiveness for purposes of evaluation;

(iii) Determinations of principal and teacher professional development and support needs; and

(iv) Teaching, learning, and program improvement.

States are obligated, under Title I of the ESEA, IDEA, and section 504 of the Rehabilitation Act of 1973, as amended, to ensure that all children with disabilities are included in State assessment systems. States or consortia of States may apply under the absolute priority in this notice for a grant to develop alternate academic achievement standards and alternate assessments for students with the most significant cognitive disabilities. Given that the RTT Assessment program does not support the development of alternate assessments based on alternate academic achievement standards, we encourage States under this competition to develop assessments that fit coherently with the Comprehensive Assessment Systems to be developed by State consortia under the RTT Assessment Program.

This invitational priority is:

The Secretary is particularly interested in projects from consortia of States to develop alternate assessment systems for students with the most significant cognitive disabilities that fit coherently with the assessment systems to be developed under the RTT Assessment Program. These alternate assessment systems must measure student knowledge and skills against a common set of college- and career-ready standards in ELA and mathematics held in common by States in the consortia and the related alternate assessments, for grades 3 through 8, and at least one grade in high school. The Secretary is also interested in projects that propose the development of alternate assessment systems that use approaches to technology, assessment administration, scoring, reporting, and other factors that facilitate the coherent inclusion of these assessments within States' Comprehensive Assessment Systems.

Program Authority: 20 U.S.C. 1411(c) and 1416(i)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities for this program, published in the **Federal Register** on July 9, 2007 (72 FR 37212).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds for Year 1: $22,000,000.

Estimated Range of Awards for Year 1: $1,300,000–$1,500,000 per State.

Estimated Average Size of Awards for Year 1: $1,400,000 per State.

Estimated Available Funds for Years 2–4: $11,000,000.

Estimated Range of Awards for Years 2–4: $650,000–$750,000 per State.

Estimated Average Size of Awards for Years 2–4: $700,000 per State.

Maximum Award: We will reject any application that proposes a budget for a single budget period of 12 months that exceeds $1,500,000 per State in year one and $750,000 per State in years two through four. We will reject any application that proposes a budget exceeding the stated maximum award amount, unless the application involves a consortium, or any other group of eligible parties that meets the requirements of 34 CFR 75.127 through 75.129. The level of funding for a consortium, or any other group of States, outlying areas (OAs), or freely associated States (FAS) will reflect the combined total that the eligible applicants comprising the consortium, or group, would have received if they had applied separately. The Secretary does not intend to make more than one award to serve a single State, OA, or FAS. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 15 (less if consortia receive awards).

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs), OAs, FAS, and, if endorsed by the SEA to apply and carry out the project on behalf of the SEA, local educational agencies (LEAs), public charter schools that are LEAs under State law, institutions of higher education (IHEs), tribes or tribal organizations, other public agencies, private nonprofit organizations, and for-profit organizations.

Note: States, OAs, and FAS are encouraged to form consortia with any other group of eligible parties that meet the requirements in 34 CFR 75.127 through 75.129 to apply under the priority in this notice. A consortium is any combination of eligible entities. The Secretary views the formation of consortia as an effective and efficient strategy to address the requirements of the priority in this notice.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.373X.

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 competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 40 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, including titles, headings, footnotes, quotations, references, abstracts, 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 cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application 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: June 8, 2010.

Deadline for Transmittal of Applications: July 23, 2010.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants Web site, or in paper format by mail or hand delivery. For information (including dates and times) about how

to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 21, 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. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) You must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

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:

- Your participation in e-Application is voluntary.
- 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 competition 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 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 System 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. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your 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 84.373X), 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 submit your application in paper format by hand delivery, you (or a courier service) 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 84.373X), 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 from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has developed a performance measure that will be used to evaluate the overall effectiveness of projects funded under this competition. This measure is: The percentage of General Supervision Enhancement Grantee products and services that are of high-quality, relevance, and usefulness, as determined by Annual Performance Report submissions and reviews of grantee work products. To ensure that the Department has the data needed for this measure, grantees will be expected to participate in mid-term assessments of progress towards stated goals and objectives, and will also be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590). The Department will also determine at the end of the grantee's project period whether the grantee has been successful in achieving the purposes of its award.

VII. Agency Contact

For Further Information Contact: Susan Weigert, U.S. Department of Education, 400 Maryland Avenue, SW., room 4078, Potomac Center Plaza (PCP), Washington, DC 20202–2550. Telephone: (202) 245–6522.

If you use a TDD, call the Federal Relay Service (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: June 3, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–13783 Filed 6–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Full-Service Community Schools

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215J

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of final priorities, requirements, definitions, and selection criteria.

SUMMARY: The Secretary of Education announces priorities, requirements, definitions, and selection criteria for the Full-Service Community Schools (FSCS) program. The Secretary may use these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2010 and later years. We take this action to focus Federal assistance on supporting collaboration among schools and entities within a community in the provision of comprehensive academic, social, and health services for students, students' family members, and community members. We intend the priorities to support the improvement of student outcomes through their promotion of strong school-community partnerships that support effective resource coordination and service delivery. The FSCS program is a "place-based" program that can leverage investments by focusing resources in targeted places, drawing on the compounding effects of well-coordinated actions. Place-based approaches can also streamline otherwise redundant and disconnected programs.

DATES: *Effective Date:* These priorities, requirements, definitions, and selection criteria are effective July 8, 2010.

FOR FURTHER INFORMATION CONTACT: Jill Staton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W245, Washington, DC 20202–5970. Telephone (202) 401–2091 or by e-mail: *FSCS@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The Fund for the Improvement of Education (FIE), which is authorized by section 5411 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), supports nationally significant programs to improve the quality of elementary and secondary education at the State and local levels and help all children meet challenging academic content and academic achievement standards. The FSCS program, which is funded under FIE, encourages coordination of academic, social, and health services through partnerships among (1) public elementary and secondary schools; (2) the schools' local educational agencies (LEAs); and (3) community-based organizations, non-profit organizations, and other public or private entities. The purpose of this collaboration is to provide comprehensive academic, social, and health services for students, students' family members, and community members that will result in improved educational outcomes for children.

Program Authority: 20 U.S.C. 7243–7243b.

We published a notice of proposed priorities, requirements, definitions, and selection criteria for this program in the **Federal Register** on February 8, 2010 (75 FR 6188–6192). That notice contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria.

There are differences between the notice of proposed priorities, requirements, definitions and selection criteria (NPP) and this notice of final priorities, requirements, definitions, and selection criteria (NFP) as discussed in the *Analysis of Comments and Changes* section elsewhere in this notice.

Public Comment: In response to our invitation in the NPP, 11 parties submitted comments on the proposed priorities, requirements, definitions, and selection criteria.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition we do not address general comments that raised concerns not directly related to the proposed priorities, requirements, definitions, and selection criteria.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priorities, requirements, definitions, and selection criteria since publication of the notice of proposed priorities, requirements, definitions, and selection criteria follows. We discuss substantive issues under the title of the item to which they pertain.

Absolute Priority—Eligible Services

Comment: Two commenters suggested that services provided under the FSCS program include strong alignment of academic supports and enrichment activities with existing resources for remedial programming. In addition, one commenter noted the importance of aligning remedial education and academic enrichment activities with State standards, curricula, and academic achievement data to ensure stronger connections between school day and after-school activities.

Discussion: We agree that remedial education, academic supports, and enrichment activities should be clearly and deliberately aligned with other key components of successful schools (e.g., a State's high academic standards; rigorous curricula; effective teachers; effective school leadership; well-designed assessments and accountability systems; positive school climates; and strong professional development) and are modifying the absolute priority accordingly. We believe that such coordination and alignment are likely to support student academic success by promoting cost-effective school-community partnerships that are tailored to the needs of students and schools.

Changes: We have revised the service category regarding remedial education in the absolute priority. This category now reads "Remedial education, aligned with academic supports and other enrichment activities, providing students with a comprehensive academic program."

Comment: One commenter suggested that the FSCS program require the use of a standardized social-emotional curriculum for grades K–12 and require grantees to implement the resiliency-based after-school activities based on the 40 developmental assets from the Search Institute's Healthy Communities/Healthy Students program.

Discussion: We decline to adopt the changes suggested by the commenter because we believe that mandating the use of specific curricula or frameworks would unduly restrict the flexibility of applicants to develop FSCS projects that are most appropriately suited to their particular circumstances. Applicants are free to select models, which may include those suggested by the commenter, that they deem most appropriate to address the needs of their proposed project.

Changes: None.

Comment: One commenter suggested that while family literacy and parental involvement are related activities, they are distinct in scope and execution and therefore, should not be grouped into a single service category. The commenter further stated that parent education and parent leadership programs are related, yet distinct, and should be listed separately in the final notice.

Discussion: We decline to adopt the changes suggested by the commenter because we believe that family literacy, parental involvement, parent education, and parent leadership are related in that they seek to meaningfully engage parents in ways that support their children's learning. Services and activities coordinated or provided by the FSCS should be based on identified needs and aligned with clearly articulated outcomes, regardless of the comprehensive nature of the service category itself. Because we believe these services are so inter-related, we are revising the absolute priority to consolidate them under one broad service category of family engagement.

Changes: In the absolute priority, we have combined the parental involvement, family literacy activities, parent education, and parent leadership program service categories into one service category, which now reads "Family engagement, including parental involvement, parent leadership, family literacy, and parent education programs."

Comment: Some commenters recommended that in addition to parental involvement and family literacy activities, family services include linking families to a wide range of supports, including public health insurance options, social service programs (e.g., food stamps, Medicaid, and Temporary Assistance for Needy Families), and programs that encourage family financial stability (e.g., benefit screenings, assistance in claiming eligible tax credits and income supports, financial literacy programs, employment services, and asset-building programs).

Discussion: We agree with the commenters that the receipt of information about health insurance options, social service programs, and programs that promote family financial stability can contribute to the overall well-being of a family. Providing information about health insurance options is an eligible activity under the primary health care service category in the absolute priority. We believe that using FSCS grant funds for activities that improve access to and use of social services programs and programs that promote family financial stability is also consistent with the purpose of the FSCS program, and are adding these activities to the absolute priority. It is important to note, however, that FSCS Federal grant funds are of greatest benefit when used to coordinate existing resources and services. Community schools cannot be sustained if administrators rely entirely on Federal FSCS funds to provide services.

Changes: We have added a new service category to the absolute priority that provides for activities that improve access to and use of social service programs and programs that promote family financial stability.

Comment: One commenter suggested that the needs of students who have been chronically absent from school should receive greater prominence in the list of eligible services in the absolute priority. The commenter noted that chronic absenteeism during the early elementary school years can significantly affect a student's future academic success.

Discussion: We agree with the commenter that chronic absenteeism can significantly affect academic success. We note that there is a growing body of national research linking chronic absence (missing 10 percent or more of school due to excused or unexcused absences) to poor academic achievement, dropping out of school, and other negative outcomes. A report conducted by the National Center for Children in Poverty in 2008 examined the prevalence, consequences, and potential contributing factors associated with chronic absence in grades K–3 and noted that one in ten kindergarten and first-grade students is chronically absent nationally.[1] The effects of chronic absence can be magnified for children living in poverty because they tend to have access to fewer resources at home to make up for lost time in school. We will, therefore, add to the service category in the absolute priority, programs that provide assistance to students who have been chronically absent.

Changes: We have revised the service category regarding programs that provide assistance to students who have been truant, suspended, or expelled, to include students who have been chronically absent.

Comment: One commenter recommended modifying the service category regarding nutrition services to include a reference to physical education classes. The commenter asserted that nutrition, physical activity, and physical education are equally important in ensuring the healthy physical development of a child and his or her academic success.

Discussion: We agree that physical activity and physical education are important to the healthy development of a child. An underlying goal of the FSCS program, however, is to supplement the in-school curriculum with additional services, supports, and opportunities, not to supplant it. We consider physical education to be a component of the in-school curriculum that, and as such, should not be supported using FSCS grant funds. Physical activities, however, are allowable if carried out in association with nutrition services or with mentoring and youth development services. We will, therefore, add physical activities to the nutrition services category in the absolute priority.

Changes: We have revised the nutrition services category to include physical activities.

Comment: One commenter suggested that while primary health care and dental care are related to each other, they should be listed as separate eligible activities and that the need for and delivery of one or both of these services should be based on the results of a needs assessment.

Discussion: We agree with the commenter that the provision of primary health care or dental care should be based on the needs of students, students' family members, and community members. We decline, however, to adopt the changes suggested by the commenter. Listing primary health care and dental care in one service category is unlikely to affect the

[1] Chang, Hedy; Romero, Mariajose. Present, Engaged and Accounted For: The Critical Importance of Addressing Chronic Absence in the Early Grades. The Annie E. Casey Foundation; National Center for Children in Poverty (2008).

coordination or delivery of these services by grantees under this program. All services and activities coordinated or provided by the FSCS should be based on identified needs and aligned with clearly articulated outcomes, regardless of the comprehensive nature of the service category itself.

Changes: None.

Comment: One commenter recommended that vision care and the provision of corrective eyewear be explicitly included as an element of the primary health and dental care service category since vision problems can interfere with students' academic attainment. The commenter noted that undiagnosed and untreated vision problems are especially problematic among low-income and minority children.

Discussion: We agree that access to vision care can affect students' success in school. Vision screening and vision care, including the provision of corrective eyewear, are allowable activities under the primary health care and dental care service category. Therefore, it is unnecessary to make the changes suggested by the commenter.

Changes: None.

Comment: One commenter suggested that in addition to counseling services, clinical mental health services should be included as an eligible service because many students in low-performing schools also live in high-poverty neighborhoods with increased rates of trauma due to violence, drug use, and other environmental stressors.

Discussion: We agree with the commenter that addressing the mental health needs of students and their family members supports social and academic development and that these services may be broader than the proposed "mental health counseling services." We recognize that mental health services encompass a broad range of school- and community-based services, including but not limited to clinical mental health services, and that the types of interventions may vary and should be based on the needs of the service recipient. We are, therefore, modifying the service category for mental health counseling services to be more general, which will allow applicants to define the appropriate range of mental health interventions needed to meet the needs of their target population.

Change: We have revised the mental health counseling services service category to read "Mental health services."

Competitive Preference Priority—Strategies That Support Turning Around Persistently Lowest-Achieving Schools

Comment: Several commenters expressed concern that the competitive preference priority for Strategies that Support Turning Around Persistently Lowest-Achieving Schools may result in the Department making awards to a cohort of grantees that is limited to only those Title I schools identified as persistently lowest-achieving. Some commenters stated that the competitive preference priority should not be limited only to the persistently lowest-achieving schools but, instead, be more broadly defined to include all schools that are eligible for Title I funding. Several commenters contended that it takes significantly more time, effort, and resources for persistently lowest-achieving schools to move through the developmental stages of a community school and to demonstrate results. In order to select projects with the greatest potential for success, one commenter suggested that the Department select a subset of applicants with schools that are persistently lowest-achieving from among the overall applicant pool in order to provide a more balanced portfolio of grantees.

Another commenter stated that the Department's School Improvement Grants (SIG) program already prioritizes persistently lowest-achieving schools and provides a significant amount of financial resources to support implementation of the school intervention models. Other commenters stated that the competitive preference priority should be eliminated and that the FSCS program should support the development of the highest-quality full-service community schools, regardless of Title I funding status.

Discussion: We appreciate the commenters' concerns. This competitive preference priority is aligned with the Department's reform goal of improving achievement in low-performing schools through intensive support and effective interventions. Persistently lowest-achieving schools are most vulnerable and in need of a well-coordinated and integrated set of services to support their turnaround efforts.

With respect to the SIG program, we note that FSCS program funds can be used to strengthen implementation of the intervention models authorized under the SIG program by leveraging resources that support a comprehensive academic program and qualify as one or more of the allowable FSCS services. FSCS funds cannot be used for direct implementation of the SIG interventions.

In response to commenters' concerns that establishing a competitive preference priority for these schools would prevent support for the development of the highest quality full-service community schools, we note that including this competitive preference priority will not restrict funding only to those applications that are eligible to receive competitive preference. All applications will be evaluated and awarded points based on a number of selection criteria. Further, applications will be assessed under this competitive preference priority depending on how well an application meets the priority. We believe the inclusion of this competitive preference priority will allow for a balanced portfolio of funded applicants, including but not limited to, our most educationally disadvantaged, persistently lowest-achieving schools. For these reasons we have concluded that no changes to the competitive preference priority should be made.

Changes: None.

Comment: One commenter asked whether a school that used to be a persistently lowest-achieving school but is no longer a persistently lowest-achieving school is eligible to receive the competitive preference. The commenter suggested that a school that was formerly identified as a persistently lowest-achieving school should be eligible for the competitive preference if it can demonstrate that it has taken steps within the last five years to become a full-service community school.

Discussion: Applications that include schools that are not persistently lowest-achieving may still apply for funds under the FSCS program, but would not be eligible for the competitive preference. In order to meet the competitive preference applicants must propose to serve schools currently identified by the State as persistently lowest-achieving schools that are currently implementing or plan to implement one of three school intervention models (as defined in this notice) to become full-service community schools.

Changes: None.

Comment: One commenter asked if one of the three school intervention models must be in place for an entity to be eligible to apply for a grant under the FSCS program.

Discussion: Applications that propose to serve persistently lowest-achieving schools that are planning to implement or are currently implementing one of the three school intervention models are

eligible for the competitive preference. Applications that do not propose to serve persistently lowest-achieving schools implementing or planning to implement one of the three school intervention models may still apply for an FSCS grant; however, such applications will not be eligible to receive the competitive preference.

Change: None.

Comment: Two commenters recommended adding other priorities. One commenter suggested adding a competitive preference for applicants that demonstrate an intention or plan to use site-based work and experience to catalyze district-wide change. The commenter noted that the presence of systems-level support and strong infrastructure is likely to result in the institutionalization of community school strategies. Another commenter recommended adding a competitive preference priority for applicants that collaborate with State educational agencies (SEAs) to develop mutually agreed upon performance measures for demonstrating the impact of community school interventions.

Discussion: We agree that there is greater potential impact when full-service community schools have a strong infrastructure in place to sustain the overall effort and expand the number of FSCS program sites throughout an LEA or State. Applicants have the flexibility to develop projects most appropriately suited to the needs and context of their target population. Accordingly, applicants are free to select models—including site-based management—they deem most appropriate to the needs of their proposed projects. Rather than adding a separate priority to address systemic support and infrastructure, we will revise the application requirements to focus on the importance of strong infrastructures to support full-service community schools.

In response to the commenter's recommendation that we add a competitive preference priority for applicants that collaborate with SEAs to develop mutually agreed upon community school performance measures, we decline to add this priority because applicants have the flexibility to partner with SEAs to develop a set of mutually defined performance measures but we do not believe this should be a priority.

Changes: We have revised application requirement (4), regarding organizational capacity, to require applicants to include a description of the existing or proposed infrastructure that will support the implementation and sustainability of the full-service community school.

Application Requirements

Comment: None.

Discussion: In the course of reviewing application requirement (1), regarding a description of the needs of students, students' family members, and community members to be served, we determined that requiring information about basic demographic characteristics of the target population would strengthen our understanding of the service recipients beyond their status as students, students' family members, and community members. Therefore, we have revised requirement (1) to require applicants to provide information about basic demographic characteristics of the population to be served.

Changes: We have revised application requirement (1) to require applicants to describe the needs of the students, students' family members, and community members to be served, including basic demographic characteristics of the students, students' family members, and community members.

Comment: Two commenters recommended strengthening the language in application requirement (2), which would require an applicant to provide a list of partner entities, to underscore the importance of realigning existing services and resources in support of the full-service community school. The commenters noted that community schools cannot be sustained if administrators rely entirely on the Federal FSCS program or any single funding stream.

Discussion: We agree that applicants should describe how they will realign existing resources to sustain the efforts of a full-service community school. We further believe that an applicant's primary emphasis should be on coordinating and integrating existing services and leveraged resources.

Change: We have revised application requirement (2), to provide that an applicant must describe how existing resources and services will be coordinated and integrated with new resources and services.

Comment: Two commenters recommended that we revise application requirement (3), regarding the memorandum of understanding, to provide that the memorandum of understanding include information about the services to be provided by partner entities and the results they will work toward, in addition to the role each partner entity will assume.

Discussion: We agree that the memorandum of understanding should include information about the role of each partner entity and the resources and services it will provide. This will help ensure that applicants have agreements in place to coordinate existing resources and leverage other resources. Such agreements contribute to the long-term sustainability of a community school effort. We will change the language in the final requirements accordingly.

Changes: We have revised application requirement (3) to require applicants to provide in their applications the memorandum of understanding between the applicant and all partner entities, describing the role each partner will assume, the services or resources it will provide, and the desired results and outcomes.

Comment: One commenter suggested that the Department revise application requirement (4), regarding organizational capacity, to require applicants to include in their applications a description of the existence of an infrastructure to support community schools at the LEA level. The commenter asserted that system-wide support promotes institutionalization of community schools as a strategy that will be sustained by the LEA over time.

Discussion: As discussed earlier, we agree that system-level support for community schools can promote better alignment of LEA policies, practices, and resources with the activities and intended outcomes of community schools. We also agree that requiring applicants to address this aspect of organizational capacity would enhance our ability to identify high-quality applications that are capable of achieving the desired results and outcomes. We are therefore modifying this requirement to require applicants to describe the existing or proposed infrastructure as part of an overall description of the applicant's experience partnering with the target school(s) and other partner entities, including the LEA.

Changes: We have revised application requirement (4) to provide that applicants must include in their applications a description of the existing or proposed infrastructure to support implementation and sustainability of the full service community school.

Comment: One commenter suggested that the Department require applicants to include a "logic model" in their applications. The commenter asserted that inclusion of a logic model promotes strong alignment of the goals, activities, objectives, performance measures, and

outcomes of the project, resulting in a more coherent evaluation plan.

Discussion: We agree that clearly articulated and well-aligned goals, activities, objectives, performance measures, and project outcomes are critical to the design of an effective community school and are modifying the application requirements to make this clear. Applicants have the flexibility to select a logic model or use an alternative approach of their choice to describe their projects' well-aligned goals, activities, objectives, performance measures, and project outcomes.

Changes: We have revised application requirement (5), regarding a comprehensive plan, to require that applicants submit a comprehensive plan that includes a description of well-aligned goals, services, activities, objectives, performance measures, and project results and outcomes.

Comment: One commenter suggested that application requirement (6), which requires applicants to provide a list and description of eligible services to be provided, be revised. The commenter recommended that we require applicants to include a description of the applicant's approach to integrating the existing and new programs and services with the school's core instructional program.

Discussion: We agree that there should be intentional alignment among key components of a full-service community school, including the school's core instructional program, and are revising this requirement accordingly. A full-service community school should work with its partners to provide a coordinated, integrated, and results-focused set of programs and services in response to the needs of its students, students' family members, and community members. Such alignment is needed for a full-service community school to be successful in achieving a range of results and outcomes, including student academic success.

Changes: We have revised application requirement (6) to require applicants to include a description of the applicant's approach to integrating new and existing programs and services with the school's (or schools') core instructional program and identification of the intended results and outcomes.

Comment: One commenter suggested revising application requirement (7), which requires applicants to provide a description of how the applicant will use data to drive decision-making and measure success. The commenter recommended that we expand the data collection rubric to require applicants to track results of health, social, and family support indicators, in addition to the proposed academic and community support indicators.

Discussion: We agree that applicants should collect data for a range of project and program indicators to monitor and assess progress toward achieving project results and outcomes and that those indicators should align with the proposed project's goals, objectives, services, and outcomes. As noted in the NIA, published elsewhere in this issue of the **Federal Register**, all grantees are required to collect and report on a program-level performance measure relevant to the individuals served by the project. However, we also believe that it is important for an applicant's data plan to include information related to project services as well as the recipients of those services and are revising the requirement accordingly. Applicants may design their plans based on the design of their projects. We further believe that it is important to emphasize in this requirement the need for applicants to ensure that their data collections and use of data comply with applicable Federal, State, and other privacy laws and requirements.

Changes: We have revised application requirement (7) to require applicants to include a description in their applications of their plans to monitor and assess outcomes of the eligible services provided and coordinated by the FCSC project as well as the number of individuals served. We also have revised this requirement to specify that an applicant's plan must provide for compliance with Federal, State, and other privacy laws and requirements.

Comment: Two commenters suggested revising application requirement (8), regarding the role and responsibilities of the full-service community school coordinator. The commenter recommended that we emphasize the need for the FSCS coordinator to be an active member of a joint planning effort consisting of key stakeholders from the school and community to guide the overall community school strategy and promote a sense of shared responsibility among all partners. Another commenter suggested requiring the FSCS coordinator to be a full-time position.

Discussion: We agree that the FSCS coordinator should work closely with school leadership and community stakeholders to plan and implement a community school strategy that aligns with and strengthens core instruction. Further, the role of the FSCS coordinator should be closely linked to the leadership and management of the school, beyond simply coordinating additional programs and services. Such joint planning encourages (1) identification of and support for mutually defined results and outcomes that are responsive to students' needs, (2) alignment of services with those needs, and (3) shared accountability for achieving intended outcomes and results. We also agree that performing the duties of an FSCS coordinator entails a full-time commitment and are revising the requirement accordingly.

Changes: We have revised application requirement (8) to require that the FSCS coordinator be employed full-time in that position at the full-service community school and that the applicant include a description of its proposed approach to ensuring that the FSCS coordinator engages in joint planning with the principal and key community stakeholders to guide the proposed full-service community school.

Comment: One commenter suggested that all full-service community schools be required to be open from 7:00 a.m. to 10:00 p.m. so as to expand community access to the facilities in order to achieve maximum utilization of available resources.

Discussion: We agree that full-service community schools should consider creative ways to expand learning opportunities and access to services and supports, including by extending hours of building facilities. However, we believe that such decisions are best left to applicants to determine based on the unique circumstances in their schools and communities.

Changes: None.

Eligible Applicants

Comment: One commenter recommended that the Department broaden the definition of *Eligible Applicants* to include a consortium of schools or an LEA because, as the requirement is currently written, a consortium of schools in a particular LEA could not apply without the approval of its LEA.

Discussion: Eligible applicants under the FSCS program are consortia consisting of an LEA and one or more community-based organizations, non-profit organizations, or other public or private entities. A public elementary or secondary school that has the independent authority to apply for a grant from the Department may do so. Generally, however, an individual school does not have independent authority to apply for a grant from the Department, or make the commitments required of a consortium partner. Consequently, in most cases, public elementary and secondary schools, while they can serve as FSCS sites, cannot be consortium partners or lead applicants and will need their LEA to

form a consortium and submit an application to the Department.

Changes: None.

Planning

Comment: Some commenters suggested amending the language for the optional planning year to direct applicants to devote adequate funding for comprehensive planning, capacity building, technical assistance, and evaluation. One commenter stated that grantees implementing one of the three school intervention models should be required to devote adequate funding for the first year of the project period to plan and obtain intensive technical assistance to build capacity for implementing a full-service community school. The commenter noted that schools undergoing significant restructuring tend to require intensive support for planning and implementation.

Discussion: We agree that including capacity-building activities as an allowable use of funds during the planning year will help address some of the technical assistance needs of projects that are in various stages of readiness and are modifying the requirement to provide this clarification. We believe that including comprehensive program planning and capacity-building as allowable activities in the first year of the project period will make those activities sufficiently broad in scope to cover the diverse needs of FSCS applicants, including the need for intensive technical assistance.

Changes: We have revised the requirement regarding the optional planning year to allow applicants to use FSCS funds for capacity building and establishing results-focused partnerships, as well as comprehensive program planning.

Definitions

Comment: One commenter suggested adding definitions to describe the concepts of "results-focused partnerships" and "conditions for learning" to provide greater context for the FSCS program.

Discussion: We agree that defining "results-focused partnerships" would highlight the importance of partners working collaboratively to achieve shared results and outcomes. In this regard, we believe that it is important for school-community partnerships to be based on identified needs and organized around a set of mutually defined results and outcomes. We are adding a definition of results-focused partnerships that reflects these key concepts.

In terms of defining "conditions for learning," we acknowledge that in order for students and the members of the communities in which they reside to thrive, their schools must be effective. Effective schools create learning environments that support student academic success and other outcomes. When characterized by stable leadership and a strong instructional program, full-service community schools have been associated with improved attendance and student achievement,[2] increased family and community engagement,[3] and improved student behavior and youth development.[4] However, we decline to add a definition of this term because we believe there are numerous factors that contribute to effective learning and defining the term might limit applicants' flexibility in developing their proposals.

Changes: We have added the term *results-focused partnerships* to the *Definitions* section of this notice and defined it to mean collaboration between a full-service community school and one or more nonprofit organizations (including community-based organizations) based on identified needs and organized around a set of mutually defined results and outcomes for increasing student success and improving access to family and community services. We have added this term throughout this notice, where appropriate.

Comment: One commenter suggested revising the definition of a *full-service community school* to highlight the importance of providing integrated services in response to identified needs. The commenter also recommended revising the definition of *full-service community school coordinator* to underscore the FSCS coordinator's role in planning jointly with the school principal.

Discussion: We agree that the commenter's suggested edits strengthen and clarify the meaning of full-service community school and FSCS coordinator and are revising the definitions accordingly.

Changes: We have revised the first sentence of the definition of *full-service community school* to indicate that services must be integrated as well as coordinated. We have also revised the definition of *full-service community school coordinator* to provide that the FSCS coordinator works closely and plans jointly with the school principal to drive the development and implementation of the full-service community school.

Comment: One commenter suggested revising the definition of *student* to include all children eligible to attend the school served by the FSCS grant, not just those enrolled.

Discussion: We believe it is unnecessary to revise the definition of *student* because a child residing in the community served by the full-service community school could be eligible for services under the definitions of either *student's family member* or *community member.* A *student* means a child enrolled in a public elementary or secondary school served by the FSCS grant. A child who lives in the community and has a sibling or any other related individual living in the same household as the student would fall under the definition of *student's family member* and, therefore, would be eligible for services under that definition. A child who does not meet the definition of *student* or *student's family member,* but who lives in the community served by the FSCS grant, would be eligible for services under the definition of *community member.*

Changes: None.

Selection Criteria—Quality of Management Plan

Comment: One commenter suggested revising selection criterion (c)(ii), Quality of the Management Plan, to include consideration of the applicant's plan to obtain technical assistance for community school planning and implementation.

Discussion: We do not believe applicants should be required to obtain technical assistance, but if an applicant were to propose using FSCS funds to obtain technical assistance, then that would be evaluated along with other proposed uses of funds. Applicants should determine for themselves their need for technical assistance in planning and implementing their proposed project.

Changes: None.

Selection Criteria—Quality of Project Services

Comment: One commenter suggested that we revise selection criterion (d)(2)(ii), Quality of Project Services, to

[2] Krenichyn, Kira, Helene Clark, and Lymari Benitez (2008). Children's Aid Society 21st Century Community Learning Centers After-School Programs at Six Middle Schools: Final Report of a Three-Year Evaluation, 2004–2007. New York: ActKnowledge.

[3] Quinn, Jane, and Joy Dryfoos (2009). Freeing teachers to teach: Students in full-service community schools are ready to learn. American Educator, Summer 2009:16–21.

[4] Whalen, Samuel (2007). Three Years Into Chicago's Community Schools Initiative (CSI): Progress, Challenges, and Emerging Lessons. Chicago: University of Illinois at Chicago. Retrieved April 9, 2010, from *http://www.aypf.org/documents/CSI_ThreeYearStudy.pdf.*

provide for consideration of the likelihood that the services to be provided will lead to improvements in children's social and emotional outcomes in addition to outcomes related to student achievement.

Discussion: We agree that a child's academic, social, and emotional development can contribute to the child's long-term economic and social success. We decline, however, to revise selection criterion (d)(2)(ii), Quality of Project Services, in order to maintain focus on the Department's reform goal of improving the academic achievement of students. We also believe that consideration of the complete range of supports and the desired results and outcomes of a proposed project is best addressed in other selection criteria, such as Quality of the Project Design.

Changes: None.

Comment: One commenter recommended adding a selection criterion that would be used to judge the extent to which applicants create and expand technology infrastructure to support the work of community schools.

Discussion: We agree that use of technology infrastructure can support attainment of student outcomes as well as support program management by enhancing a grantee's ability to use data to drive decision-making and measure success. However, we do not believe it is necessary to add a selection criterion specifically focused on technology infrastructure because technology infrastructure may be addressed in an applicant's responses to other selection criteria, such as Quality of the Project Design, Adequacy of Resources, and Quality of the Management Plan.

Changes: None.

Final Priorities

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**.

Absolute priority: Under an absolute priority, as specified by 34 CFR 75.105(c)(3), we consider only applications that meet the priority.

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii).

Invitational priority: With an invitational priority, we signal our interest in receiving applications that meet the priority; however, consistent with 34 CFR 75.105(c)(1), we do not give an application that meets an invitational priority preference over other applications.

Final Priorities: The Secretary establishes the following priorities for the Full-Service Community Schools program. We may apply these priorities in any year in which this program is in effect.

Absolute Priority—Projects That Establish or Expand Full-Service Community Schools

This absolute priority supports projects that propose to establish or expand (through collaborative efforts among local educational agencies, community-based organizations, nonprofit organizations, and other public and private entities) full-service community schools, as defined in this notice, offering a range of services. To meet this priority, an applicant must propose a project that is based on scientifically based research—as defined in section 9101(37) of the ESEA—and that establishes or expands a full-service community school. Each applicant must propose to provide at least three of the following eligible services at each participating full-service community school included in its proposed project:

1. High-quality early learning programs or services.

2. Remedial education, aligned with academic supports and other enrichment activities, providing students with a comprehensive academic program.

3. Family engagement, including parental involvement, parent leadership, family literacy, and parent education programs.

4. Mentoring and other youth development programs;

5. Community service and service learning opportunities.

6. Programs that provide assistance to students who have been chronically absent, truant, suspended, or expelled.

7. Job training and career counseling services.

8. Nutrition services and physical activities.

9. Primary health and dental care.

10. Activities that improve access to and use of social service programs and programs that promote family financial stability.

11. Mental health services.

12. Adult education, including instruction of adults in English as a second language.

Competitive Preference Priority—Strategies That Support Turning Around Persistently Lowest-Achieving Schools

We give competitive preference to applications that propose to serve persistently lowest-achieving schools, as defined in this notice, and are currently implementing or plan to implement one of three school intervention models, as defined in this notice, to enable these schools to become full-service community schools. Applicants seeking to receive this priority must describe (a) the school intervention model that would be or is being implemented to improve academic outcomes for students; (b) the academic, social, and/or health services that would be provided and why; and (c) how the academic, social and/or health services provided would align with and support the school intervention model implemented.

Requirements

Requirements: The Secretary establishes the following requirements for the FSCS program. We may apply these requirements in any year in which this program is in effect.

In order to receive funding, an applicant must include the following in its application:

1. A description of the needs of the students, students' family members, and community members to be served, including information about (a) the basic demographic characteristics of the students, students' family members, and community members; (b) the magnitude or severity of the needs to be addressed by the project; and (c) the extent to which specific gaps or weaknesses in services, infrastructures, or opportunities have been identified and will be addressed by the proposed project.

2. A list of entities that will partner with the applicant to coordinate existing services or to provide additional services that promote successful student, family, and community results and outcomes. The applicant must describe how existing resources and services will be coordinated and integrated with new resources and services.

3. A memorandum of understanding between the applicant and all partner entities, describing the role each partner will assume, the services or resources each one will provide, and the desired results and outcomes.

4. A description of the organizational capacity of the applicant to provide and coordinate eligible services at a full-service community school that will

support increased student achievement. The description must include the applicant's experience partnering with the target school(s) and other partner entities; examples of how the applicant has responded to challenges working with these schools and entities; lessons learned from similar work or previous community-school efforts, and a description of the existing or proposed infrastructure to support the implementation and sustainability of the full-service community school. Applicants must also describe their past experience (a) building relationships and community support to achieve results; and (b) collecting and using data for decision-making and continuous improvement.

5. A comprehensive plan based on results-focused partnerships, as defined in this notice, that includes a description of well-aligned goals, services, activities, objectives, performance measures, and project results and outcomes. In addition, the plan must include the estimated total number of individuals to be served, disaggregated by the number of students, students' family members, and community members, and the type and frequency of services to be provided to each group.

6. A list and description of the eligible services to be provided or coordinated by the applicant and the partner entities; a description of the applicant's approach to integrating new and existing programs and services with the school's (or schools') core instructional program; and identification of the intended results and outcomes.

7. A description of how the applicant will use data to drive decision-making and measure success. This includes a description of the applicant's plans to monitor and assess outcomes of the eligible services provided and coordinated by the FSCS project, as well as the number of individuals served, while complying with Federal, State, and other privacy laws and requirements.

8. A description of the roles and responsibilities of a full-time FSCS coordinator and the proposed approach to ensuring that the FSCS coordinator engages in joint planning with the principal and key community stakeholders to guide the proposed full-service community school.

Eligible Applicants

To be eligible for a grant under this competition, an applicant must be a consortium consisting of a local educational agency and one or more community-based organizations, nonprofit organizations, or other public or private entities.

Cost-Sharing or Matching

To be eligible for an award, a portion of the services provided by the applicant must be supported through non-Federal contributions, either in cash or in-kind donations. The applicant must propose the amount of cash or in-kind resources to be contributed for each year of the grant.

Planning

Interagency collaborative efforts are highly complex undertakings that require extensive planning and communication among partners and key stakeholders. Partnerships should be based on identified needs and organized around a set of mutually-defined results and outcomes. As a result, applicants under this program may devote funds received during the first year of the project period to comprehensive program planning, establishing results-focused partnerships, and capacity building. Funding received by grantees during the remainder of the project period must be devoted to program implementation.

Definitions

The Secretary uses the following definitions for this program. We may apply these definitions in any year in which this program is in effect.

Community member means an individual who is not a student or a student's family member, as defined in this notice, but who lives in the community served by the FSCS grant.

Full-service community school means a public elementary or secondary school that works with its local educational agency and community-based organizations, nonprofit organizations, and other public or private entities to provide a coordinated and integrated set of comprehensive academic, social, and health services that respond to the needs of its students, students' family members, and community members. In addition, a full-service community school promotes family engagement by bringing together many partners in order to offer a range of supports and opportunities for students, students' family members, and community members.

Full-service community school coordinator means an individual who works closely and plans jointly with the school's principal to drive the development and implementation of the FSCS effort and who, in that capacity, facilitates the partnerships and coordination and integration of service delivery.

Persistently lowest-achieving school means, as determined by the State under the School Improvement Grants program (pursuant to the final requirements for the School Improvement Grants program, 74 FR 65618, published in the **Federal Register** on December 10, 2009)—

(1) Any Title I school in improvement, corrective action, or restructuring that—

(i) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and

(2) Any secondary school that is eligible for, but does not receive, Title I funds that—

(i) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or

(ii) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

Results-focused partnership means a partnership between a full-service community school and one or more nonprofit organizations (including community-based organizations) that is based on identified needs and organized around a set of mutually defined results and outcomes for increasing student success and improving access to family and community services.

School intervention model means one of the following three specific interventions described in the final requirements for the School Improvement Grants program, 74 FR 65618, published in the **Federal Register** on December 10, 2009 and summarized as follows:

(1) Turnaround model, which includes, among other actions, replacing the principal and rehiring no more than 50 percent of the school's staff, adopting a new governance structure, and implementing an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with a State's academic standards.

(2) Restart model, in which a local educational agency converts the school or closes and reopens it under the management of a charter school operator, a charter management

organization, or an education management organization that has been selected through a rigorous review process.

(3) Transformation model, which addresses four specific areas critical to transforming persistently lowest-achieving schools: (i) Replace the principal and take steps to increase teacher and school effectiveness; (ii) institute comprehensive instructional reforms; (iii) increase learning time and create community-oriented schools; (iv) provide operational flexibility and sustained support.

Student means a child enrolled in a public elementary or secondary school served by the FSCS grant.

Student's family member means the student's parents/guardians, siblings, and any other related individuals living in the same household as the student and not enrolled in the school served by the FSCS grant.

Selection Criteria

Final Selection Criteria

The Secretary establishes the following selection criteria for evaluating an application under the FSCS program. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications, the application package, or both, we will announce the maximum possible points assigned to each criterion.

(a) *Quality of the Project Design.*

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project consists of a comprehensive plan that includes a description of—

(i) The project objectives;

(ii) The students, students' family members, and community to be served, including information about the demographic characteristics and needs of the students, students' family members, and other community members and the estimated number of individuals to be served; and

(iii) The eligible services (as listed in the Absolute Priority described elsewhere in this notice) to be provided or coordinated by the applicant and its partner entities, how those services will meet the needs of students, students' family members, and other community members, and the frequency with which those services will be provided to students, students' family members, and community members.

(b) *Adequacy of Resources.*

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources to be provided by the applicant and consortium partners;

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

(iii) The extent to which costs are reasonable in relation to the number of persons to be served and services to be provided.

(c) *Quality of the Management Plan.*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project consists of a comprehensive plan that includes a description of planning, coordination, management, and oversight of the eligible services (as listed in the Absolute Priority described elsewhere in this notice) to be provided at each school to be served, including the role of the school principal, the FSCS coordinator, partner entities, parents, and community members;

(ii) The qualifications, including relevant training and experience, of the FSCS coordinator and other key project personnel including prior performance of the applicant on similar or related efforts; and

(iii) The extent to which the time commitments of the project director, the FSCS coordinator, and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(d) *Quality of Project Services.*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the project services, the Secretary considers the following:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice; and

(ii) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(e) *Quality of the Project Evaluation.*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the extent to which the proposed evaluation—

(i) Sets out methods of evaluation that include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(ii) Will provide timely and valid information on the management, implementation, or efficiency of the project; and

(iii) Will provide guidance on or strategies for replicating or testing the project intervention in multiple settings.

Factors Applicants May Wish to Consider in Developing an Evaluation Plan.

The quality of the evaluation plan is one of the selection criteria by which applications in this competition will be judged. A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the project period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and about effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these final priorities and one or more of these final requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this final regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priorities, requirements, definitions, and selection criteria justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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: June 3, 2010.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–13775 Filed 6–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–194]

Appalachian Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

June 1, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 2210–194.

c. *Date Filed:* May 6, 2010.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Smith Mountain Lake Hydroelectric Project.

f. *Location:* The project is located in Pittsylvania, Bedford, Franklin, and Roanoke Counties, Virginia. The proposed action would occur in Bedford County approximately 0.5 mile south of State Route 823.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r).

h. *Applicant Contact:* Ms. Elizabeth Parcell, Appalachian Power Company, 996 Old Franklin Turnpike, Rocky Mount, VA 24151, phone: (540) 489–2540.

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 1, 2010.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link. The Commission strongly encourages electronic filings.

To paper-file, an original and eight copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2210–194) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensee proposes to permit Crystal Shores Yachting Community, LLC to reconstruct an existing 32-slip dock that was damaged during the winter. The replacement dock would be a covered fixed dock constructed of wood, arranged parallel to the shoreline, and would occupy the same footprint as the existing dock, 505.7 feet long and 48.4 feet wide. The dock would be attached to the shoreline via the existing bulkhead.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number (P–2210) excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3376 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR

"MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13561 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2055–077]

Idaho Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

June 1, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project Use of Project Lands and Waters.

b. *Project No:* 2055–077.

c. *Date Filed:* May 13, 2010.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* C.J. Strike Hydroelectric Project.

f. *Location:* The project is located on the Snake and Bruneau Rivers in Owyhee and Elmore Counties, Idaho, and occupies federal lands management by the U.S. Bureau of Land Management. The proposed action would occur in Elmore County.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Nathan Gardiner, Idaho Power Company, P.O. Box 70, 1221 W. Idaho Street, Boise, ID 83702. Telephone: (208) 388–2975.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 1, 2010.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2055–077) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee has filed an application requesting Commission authorization to lease approximately 21.23 acres of project land for farming and grazing purposes. The lands proposed for lease are located just west of the C.J. Strike Dam on a terrace above the south shore of the Snake River.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits (P–2055) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13562 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13656–000]

TideWorks, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, and Intent To Waive Scoping

May 28, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P–13656–000.

c. *Date Filed:* January 15, 2010.

d. *Applicant:* TideWorks, LLC.

e. *Name of Project:* TideWorks Project.

f. *Location:* On the Sasanoa River adjacent to Bareneck Island, in Sagadahoc County, Maine. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Shana Lewis, 730 N. Yellowstone Street, Livingston, MT 59047, (406) 224–2908.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. On April 13, 2010, Commission staff requested additional information from TideWorks, LLC including project operation, water velocity, and finfish data in the area of the proposed project. On May 5, 2010, TideWorks, LLC filed a revised final exemption application in response to the requested information.

Based on a review of the exemption application, additional environmental information subsequently filed by TideWorks, LLC, resource agency consultation letters and comments filed to date, Commission staff intend to prepare a single environmental assessment (EA). The EA will assess the potential effects of project construction and operation on aquatic, terrestrial, threatened and endangered species, recreation, and cultural resources. Because staff believe the issues that need to be addressed in its EA have been adequately identified, with this notice, we are soliciting comments on our intent to waive scoping for the TideWorks Project.

k. *Deadline for filing motions to intervene, protests, and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, and comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link.

l. This application has been accepted for filing, but is not ready for environmental analysis at this time.

m. *Description of Project:* The proposed TideWorks Project would consist of: (1) A new 10-foot-wide, 20-foot-long steel pontoon float suspending into the river; (2) a new submerged 5 kilowatt single vertical shaft hydrokinetic turbine generating unit with four 4-inch-wide, 5-foot-long blades; (3) a new 3.5-foot-wide, 40-foot-long walkway ramp connecting the pontoon float to Bareneck Island; (4) a new 100-foot-long, 220-volt transmission line; and (5) appurtenant facilities. The project would have an average annual generation of about 22,000 kilowatt-hours. The project would operate in a run-of-river mode using the river current flood and ebb tidal flows to rotate the hydrokinetic turbine generating unit.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

p. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one EA rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA.

Notice of application ready for environmental analysis—September 2010

Notice of the availability of the EA—February 2011

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13563 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12713–002]

Reedsport OPT Wave Park, LLC; Notice of Application Accepted for Filing, Ready for Environmental Analysis, and Soliciting Motions To Intervene and Protests, Comments, Terms and Conditions, Recommendations, and Prescriptions

June 1, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Filing:* Original Minor License.

b. *Project No.:* 12713–002.

c. *Dated Filed:* February 1, 2010.

d. *Applicant:* Reedsport OPT Wave Park, LLC.

e. *Name of Project:* Reedsport OPT Wave Park.

f. *Location:* Pacific Ocean in state waters about 2.5 miles off the coast near Reedsport, in Douglas County, Oregon. The project would occupy about 5 acres of federal lands in the Siuslaw National Forest (Oregon Dunes National Recreation Area).

g. *Filed Pursuant to:* 18 CFR 4.61 of the Commission's regulations.

h. *Applicant Contact:* Mr. Philip Pellegrino, Reedsport OPT Wave Park, LLC, 1590 Reed Road, Pennington, New Jersey 08534; (609) 730–0400.

i. *FERC Contact:* Jim Hastreiter at (503) 552–2760 or *james.hastreiter@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, terms*

and conditions, recommendations, and prescriptions: 90 days from the issuance of this notice. All reply comments must be filed with the Commission within 135 days from the date of this notice.

All documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov/docs-filing/ferconline.asp)* under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project description:* The project facilities would include 10 PowerBuoy wave-powered generating units attached to seabed anchors, tendon lines, subsurface floats, and catenary mooring lines. The PowerBuoy units would be deployed in an array of three to four rows, approximately in a SW–NE orientation, and would occupy about 0.25 square mile of the Pacific Ocean. Each PowerBuoy would have a maximum diameter of 36 feet, extend 29.5 feet above the water surface, and have a draft of 115 feet.

A power/fiber optic cable would exit the bottom of each PowerBuoy, descending to the seabed in a lazy "S" shape with subsurface floats attached to the cable and a clump weight at the seabed. The 10 PowerBuoy units would be connected to a single Underwater Substation Pod (USP) via power/fiber-optic lines. The USP would be about 6 feet in diameter and 15 feet in length, and would rest on the seabed below the PowerBuoys, held in place with pre-cured concrete ballast blocks. A submarine transmission cable, buried in the seabed to a depth of 3 to 6 feet, would extend from the USP to an existing wastewater discharge pipe. The submarine cable would extend through the wastewater pipe to an underground vault, which would be constructed at the existing turn-around at the end of Sparrow Park Road, immediately inland of the sand dunes. At the vault, the subsea transmission cable would exit the effluent pipe, transition to an underground cable, and reenter the effluent pipe.

The underground transmission cable would continue within the effluent pipe eastward for approximately 3 miles, where it would connect to the Douglas Electric Cooperative transmission line at a proposed shore station. The shore station would consist of a 100- to 200-square foot building.

m. A copy of the license application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site *(http://www.ferc.gov),* using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document (P–12713). For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph i.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should file such within 90 days from issuance of this notice. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

p. With this notice, we are initiating consultation with the Oregon State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at 800.4.

q. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Notice of Acceptance and Ready for Environmental Analysis	June 1, 2010.
Filing comments, recommendations, preliminary terms and conditions, and fishway prescriptions	August 30, 2010.
Reply comments	October 14, 2010.
Notice of availability of Final EA	November 15, 2010.
Comments on EA	January 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13564 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–579]

Duke Energy Carolinas, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 1, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for non-project use of project lands and waters.

b. *Project No:* 2232–579.

c. *Date Filed:* February 2, 2010, supplemented on April 15, 2010.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* Lake James in McDowell County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Kelvin Reagan, Senior Lake Services Representative, P.O. Box 1006, Charlotte, North Carolina, 28201–1006. Tel: (704) 382–9386.

i. *FERC Contact:* Mark Carter, Telephone (678) 245–3083, and e-mail *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* July 1, 2010.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2232–579) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee requests Commission approval to grant Crescent Resources, LLC (applicant) a lease of 0.42 acres of land within the project boundary for use as a permanent staging area for the loading and unloading of dirt, rock, and mulch, related to dock building, excavations, and shoreline stabilization at Lake James. The proposed lease area, which is currently a temporary staging area, will be converted to a permanent staging area, and will also be used to build and remove docks from the lake.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field (P–2232) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13565 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 26, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1093–001.

Applicants: Delaware City Refining Company LLC.

Description: Delaware City Refining Company LLC submits tariff filing per 35.17(b): Amended MBR Application to be effective 6/1/2010.

Filed Date: 05/26/2010.

Accession Number: 20100526–5048.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010.

Docket Numbers: ER10–1097–001.

Applicants: PBF Power Marketing LLC.

Description: PBF Power Marketing LLC submits tariff filing per 35.17(b): Amended MBR Application, to be effective 6/1/2010.

Filed Date: 05/26/2010.

Accession Number: 20100526–5049.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010.

Docket Numbers: ER09–1110–002; ER09–1114–003.

Applicants: RRI Energy Florida, LLC; RRI Energy Services, Inc.

Description: Supplement to Notice of Change in Status of RRI Energy Florida, LLC and RRI Energy Services, Inc.

Filed Date: 05/19/2010.

Accession Number: 20100519–5105.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 09, 2010.

Docket Numbers: ER10–1176–001; ER10–1177–001; ER10–1184–001.

Applicants: Meadow Lake Wind Farm III LLC; Meadow Lake Wind Farm IV LLC; Blackstone Wind Farm II LLC.

Description: Blackstone Wind Farm II LLC submits supplement to petitions for market-based authorization.

Filed Date: 05/25/2010.

Accession Number: 20100525–0236.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1305–000.

Applicants: Xcel Energy Companies.

Description: Xcel Energy submits a notice of cancellation of the Diversity Exchange Agreement.

Filed Date: 05/25/2010.

Accession Number: 20100525–0221.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1306–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits transmittal letter and tariff sheet to update the designation on Tariff Sheet 7013 in order to reflect changes made in filings previously accepted by the FERC.

Filed Date: 05/25/2010.

Accession Number: 20100525–0220.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1307–000.

Applicants: USEG, LLP.

Description: USEG, LLP submits Notice of Cancellation of Rate Schedule FERC 1.

Filed Date: 05/25/2010.

Accession Number: 20100525–0219.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1308–000.

Applicants: Southwest Power Pool Inc.

Description: Southwest Power Pool, Inc submits revision to several sheets of its Open Access Transmission Tariff to incorporate on the appropriate sheets language previously accepted by the Commission.

Filed Date: 05/25/2010.

Accession Number: 20100525–0218.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1309–000.

Applicants: Southwest Power Pool Inc.

Description: Southwest Power Pool, Inc submits the Network Integration Service Agreements.

Filed Date: 05/25/2010.

Accession Number: 20100525–0224.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1310–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a Network Integration Transmission Service Agreement.

Filed Date: 05/25/2010.

Accession Number: 20100525–0223.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1311–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Service Agreement for the Resale, Reassignment or Transfer of Point-to-Point Transmission Service.

Filed Date: 05/25/2010.

Accession Number: 20100525–0227.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1312–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits a notice of cancellation for two Service Agreements for the Resale, Reassignment or Transfer of Point-to-Point Transmission Service.

Filed Date: 05/25/2010.

Accession Number: 20100525–0228.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1313–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Meter Agent Service agreement.

Filed Date: 05/25/2010.

Accession Number: 20100525–0229.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1314–000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Company submits an executed Service Agreement for Wholesale Distribution Service.

Filed Date: 05/25/2010.

Accession Number: 20100525–0230.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1315–000.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits amendments to Power Sales Agreement with the City of Williston.

Filed Date: 05/25/2010.

Accession Number: 20100525–0233.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1317–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Large Generator Interconnection Agreement.

Filed Date: 05/25/2010.

Accession Number: 20100525–0235.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1318–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits revisions to their Open Access Transmission, Energy and Operating Reserves Markets Tariff.

Filed Date: 05/25/2010.

Accession Number: 20100525–0237.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 15, 2010.

Docket Numbers: ER10–1319–000.

Applicants: CMS Generation Michigan Power, LLC.

Description: CMS Generation Michigan Power, LLC submits tariff filing per 35.12: CMS Generation Michigan Power LLC Sched No 1 Electric Tariff to be effective 5/27/2010.

Filed Date: 05/26/2010.

Accession Number: 20100526–5086.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010

Docket Numbers: ER10–1320–000.

Applicants: RRI Energy West, Inc.

Description: RRI Energy West, Inc submits a Notice of Cancellation of tariffs with RRI California Companies.

Filed Date: 05/26/2010.

Accession Number: 20100525–0263.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010.

Docket Numbers: ER10–1321–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revised rate sheets to the Small Generator Interconnection Agreement and the Service Agreement for Wholesale Distribution Service etc.

Filed Date: 05/26/2010.

Accession Number: 20100525–0261.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010.

Docket Numbers: ER10–1322–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison submits First Revised Sheet No. 2 et al to FERC Electric Tariff, Second Revised Volume No. 6.

Filed Date: 05/26/2010.

Accession Number: 20100525–0262.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–13629 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 27, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2885–024; ER07–1356–010; ER07–1112–008; ER07–1113–008; ER07–1116–007; ER07–1117–009; ER07–1358–009; ER07–1118–009; ER01–2765–023; ER09–609–001; ER09–1141–008; ER05–1232–018; ER09–335–004; ER02–2102–018

Applicants: J.P. Morgan Ventures Energy Corporation, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Rayle LLC, BE Alabama LLC, BE Louisiana LLC, Cedar Brakes I, L.L.C., Mohawk River Funding IV, L.L.C., Utility Contract Funding, L.L.C., Vineland Energy LLC, Central Power & Lime LLC, Cedar Brakes II, L.L.C.

Description: JPMorgan Sellers submit Supplement to Notice of Non-Material Change in Status.

Filed Date: 05/26/2010

Accession Number: 20100526–5165

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010

Docket Numbers: ER00–2885–025; ER07–1356–011; ER07–1112–009; ER07–1113–009; ER07–1116–008; ER07–1117–011; ER07–1358–010; ER07–1118–010; ER01–2765–024; ER09–609–002; ER09–1141–003; ER05–1232–020; ER09–335–006; ER02–2102–024; ER03–1283–019

Applicants: J.P. Morgan Ventures Energy Corporation, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Alabama LLC, BE Louisiana LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C., Vineland Energy LLC, Central Power & Lime LLC, Cedar Brakes II, L.L.C., J.P. Morgan Commodities Canada Corporation, BE Rayle LLC

Description: JP Morgan Sellers submit Supplement to Notice of Non-Material Change in Status.

Filed Date: 05/26/2010

Accession Number: 20100526–5164

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010

Docket Numbers: ER00–2885–026; ER07–1356–012; ER07–1112–010; ER07–1113–010; ER07–1116–009; ER07–1117–012; ER07–1358–011; ER07–1118–011; ER01–2765–025; ER09–609–003; ER09–1141–005; ER05–1232–021; ER09–335–007; ER02–2102–025; ER03–1283–020

Applicants: J.P. Morgan Ventures Energy Corporation, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Alabama LLC, BE Louisiana LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C., Vineland Energy LLC, Central Power & Lime LLC, Cedar Brakes II, L.L.C., J.P. Morgan Commodities Canada Corporation, BE Rayle LLC

Description: JPMorgan Sellers submit Supplement to Notice of Non-Material Change in Status.

Filed Date: 05/26/2010

Accession Number: 20100526–5166

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010

Docket Numbers: ER00–2885–030; ER07–1356–015; ER07–1112–013; ER07–1113–013; ER07–1116–012; ER07–1117–015; ER07–1358–016; ER07–1118–014; ER01–2765–029; ER09–609–006; ER09–1141–009; ER05–1232–026; ER02–2102–029; ER03–1283–023

Applicants: J.P. Morgan Ventures Energy Corporation, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Rayle LLC, BE Alabama LLC, BE Louisiana LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C.,

Vineland Energy LLC, Central Power & Lime LLC, Cedar Brakes II, L.L.C., J.P. Morgan Commodities Canada Corporation

Description: JPMorgan Sellers submit Notice of Non-Material Change in Status.

Filed Date: 05/26/2010

Accession Number: 20100526–5162

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010

Docket Numbers: ER10–468–003

Applicants: Google Energy LLC

Description: Google Energy LLC's Notice of Non-Material Change in Status.

Filed Date: 05/27/2010

Accession Number: 20100527–5074

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–893–001

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits the revised Open Access Tariff.

Filed Date: 05/27/2010

Accession Number: 20100527–0165

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1160–001

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits letter requesting that the Commission accept the cancellation of the Flatlands LGIA, effective 7/28/10.

Filed Date: 05/26/2010

Accession Number: 20100527–0337

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010

Docket Numbers: ER10–1323–000

Applicants: RRI Energy West, Inc.

Description: RRI Energy West, Inc submits Notice of Succession.

Filed Date: 05/26/2010

Accession Number: 20100525–0275

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010

Docket Numbers: ER10–1324–000

Applicants: CinCap IV, LLC

Description: CinCap IV, LLC submits tariff filing per 35.12: Rate Schedule No. 1 Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5018

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1325–000

Applicants: CinCap V, LLC

Description: CinCap V, LLC submits tariff filing per 35.12: Rate Schedule No. 1 Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5021

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1326–000

Applicants: Cinergy Power Investments, Inc.

Description: Cinergy Power Investments, Inc. submits tariff filing per 35.12: Tariff Volume No. 1 Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5022

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1327–000

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an amended Service Agreement for Network Integration Transmission Service.

Filed Date: 05/26/2010

Accession Number: 20100527–0338

Comment Date: 5 p.m. Eastern Time on Wednesday, June 16, 2010

Docket Numbers: ER10–1328–000

Applicants: Happy Jack Windpower, LLC

Description: Happy Jack Windpower, LLC submits tariff filing per 35.12: Tariff Volume No. 1 Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5023

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1329–000

Applicants: St. Paul Cogeneration, LLC

Description: St. Paul Cogeneration, LLC submits tariff filing per 35.12: Tariff Volume No. 1 Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5024

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1330–000

Applicants: North Allegheny Wind, LLC

Description: North Allegheny Wind, LLC submits tariff filing per 35.12: Tariff Volume No. 1 Baseline Filing, to be effective 5/27/10.

Filed Date: 05/27/2010

Accession Number: 20100527–5025

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1331–000

Applicants: Silver Sage Windpower, LLC

Description: Silver Sage Windpower, LLC submits tariff filing per 35.12: Tariff Volume No. 1 Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5026

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1332–000

Applicants: Three Buttes Windpower, LLC

Description: Three Buttes Windpower, LLC submits tariff filing per 35.12: Tariff Volume No. 1 Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5027

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1333–000

Applicants: Duke Energy Commercial Enterprises, Inc.

Description: Duke Energy Commercial Enterprises, Inc. submits tariff filing per 35.12: Rate Schedule No. 1 Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5028

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1334–000

Applicants: Duke Energy Trading and Marketing, L.L.C.

Description: Duke Energy Trading and Marketing, L.L.C. submits tariff filing per 35.12: Tariff Volume No. 1 Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5029

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1335–000

Applicants: Duke Energy Retail Sales, LLC

Description: Duke Energy Retail Sales, LLC submits tariff filing per 35.12: Tariff Volume No. 1 Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5031

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1336–000

Applicants: Virginia Electric and Power Company

Description: Virginia Electric and Power Company submits an executed Service Agreement for Wholesale Distribution Service with WM Renewable Energy, LLC.

Filed Date: 05/27/2010

Accession Number: 20100527–0150

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1337–000

Applicants: Premier Energy Marketing L.L.C.

Description: Petition for acceptance of initial tariff, waivers and blanket authority re Premier Energy Services, LLC.

Filed Date: 05/27/2010

Accession Number: 20100527–0151

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1338–000

Applicants: Southern Indiana Gas and Electric Company

Description: Southern Indiana Gas and Electric Company, Inc. submits tariff filing per 35.12: SIGECO Market-Based Rate Tariff Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5087

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1339–000

Applicants: Southern Indiana Gas and Electric Company

Description: Southern Indiana Gas and Electric Company, Inc. submits tariff filing per 35.12: SIGECO Ancillary Services Tariff Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5097

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1340–000

Applicants: El Paso Electric Company

Description: El Paso Electric Company submits the First Revised Sheet 13 to the First Revised Rate Schedule 80.

Filed Date: 05/27/2010

Accession Number: 20100527–0166

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1341–000

Applicants: Southern California Edison Company

Description: Southern California Edison Company submits a letter agreement with Abengoa Solar Inc.

Filed Date: 05/27/2010

Accession Number: 20100527–0167

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1342–000

Applicants: CP Energy Marketing (US) Inc.

Description: CP Energy Marketing (US) Inc. submits tariff filing per 35.12: CP Energy Marketing (US) Inc. Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5134

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1343–000

Applicants: CPI Energy Services (US) LLC

Description: CPI Energy Services (US) LLC submits tariff filing per 35.12: CPI Energy Services (US) LLC Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5143

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1344–000

Applicants: CPI USA North Carolina LLC

Description: CPI USA North Carolina LLC submits tariff filing per 35.12: CPI USA North Carolina LLC Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5148

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1345–000

Applicants: CPIDC, Inc.

Description: CPIDC, Inc. submits tariff filing per 35.12: CPIDC, Inc. Baseline Tariff Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5152

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1346–000

Applicants: Frederickson Power L.P.

Description: Frederickson Power L.P. submits tariff filing per 35.12: Frederickson Power L.P. Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5155

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Docket Numbers: ER10–1348–000

Applicants: Manchief Power Company LLC

Description: Manchief Power Company LLC submits tariff filing per 35.12: Manchief Power Company LLC Baseline Filing to be effective 5/27/2010.

Filed Date: 05/27/2010

Accession Number: 20100527–5167

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–29–000

Applicants: Ameren Corporation

Description: Ameren Corporation submits its response to FERC Staff Data Requests.

Filed Date: 05/26/2010

Accession Number: 20100526–5167

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010

Docket Numbers: ES10–37–000

Applicants: Old Dominion Electric Cooperative, Inc.

Description: Amendment to Application of Old Dominion Electric Cooperative.

Filed Date: 05/26/2010

Accession Number: 20100526–5131

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010

Docket Numbers: ES10–46–000

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Application of Golden Spread Electric Cooperative, Inc. for Authorization to Issue Securities Pursuant to Section 204 of the Federal Power Act.

Filed Date: 05/27/2010

Accession Number: 20100527–5036

Comment Date: 5 p.m. Eastern Time on Thursday, June 17, 2010

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–26–004

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc submits Order No. 890 Attachment K Compliance Filing.

Filed Date: 03/12/2010

Accession Number: 20100312–5122

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–13630 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–69–000]

Virginia Electric and Power Company v. PJM Interconnection, LLC; Notice of Complaint

May 28, 2010.

Take notice that on May 25, 2010, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Virginia Electric and Power Company (Complainant) filed a formal complaint against PJM Interconnection, LLC (Respondent), alleging that the Respondent erroneously changed its load forecast model for 2010 for the Dominion zone.

Complainant certifies that copies of the complaint were served on the contacts for the Respondent, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 14, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13555 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–70–000]

TC Ravenswood, LLC v. New York Independent System Operator, Inc.; Notice of Complaint

May 28, 2010.

Take notice that on May 27, 2010, pursuant to sections 206 and 306 of the Federal Power Act and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission or FERC), 18 CFR 385.206, TC Ravenswood, LLC (Complainant) filed a complaint against New York Independent System Operator, Inc. (NYISO) (Respondent), requesting FERC order the NYISO to reimburse TC Ravenswood, LLC, as required by section 4.1.7a of the NYISO Services Tariff for the variable costs, inclusive of interest it incurred during June, July, August, and September 2009 to respond to NYISO orders to burn an alternate fuel instead of natural gas.

Complainant certifies that copies of the complaint were served on the contacts for the Respondent, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 16, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13560 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

May 28, 2010.

CER Generation, LLC	Docket No. EG10–18–000
Day County Wind, LLC	Docket No. EG10–19–000
Northeastern Power Company	Docket No. EG10–20–000
EC&R Papalote Creek II, LLC	Docket No. EG10–22–000
EDF EN Canada Inc.	Docket No. FC10–1–000

Take notice that during the month of April 2010, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations, 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13556 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

National Energy Rating Program for Homes

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

ACTION: Request for Information (RFI).

SUMMARY: The Department of Energy (DOE) is seeking comments and information from interested parties to assist DOE in developing a voluntary National Energy Rating Program for Homes. The purpose of this program is to encourage consumers to invest in energy improvements in existing homes by providing reliable information to them at low cost. The Department is considering a wide range of issues including how to measure energy performance, what performance metrics to use, and how to present the information to consumers, among other questions. For a full discussion of these issues, please view *www.buildings.energy.gov/home_rating_rfi.html.*

DATES: Comments must be postmarked by no later than July 5, 2010. Comments must be received by no later than July 10, 2010.

ADDRESSES: You may submit comments, identified by "RFI: National Energy Rating Program for Homes," by any of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. E-mail: *buildingratingRFI@EE.DOE.GOV.* Include "RFI: National Energy Rating Program for Homes" in the subject line of the message. Mail: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy (EE–1), 1000 Independence Avenue, SW., Washington, DC 20585 Attn: National Energy Rating Program for Homes, Jessica Balsam.

FOR FURTHER INFORMATION CONTACT: Joan Glickman at *buildingratingRFI@ee.doe.gov.*

Issued in Washington, DC, on June 2, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–13679 Filed 6–7–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

May 28, 2010.

In the matter of: Three Rivers Park District, Project No. 13457–000, BOST1 Hydroelectric LLC, Project No. 13458–000.

On May 1, 2009, at 8:30 a.m., the Commission received two preliminary permit applications for proposed projects to be located at the existing Coon Rapids Dam on the Mississippi River in Hennepin and Anoka Counties, Minnesota.[1] The applications were filed by Three Rivers Park District, for Project No. 13457 and BOST1 Hydroelectric LLC, for Project No. 13458.

Where all permit applicants are municipalities or all permit applicants are non-municipalities, and no applicant's plans are better adapted than the others' to develop, conserve, and utilize in the public interest the water resources of a region, the Commission issues a permit to the applicant who filed first in time.[2] In this case, because two applications from entities not claiming municipal preference are deemed filed at the same time, the Commission will conduct a random tie breaker to determine priority. In the event that the Commission concludes that neither applicant's plans are better adapted than the other, priority will be determined accordingly.

On June 8, 2010, at 2 p.m. (eastern time), the Secretary of the Commission, or her designee, will, by random drawing, determine the filing priority for the two applicants identified in this notice. The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. The results of the drawing will be recorded by the Secretary or her designee. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13558 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

[1] The Commission is open each day from 8:30 a.m. to 5 p.m., except Saturdays, Sundays, and holidays. 18 CFR 375.101(c) (2009). The applications were filed between 5 p.m. on Thursday April 30, 2009, and 8:30 a.m. on Friday May 1, 2009. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2009).

[2] 18 CFR 4.37 (2009). *See, e.g., BPUS Generation Development, LLC,* 126 FERC ¶ 61,132 (2009).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Preliminary Permit Drawing

May 28, 2010.

In the matter of: Green Power Development, LLC, Alaska Power & Telephone Company, Project No. 12661–001, Project No. 13599–000.

On October 1, 2009, at 8:30 a.m., the Commission received two preliminary permit applications for proposed projects to be located at an unnamed lake designated as Lake 3160 in an unorganized borough near Juneau, Alaska.[1] The applications were filed by Green Power Development, LLC, for Project No. 12661–001 and Alaska Power & Telephone Company, for Project No. 13599–000.

Where all permit applicants are municipalities or all permit applicants are non-municipalities, and no applicant's plans are better adapted than

[1] The Commission is open each day from 8:30 a.m. to 5 p.m., except Saturdays, Sundays, and holidays. 18 CFR 375.101(c) (2009). The applications were filed between 5 p.m. on Wednesday September 30, 2009, and 8:30 a.m. on Thursday October 1, 2009. Under the Commission's Rules of Practice and Procedure, any document received after regular business hours is considered filed at 8:30 a.m. on the next regular business day. 18 CFR 385.2001(a)(2) (2009).

the others' to develop, conserve, and utilize in the public interest the water resources of a region, the Commission issues a permit to the applicant who filed first in time.[2] In this case, because two applications from entities not claiming municipal preference are deemed filed at the same time, the Commission will conduct a random tie breaker to determine priority. In the event that the Commission concludes that neither applicant's plans are better adapted than the other, priority will be determined accordingly.

On June 8, 2010, at 2 p.m. (eastern time), the Secretary of the Commission, or her designee, will, by random drawing, determine the filing priority for the two applicants identified in this notice. The drawing is open to the public and will be held in room 2C, the Commission Meeting Room, located at 888 First St., NE., Washington, DC 20426. The results of the drawing will be recorded by the Secretary or her designee. A subsequent notice will be issued by the Secretary announcing the results of the drawing.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13559 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–438–000]

Natural Gas Pipeline Company of America LLC; Notice of Request Under Blanket Authorization

May 28, 2010.

Take notice that on May 20, 2010, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed in Docket No. CP10–438–000, an application pursuant to sections 157.205, 157.208, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct and operate facilities necessary to deliver natural gas to its affiliate, Kinder Morgan Louisiana Pipeline LLC (KMLP) in Johnsons Bayou, Cameron Parish, Louisiana, under Natural's blanket certificate issued in Docket No. CP82–402–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Natural proposes to construct and operate a delivery interconnect off its UTOS Lateral with the Southwest Louisiana lateral (Southwest Loop). To accomplish this, Natural would construct and operate approximately 320 feet of 12-inch diameter pipeline; a dual 8-inch meter on a new metering platform; and such other appurtenant facilities required to effect the interconnects to deliver up to 200,000 Dth/day of natural gas from its UTOS Lateral to KMLP. Natural would also construct certain section 2.55(a) non-jurisdictional facilities such as instrumentation and cathodic protection for all piping and equipment. Natural also states that KMLP would reimburse Natural for the estimated $2,500,000 construction cost of the proposed facilities.

Any questions concerning this application may be directed to Bruce H. Newsome, Vice President, Regulatory Products and Services, Natural Gas Pipeline Company of America LLC, 3250 Lacey Road, 7th Floor, Downers Grove, Illinois 60515–7918, or via telephone at (630) 725–3070, or by e-mail *bruce_newsome@kindermorgan.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13557 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–431–000]

Natural Gas Pipeline Company of America LLC; Notice of Request Under Blanket Authorization

May 28, 2010.

Take notice that on May 14, 2010, Natural Gas Pipeline Company of America LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, Illinois 60515, filed in Docket No. CP10–431–000, an application pursuant to sections 157.205, 157.208, 157.211 and 157.212 of the Commission's regulations under the Natural Gas Act (NGA) as amended, to construct and operate facilities necessary to deliver natural gas to Bridgeline Holdings L.P. (Bridgeline) in Johnsons Bayou, Cameron Parish, Louisiana, under Natural's blanket certificate issued in Docket No. CP82–402–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Natural proposes to construct and operate a delivery interconnect off its UTOS Lateral in order to deliver natural gas volumes to Bridgeline. To accomplish this, Natural would construct and operate a 16-inch tap; approximately 530 feet of 12-inch diameter pipeline; a metering platform; a dual 8-inch meter on the metering platform; and such other appurtenant facilities required to effect the interconnects to deliver up to 200,000 Dth/day of natural gas from its UTOS Lateral to Bridgeline. Natural further states that it would construct approximately 180 feet of 16-inch diameter interconnecting pipeline between the metering facilities located on the platform and the UTOS Lateral. Through the proposed piping, Natural would deliver natural gas from the platform and metering equipment to Bridgeline's existing pipeline system, where Bridgeline has already constructed the tap for this interconnection. Natural would also construct certain section 2.55(a) non-

[2] 18 CFR 4.37 (2009). *See, e.g., BPUS Generation Development, LLC,* 126 FERC ¶ 61,132 (2009).

[1] 20 FERC ¶ 62,415 (1982).

[1] 20 FERC ¶ 62,415 (1982).

jurisdictional facilities, including a valve actuator, a meter tube outlet valve, an instrument building, cathodic protection for all piping and equipment. Natural also states that it would cost an estimated $6,100,000 to construct the proposed facilities.

Any questions concerning this application may be directed to Bruce H. Newsome, Vice President, Regulatory Products and Services, Natural Gas Pipeline Company of America LLC, 3250 Lacey Road, 7th Floor, Downers Grove, Illinois 60515–7918, or via telephone at (630) 725–3070, or by e-mail *bruce_newsome@kindermorgan.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–13554 Filed 6–7–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2010–0381; FRL–9159–9]

Human Studies Review Board; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of research with human subjects.

DATES: The public meeting will be held on June 23, 2010, from approximately 10 a.m. to approximately 5:30 p.m., Eastern Time.

Location: Environmental Protection Agency, Conference Center—Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202.

Meeting Access: Seating at the meeting will be on a first-come basis. To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting, to allow EPA as much time as possible to process your request.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in section I., under subsection D., **SUPPLEMENTARY INFORMATION** of this notice.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes further information should contact Jim Downing, EPA, Office of the Science Advisor, (8105R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–2468; fax: (202) 564–2070; e-mail addresses: *downing.jim@epa.gov.* General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2010–0381, by one of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ord.docket@epa.gov.

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Ave, NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2010–0381. 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 the disclosure of which 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.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA, or to

persons who are, or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I access electronic copies of this document and other related information?

In addition to using *regulations.gov,* you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

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 ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC 20460. The hours of operation are 8:30 am to 4:30 p.m. EST, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*). EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by early June 2010. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the *regulations.gov* Web site and the EPA HSRB Web site at *http://www.epa.gov/osa/hsrb/*. For questions on document availability, or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data that you used to support your views.

4. Provide specific examples to illustrate your concerns and suggest alternatives.

5. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. How may I participate in this meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2010–0381 in the subject line on the first page of your request.

1. Oral comments. Requests to present oral comments will be accepted up to June 16, 2010. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via e-mail) to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Time, June 16, 2010, in order to be included on the meeting agenda, and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Officer (DFO) to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (*e.g.,* overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to five minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting.

2. Written comments. Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, June 16, 2010. You should submit your comments using the instructions in section I., under subsection C., "What should I consider as I prepare my comments for EPA?" above in this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the person listed under **FOR FURTHER INFORMATION CONTACT.** There is no limit on the length of written comments for consideration by the HSRB.

E. Background

1. Topics for discussion. The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2 section 9. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA's Science Advisor.

At its meeting on June 23, 2010, EPA's Human Studies Review Board will consider scientific and ethical issues surrounding these topics:

(a) The unpublished report of the completed Carroll-Loye Biological Research, Inc. study LNX–002: Field Repellency of Two Picaridin-Based Personal Insect Repellents to Black Flies. The protocol for this study was

reviewed favorably by the HSRB at their meeting in June 2009. EPA seeks the advice of the HSRB on the scientific soundness of this completed study for use to estimate the duration of complete protection against black flies provided by the tested repellents, and on whether available information supports a determination that the study was conducted in substantial compliance with subparts K and L of 40 CFR part 26.

(b) The unpublished report of the completed Carroll-Loye Biological Research, Inc. study LNX–003: Laboratory Repellency of Two Picaridin-Based Personal Insect Repellents to Two Species of Ticks. The protocol for this study was reviewed favorably by the HSRB at their meeting in October 2009. EPA seeks the advice of the HSRB on the scientific soundness of this completed study for use to estimate the duration of complete protection against ticks provided by the tested repellents, and on whether available information supports a determination that the study was conducted in substantial compliance with subparts K and L of 40 CFR Part 26.

(c) In addition, EPA will present to the HSRB update reports on two topics of interest:

(1) The revised guideline for performance testing of topically applied repellent products, for use by investigators and sponsors of new studies

(2) The terms of a recent settlement of litigation related to EPA's 2006 rule for the protection of human subjects of research, in which EPA has agreed to initiate rulemaking to amend the 2006 rule.

2. Meeting minutes and reports. Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters, will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov.* In addition, information concerning a Board meeting report, if applicable, can be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Kevin Teichman,

EPA Science Advisor.

[FR Doc. 2010–13684 Filed 6–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0012; FRL–8827–5]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before July 8, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 0E7704.* (EPA–HQ–OPP–2010–0311). Interregional Research Project Number 4 (IR-4), 681 US Highway #1 South, North Brunswick, NJ 08902, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide thiacloprid ([3-[(6-chloro-3-pyridinyl)methyl]-2-thiazolidinylidene] cyanamide), in or on fruit, stone, group 12 at 0.5 parts per million (ppm). The analytical method for determining residues in stone fruit and peppers is specific for thiacloprid and metabolites containing the intact thiazolidine ring and utilizes high performance liquid chromatography (HPLC) with electrospray tandem mass spectrometry (MS/MS)-detection. Thiacloprid and its metabolites are stable in peppers and stone fruit commodities for at least 10 months when the commodities are frozen. Contact: Andrew Ertman, (703) 308–9367, e-mail address: *ertman.andrew@epa.gov*.

2. *PP 0F7685.* (EPA–HQ–OPP–2007–0099). Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide flubendiamide, (N^2-[1,1-dimethyl-2-(methylsulfonyl)ethyl]-3-iodo- N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide), in or on artichoke, globe, flower head at 1.6 ppm; low growing berry subgroup, crop subgroup 13-07G, except cranberry at 1.5 ppm; peanut, hay at 60 ppm; peanut, meal at 0.032 ppm; peanut, nutmeat at 0.02 ppm; peanut, refined oil at 0.04 ppm; pistachio at 0.06 ppm; small fruit vine climbing subgroup except fuzzy kiwifruit, crop subgroup 13-07F at 1.4 ppm; sorghum, grain, grain at 5.0 ppm; sugarcane, cane at 0.30 ppm; sunflower, seed at 4.5 ppm; and turnip, greens at 25 ppm. Independently validated, analytical methods for crop matrices have been submitted for measuring flubendiamide. Typically, plant matrices samples are extracted, concentrated, and quantified by liquid chromatography/MS/MS (LC/MS/MS) using deuterated internal standards. Contact: Carmen Rodia, (703) 306–0327, e-mail address: *rodia.carmen@epa.gov*.

3. *PP 0F7688.* (EPA–HQ–OPP–2010–0387). Gowan Company, 370 South Main Street, Yuma, AZ 85364, proposes to establish tolerances at 40 CFR part 180.484 for residues of the fungicide flutolanil [*N*-[3-(1-methylethoxy) phenyl]-2-(trifluoromethyl)benzamide], in or on beet, sugar at 0.5 ppm and beet, sugar, tops at 25 ppm. Residues of flutolanil and its M-4 metabolite in

sugar beet roots, sugar beet tops, and processed commodities were quantitated by HPLC employing tandem mass spectrometric (MS/MS) detection. The analytical method used was the Xenos Analytical Method: XAM-65, entitled "LC/MS Determination of Flutolanil and its Metabolite (M-4) in Cotton Seed and Corn Grain," dated December 18, 2000 with modifications dated January 20, 2009. Contact: Lisa Jones, (703) 308–9424, e-mail address: *jones.lisa@epa.gov*.

4. *PP 0F7691*. (EPA–HQ–OPP–2010–0250). Bayer CropScience, P.O. Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish tolerances in 40 CFR part 180 for residues of the insecticide spiromesifen; 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro(4,4)non-3-en-4-yl 3,3-dimethylbutanoate, and its enol metabolite; 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4,4]non-3-en-2-one calculated as parent compound equivalents, in or on sorghum, grain at 0.8 ppm; sorghum, fodder at 1.3 ppm; sorghum, forage at 9.0 ppm; sorghum, aspirated grain fraction at 11.0 ppm; wheat, grain and the corresponding processed fractions flour, middlings, shorts, germ and bran at 0.1 ppm; wheat, forage at 19.0 ppm; wheat, hay at 16.0 ppm; wheat, straw at 4.5 ppm; and wheat, aspirated grain fraction at 30.0 ppm. Adequate analytical methodology using liquid chromatography/MS/MS (LC/MS/MS) detection is available for enforcement purposes. Contact: Jennifer Gaines, (703) 305–5967, e-mail address: *gaines.jennifer@epa.gov*.

5. *PP 0F7706*. (EPA–HQ–OPP–2010–0311). Bayer CropScience LLC, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide thiacloprid ([3-[(6-chloro-3-pyridinyl)methyl]-2-thiazolidinylidene] cyanamide), in or on pepper (bell and non-bell) at 1.1 ppm. The analytical method for determining residues in stone fruit and peppers is specific for thiacloprid and metabolites containing the intact thiazolidine ring and utilizes HPLC with electrospray tandem mass spectrometry (MS/MS)-detection. Thiacloprid and its metabolites are stable in peppers and stone fruit commodities for at least 10 months when the commodities are frozen. Contact: Andrew Ertman, (703) 308–9367, e-mail address: *ertman.andrew@epa.gov*.

6. *PP 0F7707*. (EPA–HQ–OPP–2010–0324). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to establish tolerances in 40 CFR part 180 for residues of the insecticide thiamethoxam (3-[(2-chloro-5-thiazolyl) methyl]tetrahydro-5-methyl-*N*-nitro-4*H*-1,3,5-oxadiazin-4-imine) (CAS Reg. No. 153719–23–4) and its metabolite [*N*–(2–chloro-thiazol-5-ylmethyl)-*N*'-methyl-*N*'-nitro-guanidine], in or on alfalfa, forage at 0.05 ppm and alfalfa, hay at 0.12 ppm. Syngenta Crop Protection, Inc., has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on raw agricultural commodities. This method is based on crop specific cleanup procedures and determination by liquid chromatography with either ultraviolet (UV) or MS detections. The limit of detection (LOD) for each analyte of this method is 1.25 nanogram (ng) injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantification (LOQ) is 0.005 ppm for milk and juices, and 0.01 ppm for all other substrates. Contact: Julie Chao, (703) 308–8735, e-mail address: *chao.julie@epa.gov*.

7. *PP 9F7528*. (EPA–HQ–OPP–2009–0672). BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1*H*-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester and its metabolite methyl-*N*-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate (BAS 500–3), expressed as parent compound, in or on alfalfa, forage at 10.0 ppm and alfalfa, hay at 30.0 ppm; and new tolerances for pyraclostrobin, carbamic acid, [2-[[[1-(4-chlorophenyl)-1*H*-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its metabolites convertible to 1-(4-chlorophenyl)-1*H*-pyrazol-3-ol (BAS 500–5) and 1-(3-chloro-4-hydroxyphenyl)-1*H*-pyrazol-3-ol (BAS 500–9), expressed as parent compound, in the animal commodities poultry, fat at 0.1 ppm; poultry, meat byproducts at 0.1 ppm; poultry, meat at 0.1 ppm; and eggs at 0.1 ppm. The method of analysis in plants is aqueous organic solvent extraction, column cleanup and quantitation by LC/MS/MS. The method of analysis in animals involves base hydrolysis, organic extraction, column cleanup and quantitation by LC/MS/MS or derivatization (methylation) followed by quantitation by gas chromatography/MS (GC/MS). Contact: John Bazuin, (703) 305–7381, e-mail address: *bazuin.john@epa.gov*.

Amended Tolerances

1. *PP 0F7706*. (EPA–HQ–OPP–2010–0311). Bayer CropScience LLC, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR 180.594 for residues of thiacloprid by revising the tolerance expression under (a) to read: Tolerances are established for residues of thiacloprid, including its metabolites and degradates. Compliance with the tolerance levels specified is to be determined by measuring only thiacloprid ([3-[(6-chloro-3-pyridinyl)methyl]-2-thiazolidinylidene] cyanamide). Contact: Andrew Ertman, (703) 308–9367, e-mail address: *ertman.andrew@epa.gov*.

2. *PP 0F7685*. (EPA–HQ–OPP–2007–0099). Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808, proposes to amend the tolerances in 40 CFR 180.639 for residues of the insecticide flubendiamide (N^2-[1,1-dimethyl-2-(methylsulfonyl)ethyl]-3-iodo- N^1-[2-methyl-4-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]phenyl]-1,2-benzenedicarboxamide), in or on alfalfa, forage at 25.0 ppm; alfalfa, hay at 65.0 ppm; *Brassica*, head and stem, subgroup 5A at 4.0 ppm; *Brassica*, leafy greens, subgroup 5B at 25.0 ppm; cattle, fat at 0.8 ppm; cattle, kidney at 0.4 ppm; cattle, liver at 0.4 ppm; cattle, muscle at 0.1 ppm; eggs at 0.7 ppm; goat, fat at 0.8 ppm; goat, kidney at 0.4 ppm; goat, liver at 0.4 ppm; goat, muscle at 0.1 ppm; grain, aspirated fractions at 215.0 ppm; hog, fat at 0.15 ppm; hog, kidney at 0.06 ppm; hog, liver at 0.06 ppm; hog, muscle at 0.02 ppm; horse, fat at 0.8 ppm; horse, kidney at 0.4 ppm; horse, liver at 0.4 ppm; horse, muscle at 0.1 ppm; milk at 0.2 ppm; poultry, fat at 3.0 ppm; poultry, liver at 0.8 ppm; poultry, muscle at 0.1 ppm; sheep, fat at 0.8 ppm; sheep, kidney at 0.4 ppm; sheep, liver at 0.4 ppm; sheep, muscle at 0.1 ppm; sorghum, grain, forage at 13.0 ppm; and sorghum, grain, stover at 18.0 ppm. Independently validated, analytical methods for crop matrices have been submitted for measuring flubendiamide. Typically, plant matrices samples are extracted, concentrated, and quantified by liquid chromatography/MS/MS (LC/MS/MS) using deuterated internal standards. Contact: Carmen Rodia, (703) 306–0327, e-mail address: *rodia.carmen@epa.gov*.

3. *PP 0F7696*. (EPA–HQ–OPP–2010–0385). Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC 27409, proposes to amend the tolerance in 40 CFR 180.532 for residues of the fungicide cyprodinil 2-pyrimidinamine, 4-cyclopropyl-6-methyl-*N*-phenyl, in or on fruit, pome, group 11 from 0.1 ppm to 1.7 ppm. Syngenta Crop Protection has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection

Method AG-631B) has passed an Agency petition method validation for several commodities and is currently the enforcement method for cyprodinil. An extensive database of method validation data using this method on various crop commodities is available. Contact: Lisa Jones, (703) 308–9424, e-mail address: *jones.lisa@epa.gov*.

New Tolerance Exemptions

1. *PP 0E7693*. (EPA–HQ–OPP–2010–0330). FBSciences, Inc., 153 N. Main Street, Ste. 100, Collierville, TN 38017, proposes to establish an exemption from the requirement of a tolerance for residues of 2-methyl-2,4-pentanediol (CAS Reg. No. 107–41–5) when used as a pesticide inert ingredient in pesticide formulations. The petitioner believes no analytical method is needed because an exemption from the requirement of a tolerance is requested, therefore no field residue studies are required. Contact: Lisa Austin, (703) 305–7894, e–mail address: *austin.lisa@epa.gov*.

2. *PP 0E7699*. (EPA–HQ–OPP–2010–0275). Croda Inc., EPA Company No. 86095, 315 Cherry Lane, New Castle, DE 19720, proposes to establish an exemption from the requirement of a tolerance for residues of polymerized fatty acid esters with aminoalcohol alkoxylates (PFAEAA) under 40 CFR 180.910 pre– and post-harvest uses and 40 CFR 180.930 animal uses when used as a pesticide inert ingredient in pesticide formulations, including: (CAS Registration No. (CAS RN's)) supported under the following tolerance exemption descriptor "Fatty acids, unsaturated, dimers and/or trimers, esters with [alpha]–alkylaminoalkyl–[omega]-hydroxy poly (oxyethylene) or [alpha]-alkylaminoalkyl-[omega]-hydroxy poly (oxyethylene) poly (oxypropylene) copolymers where the poly (oxyethylene) content is 10–30 moles and the poly (oxypropylene) content is 0–20 moles, the resulting alkoxylated aminoalcohol esters are derived and limited to 2-(*N,N*-Dimethyl) aminoethanol, 2-(*N,N*-Dimethyl) aminopropanol, 2-(*N,N*-Diethyl) aminoethanol, 2-(*N,N*-Diethyl) aminopropanol, 2-Hydroxyethylmorpholine, and 2-Hydroxyethylpiperidine and have a minimum molecular weight (in amu) of 1,200":

Dimethylaminoethanol, ethoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173188–38–9).

Dimethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173188–42–5).

Diethylaminoethanol, ethoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173188–72–1).

Diethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173188–75–4).

Dimethylaminoethanol, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–49–2).

Dimethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–17–7).

Diethylaminoethanol, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–81–2).

Diethylaminoethanol, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173188–83–4).

Hydroxyethylmorpholine, ethoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–00–8).

Hydroxyethylmorpholine, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–06–4).

Hydroxyethylpiperidine, ethoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–20–2).

Hydroxyethylpiperidine, ethoxylated, propoxylated, reaction products with fatty acid dimers (CAS Reg. No. 1173189–22–4).

Hydroxyethylmorpholine, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–09–7).

Hydroxyethylmorpholine, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–17–7).

Hydroxyethylpiperidine, ethoxylated, reaction products with fatty acid trimers (CAS Reg. No. 1173189–25–7).

Hydroxyethylpiperidine, ethoxylated, propoxylated, reaction products with fatty acid trimers (CAS Reg. No.1173189–28–0).

The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for polymeric inert ingredients. Contact: Deirdre Sunderland, (703) 603–0851, e–mail address: *sunderland.deirdre@epa.gov*.

3. *PP 0E7702*. (EPA–HQ–OPP–2010–0272). Clariant Corporation, 625 E. Catawba Ave, Mt. Holly, NC 28120, proposes to establish an exemption from the requirement of a tolerance for residues of 2–propenoic acid, 2-methyl-, C_{12-16}-alkyl esters, telomers with 1-dodecanethiol, polyethylene-polypropylene glycol ether with propylene glycol monomethacrylate (1:1), and styrene 2,2 -(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated (CAS Reg. No. 950207–35–9) under 40 CFR 180.960 when used as a pesticide inert ingredient in pesticide formulations. Clariant Corporation, is petitioning that 2–Propenoic acid, 2–methyl-, C_{12-16}-alkyl esters, telomers with 1-dodecanethiol, polyethylene-polypropylene glycol ether with propylene glycol monomethacrylate (1:1), and styrene, 2,2'-(1,2-diazenediyl)bis[2-methylbutanenitrile]-initiated be exempt from the requirement of a tolerance based upon the definition of a low-risk polymer under 40 CFR 723.250. Therefore, an analytical method to determine residues on treated crops is not relevant. Contact: Elizabeth Fertich, (703) 347–8560, e-mail address: *fertich.elizabeth@epa.gov*.

4. *PP 9E7538*. (EPA–HQ–OPP–2009–0066). Croda Inc., 315 Cherry Lane, New Castle, DE 19720, proposes to establish an exemption from the requirement of a tolerance for residues of alkoxylated glycerides used to formulate pesticides applied to growing crops or to raw commodities after harvest. Croda Inc., is petitioning that alkoxylated glycerides be exempt from the requirement of a tolerance based upon their compliance with the low risk polymer criteria per 40 CFR 723.250. Therefore, an analytical method to determine residues in raw agricultural commodities has not been proposed. No residue chemistry data or environmental fate data are presented in the petition as the Agency does not generally require some or all of the listed studies to rule on the exemption from the requirement of a tolerance for a low risk polymer inert ingredient. Contact: Kerry Leifer, (703) 308–8811, e-mail address: *leifer.kerry@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 28, 2010.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–13689 Filed 6–7–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9159–7]

Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Richland (the City) Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 10 is hereby granting a late waiver request from the Buy American requirements of ARRA Section 1605(a) under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City for the purchase and use of a 42-inch by 24-inch AWWA C153 cement lined mechanical joint reducer tee fitting, manufactured outside of the U.S. This is a project specific waiver and only applies to the use of the specified product for the ARRA project discussed in this notice. Any other ARRA recipient that wishes to use the same product must apply for a separate waiver based on project specific circumstances. The City's waiver request included the project schedule and purchasing efforts attempting to meet Buy American compliance by the applicant, contractor and pipeline materials supplier. The domestic manufacturer notified the piping supplier that the shipment of the product would be delayed and it appears that the supplier on behalf of the City, the ARRA recipient, did an extensive, seemingly comprehensive, and ultimately unsuccessful search for a U.S. manufacturer who could meet the project specifications in accordance with the construction schedule.

The Regional Administrator is making this determination based on the review and recommendations of the Grants & Strategic Planning Unit. The City has provided sufficient documentation to support their request.

DATES: *Effective Date:* May 21, 2010.

FOR FURTHER INFORMATION CONTACT: Bryan Fiedorczyk, CWSRF ARRA Program Management Analyst, Grants and Strategic Planning Unit, Office of Water & Watersheds (OWW), (206) 553–0506, U.S. EPA Region 10 (OWW–137), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION:

In accordance with ARRA Section 1605(c) and OMB regulations at 2 CFR Part 176, Subpart B, the EPA hereby provides notice that it is granting a late project waiver request of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the City for the purchase and use of a 42-inch by 24-inch AWWA C153 cement lined mechanical joint reducer tee fitting, manufactured outside of the U.S. The AWWA C153 reducer fittings will be incorporated as part of a wastewater treatment system upgrade project that will replace an energy intensive inefficient aeration treatment process with a plug flow fine bubble aeration system. The improvements will reduce energy consumption by more than 70% and reduce the discharge of suspended solids, biochemical oxygen demand and nitrogen into the Columbia River. The City received $3,049,304 of ARRA funding through the Clean Water State Revolving Fund to complete this project. The City was unable to find a supplier that could provide American manufactured reducer fittings to meet the project specific requirements and the construction schedule agreed upon for the project.

There are several noteworthy factors that impact this waiver analysis: (a) It is a late request because the waiver request came after the construction contract was signed; (b) under 2 CFR 176.130(c)(1) the applicable non-compliance provision regarding unauthorized use of foreign manufactured goods, EPA is authorized to process a waiver under 2 CFR 176.120(a) if "the need for such determination otherwise was not reasonably foreseeable," and EPA has further outlined this process in its April 28, 2009 memorandum: Implementation of Buy American provisions of Public Law 111–5, the "American Recovery and Reinvestment Act of 2009" (the April 28 memorandum); (c) EPA has determined that the applicant ordered domestically manufactured AWWA C153 reducer fittings, and due to the supplier's inability to deliver one of the fittings on schedule, the applicant could not reasonably foresee they would need to request a waiver for a foreign made product.

The project contractor's piping supplier (H.D. Fowler) issued a purchase order to the manufacturer (Star Pipe Products) for the AWWA C153 reducer fittings (2 each) on February 23, 2010. One fitting is associated with the modification to the WWTF Aeration Basin 2 and the second fitting is associated with the modification to the WWTF Aeration Basin 1. The contract schedule requires that the subject product for Basin 2 be delivered to the project site by June 2, 2010, which will ensure the startup of Basin 2 by August 5, 2010 and the commissioning of Basin 2 by September 15, 2010. Work on the modification to Basin 1 is scheduled to commence immediately following the commissioning of Basin 2. The piping supplier placed the order with the manufacturer on the basis of an agreed ship date of May 24, 2010 [90 days from receipt of purchase order] for one of the two products and an agreed ship date of June 23, 2010 [120 days from receipt of purchase order] for the second of the two products. On March 30, 2010, the manufacturer notified the piping supplier that the shipment of the product would be delayed. The estimated time of arrival at the site would be June 26, 2010. The delay in shipment poses a negative impact to project construction costs, schedule, and employment. Late delivery would push the site piping installation into the same time frame as the diffuser installation in order to meet the project's contractual completion schedule. Since the reducer fitting is a central part of the piping scheme, most pipe cannot be installed prior to this central node being completed. Delay of the piping installation would impose extra costs of installation equipment (excavator, dump truck, and loader) that would need to remain on site for an additional month. Additionally, the contractor would need to lay off two full-time equivalent (FTE) employees (of the three FTE positions assigned to the project) for approximately 18 work days (between June 2nd and June 26th, 2010). Based on the technical evaluation conducted by EPA's consulting contractor (Cadmus), the available evidence supports the applicant's claim that the AWWA C153 reducer fitting for Basin 2 is not available from a domestic manufacturer within a timeframe that meets the project's schedule (*i.e.,* delivery to the project site by June 2, 2010). Further, the domestic manufacturer has advised the Grants and Strategic Planning Unit that it has a substantial back log of orders and will not be adversely affected if the City cancels the purchase order.

Section 1605 of the ARRA requires that none of the appropriated funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project is produced in the United States unless a waiver is provided to the recipient by EPA. A waiver may be provided under Section 1605(b) if EPA determines that, (1)

Applying these requirements would be inconsistent with public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The April 28 memorandum defines "reasonably available quantity" as the quantity of iron, steel, or relevant manufactured good is available or will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design. Based on additional research by EPA's consulting contractor (Cadmus), and to the best of the Region's knowledge at this time, the City attempted without success, to meet the Buy American requirements. Furthermore, the purpose of the ARRA provisions was to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the City, to halt construction pending manufacture of domestically produced goods. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA; to create or retain jobs.

The Grants and Strategic Planning Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City is sufficient to meet the following criteria listed under Section 1605(b) and in the April 28 memorandum: Iron, Steel, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The basis for this project waiver is the authorization provided in Section 1605(b)(2), due to the lack of U.S. production of a 42-inch by 24-inch AWWA C153 cement lined mechanical joint reducer tee fitting, in order to meet the City's design schedule and specifications. The March 31, 2009, Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients. Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the City is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase of a 42-inch by 24-inch AWWA C153 cement lined mechanical joint reducer tee fitting from a manufacturer outside of the U.S. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Pub. L. 111–5, section 1605

Dated: May 21, 2010.

Dennis J. McLerran,

Regional Administrator EPA, Region 10.

[FR Doc. 2010–13619 Filed 6–7–10; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

AGENCY: Farm Credit System Insurance Corporation.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 10, 2010, from 1 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Closed Session

- FCSIC Report on System Performance

Open Session

A. Approval of Minutes

- March 25, 2010 (Open and Closed)

B. Business Reports

- FCSIC Financial Report
- Report on Insured Obligations
- Quarterly Report on Annual Performance Plan

C. New Business

- Policy Statement Concerning Appraisals
- Mid-Year Review of Insurance Premium Rates
- FCSIC Strategic Plan FY 2010–2015

Dated: June 2, 2010.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. 2010–13605 Filed 6–7–10; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve 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.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority to discontinue the following report:

Report title: Survey of Financial Management Behaviors of Military Personnel.

Agency form number: FR 1375.

OMB control number: 7100–0307.

Frequency: Semi-annually.

Reporters: Military personnel.

Estimated annual reporting hours: 2,640 hours.

Estimated average hours per response: 20 minutes.

Number of respondents: 4,000.

General description of report: This information collection is voluntary. The statutory basis for collecting this information includes: The Truth in Lending Act, 15 U.S.C. 1604(a), The Truth in Savings Act, 12 U.S.C. 4308(a), the Equal Credit Opportunity Act, 15 U.S.C. 1691b, and the Fair Credit Reporting Act, 15 U.S.C. 1681m(h)(6), 1681s(e)(1). Further, under the Truth in Lending Act, the Board is required to report annually to Congress and make recommendations concerning the Act, 15 U.S.C. 1613. Respondent participation in the survey is voluntary. No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents are not reported to the Board.

Abstract: This survey, which was implemented in 2004, gathers data from two groups of military personnel: (1) Those completing a financial education course as part of their advanced individualized training and (2) those not completing a financial education course. These two groups are surveyed on their financial management behaviors and changes in their financial situations over time. Data from the survey help to determine the effectiveness of financial education for young adults in the military and the durability of the effects as measured by financial status of those receiving financial education early in their military careers.

Current Actions: On March 25, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 14440) seeking public comment for 60 days on the discontinuance of the Survey of Financial Management Behaviors of Military Personnel. The comment period for this notice expired on May 24, 2010. The Federal Reserve did not receive any comments.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

Report title: Notification of Nonfinancial Data Processing Activities.

Agency form number: FR 4021.

OMB control number: 7100–0306.

Frequency: On occasion.

Reporters: Bank holding companies.

Estimated annual reporting hours: 4 hours.

Estimated average hours per response: 2 hours.

Number of respondents: 2.

General description of report: This information collection is required to obtain a benefit. (12 U.S.C. 1843(c)(8), (j) and (k)) and may be given confidential treatment upon request (5 U.S.C. 552(b)(4)).

Abstract: Bank holding companies submit this notification to request permission to administer the 49-percent revenue limit on nonfinancial data processing activities on a business-line or multiple-entity basis. A request may be filed in a letter form; there is no reporting form for this information collection.

Current Actions: On March 25, 2010, the Federal Reserve published a notice in the **Federal Register** (75 FR 14440) seeking public comment for 60 days on the proposal to extend, without revision, the Notification of Nonfinancial Data Processing Activities. The comment period for this notice expired on May 24, 2010. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, June 3, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–13760 Filed 6–7–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of the Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 17, 2010. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace Level of the Martin Building. For security purposes, anyone planning to attend the meeting should register no later than Tuesday, June 15, by completing the form found online at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm.*

Attendees must present photo identification to enter the building and should allow sufficient time for security processing.

The meeting will begin at 9 a.m. and is expected to conclude at 12:30 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

- Home Mortgage Disclosure Act (HMDA)

In the context of the Board's review of Regulation C, which implements HMDA, members will discuss whether the 2002 revisions to Regulation C, which required lenders to report mortgage pricing data, helped provide useful and accurate information about the mortgage market; the need for additional data and other improvements; and what emerging issues in the mortgage market may warrant additional research.

- Community Reinvestment Act (CRA)

Members will discuss the future of the Community Reinvestment Act, including possible changes in light of developments in the financial services industry and issues associated with the foreclosure crisis.

- Foreclosure issues

Members will discuss loss-mitigation efforts, including the Administration's Making Home Affordable program, neighborhood stabilization initiatives and challenges, and other issues related to foreclosures.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Kerslake at 202–452–6470.

Board of Governors of the Federal Reserve System, June 3, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–13670 Filed 6–7–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting

The Consumer Advisory Council will meet on Thursday, June 17, 2010. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace Level of the Martin Building. For security purposes, anyone planning to attend the meeting should register no later than Tuesday, June 15, by completing the form found online at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm.*

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• *Foreclosure Issues*

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Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Kerslake at 202–452–6470.

Board of Governors of the Federal Reserve System, June 3, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–13650 Filed 6–7–10; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The FTC intends to conduct an exploratory study on consumer susceptibility to fraudulent and deceptive marketing. This research will be conducted to further the FTC's mission of protecting consumers from unfair and deceptive marketing. Before gathering this information, the FTC is seeking public comments on its proposed research. The information collection requirements described below are being submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA").

DATES: Comments must be submitted on or before July 8, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/fraudexperiment2*) and following the instructions on the web-based form). Comments filed in paper form should refer to "Fraud Susceptibility Experiment, FTC File No. P095501," both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

All comments should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Patrick McAlvanah, Economist, Bureau of Economics, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mail Stop NJ-4136, Washington, DC 20580. Telephone: (202) 326-2974; e-mail: (*fraudexperiment@ftc.gov*).

SUPPLEMENTARY INFORMATION:

Request for Comments:

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Fraud Susceptibility Experiment, FTC File No. P095501" to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/fraudexperiment2*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: (*https://public.commentworks.com/ftc/fraudexperiment2*). If this Notice

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

appears at (*http://www.regulations.gov/search/Regs/home.html#home*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

A comment filed in paper form should include the "Fraud Susceptibility Experiment, FTC File No. P095501" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

On June 11, 2009, the FTC sought comment on the information collection requirements associated with the proposed Fraud Susceptibility Experiment study.[2] No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501-3521, the Commission is providing this second opportunity for public comment. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before July 8, 2010.

Background Information:

As part of its consumer protection mission, the FTC has brought hundreds of cases targeting fraud, and has committed significant resources to educational initiatives designed to protect consumers. The Commission hosted a Fraud Forum[3] on February 25-26, 2009 to examine fraud in the market place. The Commission has also conducted telephone surveys in 2003 and 2005 designed to measure the proportion of the U.S. adult population that has fallen victim to various consumer frauds.[4] Despite this, surprisingly little is known about what determines consumers' susceptibility to fraud. For example, the 2003 and 2005 FTC consumer fraud surveys found that education was not a significant predictor of fraud victimization. Understanding when and why people are vulnerable to fraud would better inform the FTC's substantial, ongoing efforts to fight fraud through law enforcement and consumer education. Additional insights into how and why people fall victim to fraud could also help improve any future fraud surveys the Commission may undertake. The study announced in this notice is a preliminary and exploratory step toward facilitating those efforts. The study is not intended to lead to enforcement actions; rather, study results may aid the FTC's efforts to better target its enforcement actions and consumer education initiatives, and improve future fraud surveys.

Economic and psychological experiments have identified several decision-making biases, such as impulsivity, over-confidence, over-optimism, and loss aversion, that can cause inaccurate assessments of the risks, costs, and benefits of various choices. FTC staff proposes to conduct an economic laboratory experiment to study whether these types of decision biases are related to consumer susceptibility to fraudulent or deceptive marketing claims. Staff intends to study consumers' assessment of potentially deceptive advertisements, in addition to their assessment of non-deceptive advertisements. Staff seeks to understand which characteristics of individuals and advertisements predict consumers' ability to differentiate between apparently fraudulent materials and apparently legitimate materials.

Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501-21, the FTC is providing this opportunity for public comment while requesting that OMB approve the study. Under the PRA, federal agencies must obtain OMB approval for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before July 8, 2010.

A. Description of the collection of information and proposed use

The FTC proposes to conduct an experiment in a university's economics laboratory with 250 subjects drawn from the campus community.[5] A sample of 250 persons enables random assignment of subjects into different experimental conditions of sufficient size for analytic power. The sample is not intended to be nationally representative, but will still provide useful insights into consumer susceptibility to fraud. In addition, five to ten of these subjects will participate in a pretest. Pretest subjects will participate in an in-person interview about the clarity and comprehensibility of the instructions.

The study will gauge consumer attitudes towards legitimate and potentially fraudulent or deceptive advertisements. Staff plans to ask subjects to examine advertisements for fraudulent products and report their opinion about the credibility of the advertisements. Staff also plans to ask participants to rate the credibility of advertisements for apparently legitimate products to gauge how participants distinguish between apparently fraudulent product claims and legitimate product claims. Staff plans to measure consumer knowledge, risk attitudes, impatience, and skepticism using existing methods from economics and psychology research. Staff intends to measure consumer knowledge using consumer literacy, financial literacy, and numeracy questions[6] in order to test subjects' marketplace understanding and sophistication. Staff seeks to determine if people with such knowledge deem fraudulent advertisements to be less credible than legitimate advertisements. Staff plans to measure subjects' risk attitudes through

[2] 74 FR 27794.

[3] Information on the Fraud Forum is available at: (*http://www.ftc.gov/bcp/workshops/fraudforum/index.shtm*).

[4] The Commission has published two staff reports describing the results of these surveys – *Consumer Fraud in the United States: An FTC Survey* (published August 2004 and available at (*http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf*) and *Consumer Fraud in the United States: The Second FTC Survey* (published in October 2007 and available at (*http://www.ftc.gov/opa/2007/10/fraud.pdf*).

[5] Staff has contracted with a faculty member of George Mason University who will recruit the study subjects and oversee and administer the experiment.

[6] Staff plans to use financial literacy and numeracy measures such as in James Banks and Zoe Oldfield, *Understanding Pensions: Cognitive Function, Numerical Ability and Retirement Saving*, *Fiscal Studies*, 2007, 28 (2).

a series of choices between smaller certain amounts of money or larger risky amounts.[7] Staff intends to describe the product to some subjects as creating benefits, while presenting to other subjects nearly identical information depicted as a reduction in harm. Staff intends to then test whether risk-averse and loss-averse subjects are particularly susceptible to fraudulent claims framed as opportunities to escape losses.[8] Staff plans to measure subjects' impatience through a series of choices between smaller monetary amounts received sooner or larger amounts but received later.[9] Staff would then test to see if impatient subjects are more susceptible to fraudulent claims. Staff also plans to elicit measures of optimism [10] and skepticism [11] to determine their roles in deeming advertisements, both of fraudulent and legitimate products, as credible. In addition, staff intends to collect demographic and background information from the surveyed subjects. The FTC has contracted with the faculty of a university-run experimental economics laboratory to locate and recruit subjects and conduct the experiments.

Staff will pre-test the experimental procedures with up to ten subjects to ensure that the instructions provided to participants are clear and comprehensible, and that the experimental procedures are workable. Pre-test subjects will be drawn from the same university subject pool as the experiment's subjects.

B. Estimated Hours Burden

The FTC plans to seek information from up to 250 respondents for approximately 90 minutes each. Allowing for pre-testing of the instructions on as many as 10 respondents, at an additional 30 minutes apiece, cumulative burden, inclusive of the pre-testing, will total approximately 380 hours.

C. Estimated Costs Burden

The cost per respondent should be negligible. Participation will not require start-up, capital, or labor expenditures by respondents. The above-noted contractor will recruit the student and community member subjects to participate in this study; subjects will be asked to respond to an initial recruitment email to participate voluntarily. Staff will compensate all subjects for their participation in the 90-minute study. Subjects will receive approximately $8 as a show-up fee; in addition, they will have the opportunity to earn more during the course of the study based upon their responses to various questions. Staff expects that subjects will earn an average of $30 each for their participation in the 90 minute study, and that most subjects will earn between $20 and $40.

David C. Shonka

Acting General Counsel

[FR Doc. 2010–13691 Filed 6–7–10; 8:45 am]

BILLING CODE 6750–01–S

[7] Staff intends to use standard risk aversion measurement methodologies akin to those in Charles Holt and Susan Laury, *Risk Aversion and Incentive Effects*, *American Economic Review*, December 2002, 1644-1655.

[8] Several academic articles report that people are more willing to take identical risks over monetary gambles if the risk is presented as an opportunity to escape losses rather than as a chance to gain. Our "framing" methodologies emulate those in Amos Tversky and Daniel Kahneman, *The Framing of Decisions and the Psychology of Choice*, Science, Vol. 211, No. 4481 (Jan. 30, 1981), 453-458.

[9] Staff intends to use methodology similar to that in Stephan Meier and Charles Sprenger, *Present-Biased Preferences and Credit Card Borrowing*, *American Economic Journal: Applied Economics* 2010, 2:1, 193-210.

[10] Staff plans to use standard questions similar to those in Manju Puri and David Robinson, *Optimism and Economic Choice*, *Journal of Financial Economics*, 2007, Vol. 86, 71-99.

[11] Staff plans to use the scale developed in Carl Obermiller and Eric Spangenberg, *Development of a Scale to Measure Consumer Skepticism toward Advertising*, *Journal of Consumer Psychology*, Vol. 7, No. 2, 1998, 159-186.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee; Notice and Publication of Committee Recommendations to the National Coordinator for Health Information Technology

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of committee recommendations and invitation for public input.

SUMMARY: This notice publishes recommendations made by the HIT Standards Committee (Committee) at its public meeting on April 28, 2010, and invites public input on the recommendations at the Committee's next meeting on June 30, 2010. The Committee is a federal advisory committee to the Office of the National Coordinator for Health Information Technology (ONC).

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee. Sections 3003(b)(4) and (e) of the Health Information Technology for Economic and Clinical Health (HITECH) Act requires ONC to publish the Committee's recommendations to the National Coordinator in the **Federal Register** and on ONC's Web site.

Contact Person: Judith Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.*

Recommendations: During the April 28, 2010 meeting, the Committee's recommendations focused on standards for governance, funding and infrastructure of controlled vocabularies, value sets and vocabulary subsets to be used primarily to further interoperability between providers and the systems they deploy as defined by the various stages of Meaningful Use Objectives. The recommendations may be found at *http://healthit.hhs.gov/standardscommittee.*

Procedure: Individuals wishing to make comments on the Committee's April 28, 2010, recommendations may present oral comments at the Committee's next meeting on June 30, 2010, from approximately 1 p.m. to 2 p.m., e.t., at the Marriott Hotel Washington, 1221 22nd Street, NW., Washington, DC 20037. Comments will be limited to two (2) minutes per person. A separate notice announcing this meeting has been published in the **Federal Register** and provides additional information.

Authority: Sections 3003(b)(4) and (e) of Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111–5.

Dated: June 2, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–13683 Filed 6–7–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: TANF Emergency Fund Subsidized Employment Report, Form OFA 200.

OMB No.: New Collection.

Description: On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act), which establishes the Emergency Contingency Fund for State Temporary Assistance for Needy Families (TANF) Programs (Emergency Fund) as section 403(c) of the Social Security Act (the Act). This legislation provides up to $5 billion to help States, Territories, and Tribes in fiscal year (FY) 2009 and FY 2010 that have an increase in assistance caseloads or in certain types of expenditures. The Recovery Act also made other changes to TANF—extending supplemental grants through FY 2010, expanding flexibility in the use of TANF funds carried over from one fiscal year to the next, and adding a hold-harmless provision to the caseload reduction credit for States and Territories serving more TANF families.

The Emergency Fund is intended to build upon and renew the principles of work and responsibility that underlie successful welfare reform initiatives. The Emergency Fund provides resources to States, Territories, and Tribes (referred to collectively here as "jurisdictions") to support work and families during this difficult economic period.

Many jurisdictions are implementing subsidized employment programs as a result of the availability of this new funding, and there is substantial interest in understanding how this funding has been used. There is also significant public interest in the number of individuals that are being placed in subsidized employment as a result of the Recovery Act. As a result, we are proposing a voluntary data collection for jurisdictions regarding information on the number of individuals in subsidized employment funded in whole or in part by the TANF Emergency Fund or that were included in the calculation of a TANF Emergency Fund award.

The definition of subsidized employment used for this collection is the same as the definition for the TANF program in general, given in 45 CFR 261.2(c) and (d). This information will help the agency as well as the public better understand how jurisdictions are using the money they are awarded through the Emergency Fund.

A voluntary information collection relating to the number of individuals in subsidized employment will serve several purposes.

This information will demonstrate the impact of the program, help ACF to evaluate the effectiveness of this initiative, and provide information to aide in the transparency and accountability of jurisdictions receiving Recovery Act funds. This information will also allow the Administration to publicly communicate the impact and achievements of the program, and make future policy decisions on the basis of such knowledge.

Respondents: State, Territory, and Tribal agencies administering the Temporary Assistance for Needy Families (TANF) Program that have received TANF Emergency Funds.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Subsidized Employment Report OFA–200.	74 jurisdictions	2 (Q3 & Q4 of FY 2010)	24	3,552

Estimated Total Annual Burden Hours: We estimate the annualized cost of the hour burden to be $319,680. This figure is based on an estimated average hourly cost of $90 (including fringe benefits, overhead, and general and administrative costs) for the jurisdiction staff performing the work multiplied by the estimated 3,552 burden hours, calculated based on 74 jurisdictions applying for and receiving TANF Emergency Funds (all States and Territories, plus an estimated 20 Tribes). Jurisdictions would submit two report for FY 2010, one for quarter 3 and one for quarter 4.

Additional Information: A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275. Interested persons are invited to submit comments regarding this request. For the best effect, comments must be received within thirty days from the publication date of this notice.

Comments about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503; Fax: (202) 395–7285; e-mail: *oira_submission@omb.eop.gov.*

Dated: May 28, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–13474 Filed 6–7–10; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; The STAR METRICS Program

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director of the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. 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: STAR METRICS.

Science and Technology for America's Reinvestment: Measuring the Effects of Research on Innovation, Competitiveness and Science. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The aim of STAR METRICS is twofold. The initial goal of STAR METRICS is to provide mechanisms that will allow participating universities and Federal agencies with a reliable and consistent means to account for the number of scientists and staff that are on research institution payrolls, supported by Federal funds. In subsequent generations of the program, it is hoped that STAR METRICS will allow for measurement of science impact on economic outcomes (such as job creation), on knowledge generation (such as citations and patents) as well as on social and health outcomes.

Frequency of Response: Quarterly.

Affected Public: Universities.

Type of Respondents: University administrators.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 4.

Average Burden Hours per Response: Reduced by 156; and

Estimated Total Annual Burden Hours Requested: Reduced by 15,600.

The annualized cost to respondents is estimated to be reduced by $780,000. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

A.12—1 ESTIMATES OF NET HOUR BURDEN REDUCTION

Type of respondents	Number of respondents	Frequency of response	Average time per response (in hours)	Annual hour burden
Stage 1: Immediate	100	1	72	+7200
Stage 1: Expected Reduction in Current burden (assuming 100 universities and at median)	100	4	40	−16000
Net reduction in burden	100	4	.....	−8800
Stage 1: Future	100	4	1.0	+400
Stage 2: Expected Reduction in Current burden (assuming 100 universities and at median)	100	4	40	−16000
Net reduction in burden	100	4	.....	−15600

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.

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: Dr. Stefano Bertuzzi, MSC 0166, Building 1 Room 218, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number 301–496–9286 or E-mail your request, including your address to: *Stefano.bertuzzi@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: June 2, 2010.

Laverne Stringfield,

Executive Officer, Office of the Director, National Institutes of Health.

[FR Doc. 2010–13736 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Revision to Proposed Collection; Comment Request; the National Children's Study (NCS), Vanguard (Pilot) Study, Recruitment Substudy Phase 1

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 22, 2010, pages 14165–14168, and allowed 60 days for public comment. One comment was received. The comment questioned the value and utility of the proposed data collection, stating that this type of research is not needed. 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: Pilot Study for the National Children's Study, *Type of Information Collection Request:* Revision, *Affected entities:* Households and individuals. *Types of respondents:* People potentially affected by this action are pregnant women, women age 18–49 years of age, their husbands or partners, and their children who live in selected areas within National Children's Study sites. Health care

professionals, community leaders, and child care personnel are also potentially affected. *Frequency of Response:* On occasion. See burden table for estimated number of annual responses for each respondent. *Need and use of information collection:* The purpose of the proposed methodological study is to evaluate the feasibility, acceptability, and cost of three separate recruitment strategies for enrollment of women into a prospective, national longitudinal study of child health and development. This Recruitment Substudy is a component of the Vanguard Phase of the National Children's Study (NCS). In combination, the studies in the Vanguard Phase will be used to inform the design of the Main Study of the National Children's Study.

This data collection will evaluate the feasibility, acceptability and cost of three separate recruitment strategies for enrollment of women into the NCS. Up to 30 additional sites will be added to the NCS Vanguard Cohort, as reflected in the burden table, in order to ensure an adequate cohort size. These additional sites will be chosen from among those already identified for the Main Study of the NCS. Across these additional sites, three alternate recruitment strategies will be assessed:

- An enhanced household enumeration strategy that builds on the lessons learned in the existing Vanguard Study by enhancing enumeration techniques and employing a more streamlined recruitment process;
- A provider based recruitment strategy that relies on health care providers for assistance in participant identification and recruitment; and
- A two-tiered recruitment strategy that relies on larger secondary sampling units to increase the number of geographically-eligible women in a given area, and allows for both higher-intensity and lower-intensity forms of data collection.

The feasibility (technical performance), acceptability (respondent tolerance and impact on study infrastructure), and cost (operations, time, and effort) of each of these three strategies will be evaluated using pre-determined measures. The findings will be assessed and used to inform the strategies, or combinations of strategies, that might be used in the Main Study of the NCS. Further details pertaining to the NCS background and planning can be found at: *http://www.nationalchildrensstudy.gov.*

*Burden statemen*t: The public burden for this study will vary depending on the eligibility and pregnancy status of potential participants at the time of household screening and the method of recruitment. The table below provides an annualized average burden per person for each stage of the Recruitment Substudy.

TABLE 1—ESTIMATED HOUR BURDEN AND COST FOR RECRUITMENT SUBSTUDY RESPONDENTS—STAGE 1

[July 2010 to December 2010]

Recruitment strategy/activity	Type of respondent	Number of respondents	Responses per respondent	Hours per response	Annual hour burden
Provider-based: 10 Study Locations—Projected for Stage 1 (July 2010–December 2010)					
Screening Activities					
Address Look-Up	Age-Eligible Women	7,500	1	0.1	750
Pregnancy Screening	Age-Eligible Women	1,500	1	0.42	630
Preconception Activities					
Pre-Pregnancy Interview	Age-Eligible Women	123	1	0.75	92
PPG Follow Up Script	Age-Eligible Women	123	6	0.1	74
Pregnancy Activities					
Women's Informed Consent Form	Pregnant Women	1,500	1	0.67	1,005
First Pregnancy Interview	Pregnant Women	572	1	1	572
Second Pregnancy Interview	Pregnant Women	572	1	0.75	429
Birth-Related Activities					
Birth Visit Interview	Mother/Baby	299	1	0.4	120
Total—Stage 1		12,188			3,671
Enhanced Household: 10 Study Locations—Projected for Stage 1 (July 2010–December 2010)					
Screening Activities					
Household Enumeration Script	HH reporters	120,000	1	0.33	39,600
Pregnancy Screening	Age-Eligible Women	51,198	1	0.42	21,503
Neighbor Report	Neighbors	12,000	1	0.05	600
Preconception Activities					
Pre-Pregnancy Interview	Age-Eligible Women	211	1	0.75	158
PPG Follow Up Script	Age-Eligible Women	211	6	0.1	127
Pregnancy Activities					
Women's Informed Consent Form	Pregnant Women	2,586	1	0.67	1,733
First Pregnancy Interview	Pregnant Women	986	1	1	986
Second Pregnancy Interview	Pregnant Women	986	1	0.75	740
Birth-Related Activities					
Birth Visit Interview	Mother/Baby	516	1	0.4	206
Total—Stage 1		188,695			65,653
Two Tier (Low): 10 Study Locations Across Both Tiers—Projected for Stage 1 (July 2010–December 2010)					
Screening Activities					
Low-intensity CATI Preg. Screener	Age-Eligible Women	48,000	1	0.35	16,800
Low Intensity Consent Script	Age-Eligible Women	28,800	1	0.33	9,504
Preconception Activities					

TABLE 1—ESTIMATED HOUR BURDEN AND COST FOR RECRUITMENT SUBSTUDY RESPONDENTS—STAGE 1—Continued

[July 2010 to December 2010]

Recruitment strategy/activity	Type of respondent	Number of respondents	Responses per respondent	Hours per response	Annual hour burden
Low-intensity CATI Questionnaire	Age-Eligible Women	10,057	1	0.5	5,028
PPG Follow Up Script	Age-Eligible Women	10,057	6	0.1	6,034
Pregnancy Activities					
Low-intensity CATI Questionnaire	Pregnant Women	518	1	0.5	259
Birth-Related Activities					
Low-intensity CATI Questionnaire	Mother/Baby	166	1	0.5	83
Total—Stage 1		97,598			37,709
Two Tier (High): 10 Study Locations Across Both Tiers—Projected for Stage 1 (July 2010–December 2010)					
Screening Activities					
Pregnancy Screening	Age-Eligible Women	15,840	1	0.42	6,653
Preconception Activities					
Pre-Pregnancy Interview	Age-Eligible Women	761	1	0.75	571
PPG Follow Up Script	Age-Eligible Women	761	6	0.1	456
Pregnancy Activities					
Women's Informed Consent Form	Pregnant Women	9,504	1	0.67	6,368
First Pregnancy Interview	Pregnant Women	3,552	1	1	3,552
Second Pregnancy Interview	Pregnant Women	3,552	1	0.75	2,664
Birth-Related Activities					
Birth Visit Interview	Mother/Baby	1,857	1	0.4	743
Total—Stage 1		35,826			21,006
Grand Total, Recruitment Substudy.		334,308			176,876

The estimated annualized cost to respondents is $1,782,053 based on the differential hourly rate estimates in the above table. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

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: 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, New Executive Office Building, Room 10235, Washington, DC 20503, 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: Sarah L. Glavin, Ph.D., National Institute of Child Health and Human Development, 31 Center Drive, Room 2A18, Bethesda, Maryland, 20892, or call non-toll free number (301) 496–1877, or e-mail your request, including your address to *glavins@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: June 2, 2010.

Sarah L. Glavin,

NICHD Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2010–13705 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0250]

Agency Information Collection Activities; Proposed Collection; Comment Request; Premarket Approval of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for premarket approval of medical devices.

DATES: Submit either electronic or written comments on the collection of information by August 9, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301 796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Premarket Approval of Medical Devices—21 CFR Part 814 /Food and Drug Administration Modernization Act of 1997 (FDAMA) Sections 201, 202, 205, 208, and 209 (OMB Control Number 0910–0231)—Extension

Section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e) sets forth the requirements for premarket approval of certain class III medical devices. Class III devices are either pre-amendments devices that have been classified into class III, or post-amendments devices which are not substantially equivalent to a pre-amendments device, or transitional devices. Class III devices are devices such as implants, life sustaining or life supporting devices, and/or devices which otherwise present a potentially unreasonable risk of illness or injury, and/or are of substantial importance in preventing impairment of human health. Most premarket approval applications (PMAs) are for post-amendments class III devices.

Under section 515 of the act, an application must contain certain specific information, including full reports of all information concerning investigations showing whether the device is reasonably safe and effective. The application should also include a statement of components, ingredients, and properties of the principles of operation for such a device. In addition, the application should also include a full description of the methods used in, and the facilities and controls used for the manufacture and processing of the device and labeling specimens. The implementing regulations, contained in part 814 (21 CFR part 814), further specifies the contents of a PMA for a class III medical device and the criteria FDA sets forth in approving, denying, or withdrawing approval of a PMA as well as supplements to PMAs. The purpose of this regulation is to establish an efficient and thorough procedure for FDA's review of PMAs and supplements to PMAs for certain class III (premarket approval) medical devices. The regulations under part 814 facilitate the approval of PMAs and supplements to PMAs for devices that have been shown to be reasonably safe and effective and otherwise meet the statutory criteria for approval. The regulations also ensure the disapproval of PMAs and supplements to PMAs for devices that have not been shown to be reasonably safe and effective and that do not otherwise meet the statutory criteria for approval. FDAMA (Public Law 105–115) was enacted on November 21, 1997, to implement revisions to the act by streamlining the process of bringing safe and effective drugs, medical devices, and other therapies to the U.S. market. Several provisions of this act affect the PMA process, such as section 515(d)(6) of the act. This section provided that PMA supplements were required for all device changes that affect safety and effectiveness of a device unless such changes are modifications to manufacturing procedures or method of manufacture. This type of manufacturing change now requires a 30-day notice, or where FDA finds such notice inadequate, a 135-day PMA supplement.

To make the PMA process more efficient, in the past several years FDA has done the following: (1) Made changes to the PMA program based on comments received, (2) complied with changes to the program mandated by FDAMA and the Medical Device User Fee Modernization Act, and (3) worked toward completion of its PMA reinvention efforts.

Respondents to this information collection are persons filing a PMA application or a PMA supplement with FDA for approval of certain class III medical devices. Part 814 defines a person as any individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit, or other legal entity. These respondents include entities meeting the definition of manufacturers such as manufacturers of commercial medical devices in distribution prior to May 28, 1976 (the enactment date of the Medical Device Amendments). In addition, hospitals that reuse single use devices (SUDs) are also included in the definition of manufacturers. It is expected that FDA will receive one PMA application from hospitals that remanufacture SUDs annually. This figure has been included in table 1 of this document, as part of the reporting burden in § 814.20.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/ FDAMA Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.15(b)	8	1	8	2	16

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section/ FDAMA Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.20	36	1	36	668	24,048
814.37(a) through (c) and (e)	36	1	36	167	6,012
814.39(a)	670	1	670	60	40,200
814.39(d)	68	1	68	6	408
814.39(f)	505	1	505	16	8,080
814.82(a)(9)	18	1	18	135	2,430
814.84(b)	648	1	648	10	6,480
Section 201 (FDAMA) Agreement Meeting	3	1	3	50	150
Section 202 (FDAMA) Expedited Review Request	5	1	5	10	50
Section 205 (FDAMA) Effectiveness Meeting	5	1	5	50	250
Section 208 (FDAMA) Classification Panel Meetings	20	1	20	30	600
Section 209 (FDAMA) 100-day meeting	28	1	28	10	280
Totals	2,050	13	2,050	1,214	89,004

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.82(a)(5) and (a)(6)	698	1	698	17	11,866

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The industry-wide burden estimate for PMAs is based on an FDA actual average fiscal year (FY) annual rate of receipt of 36 PMA original applications, 532 PMA supplements, and 505 30-day notices using FY 2005 through 2009 data. The burden data for PMAs is based on data provided by manufacturers by device type and cost element in an earlier study. The specific burden elements for which FDA has data are as follows:

- Clinical investigations—67 percent of total burden estimate;
- Submission of additional data or information to FDA during a PMA review—12 percent;
- Additional device development cost (e.g., testing)—10 percent; and
- PMA and PMA supplement preparation and submissions, and development of manufacturing and controls data—11 percent.

Reporting Burden

The reporting burden can be broken out by certain sections of the PMA regulation as follows:

- *§ 814.15—Research Conducted Outside the United States*

Approximately 20 percent of the clinical studies submitted in support of a PMA application are conducted outside the United States. Each study should be performed in accordance with the "Declaration of Helsinki" or the laws and regulations of the country in which the study was conducted. If the study was conducted in accordance with the laws of the country, the PMA applicant is required to explain to FDA in detail the differences between the laws of the country and the "Declaration of Helsinki." Based on the number of PMAs received that contained studies from overseas, FDA estimates that the burden estimate necessary to meet this requirement is 20 hours.

- *Application in § 814.20(a) through (c) and (e)*

The majority of the 24,048 hourly burden estimate is due in part to this requirement. Included in this requirement are the conduct of laboratory and clinical trials as well as the analysis, review, and physical preparation of the PMA application. FDA estimates that 36 manufacturers, including hospital re-manufacturers of SUDs, will be affected by these requirements which are based on the actual average of FDA receipt of new PMA applications in FY 2005 through 2009. FDA's estimate of the hours per response (668) was derived through FDA's experience and consultation with industry and trade associations. In addition, FDA also based its estimate on the results of an earlier study which accounts for the bulk of the hourly burden for this requirement, which is identified by manufacturers.

- *§ 814.37—PMA Amendments and Resubmitted PMAs*

As part of the review process, FDA often requests PMA applicant to submit

additional information regarding the device necessary for FDA to file the PMA or to complete its review and make a final decision. The PMA applicant may, also on their own initiative, submit additional information to FDA during the review process. These amendments contain information ranging from additional test results, re-analysis of the original data set to revised device labeling. Almost all PMAs received by the Agency have amendments submitted during the review process. FDA estimates that 6,012 burden hours are necessary to satisfy this requirement.

• *PMA Supplements in § 814.39(a)*

FDA believes that the amendments mandated by FDAMA for § 814.39(f), permitting the submission of the 30-day notices in lieu of regular PMA supplements, will result in an approximate 20 percent reduction in the total number of hours as compared to regular PMA supplements. As a result, FDA estimates that 40,200 hours of burden are needed to complete the requirements for regular PMA supplements.

• *Special PMA Supplements—Changes Being Affected in § 814.39(d)*

These types of supplements are intended to enhance the safety of the device or the safe use of the device. The number of PMA supplements received that fit this category averaged 68 per year based on the numbers received from FY 2005 through FY 2009. Because of the minimal data required to be included in this type of supplement, FDA estimates that the burden hours necessary to satisfy this requirement are 408 hours.

• *30–Day Notice in § 814.39(f)*

Under section 515(d) of the act, modifications to manufacturing procedures or methods of manufacture that affect the safety and effectiveness of a device subject to an approved PMA do not require submission of a PMA supplement under § 814.39(a) and are eligible to be the subject of a 30-day notice. A 30-day notice shall describe in detail the change, summarize the data or information supporting the change, and state that the change has been made in accordance with the requirements of part 820 (21 CFR part 820). The manufacturer may distribute the device 30 days after the date on which FDA receives the 30-day notice, unless FDA notifies the applicant within 30 days from receipt of the notice, that it is not adequate. FDA estimates the burden to satisfy this requirement is 8,080 hours.

• *Post-Approval Requirements in § 814.82(a)(9)*

Post-approval requirements concern approved PMAs that were not reclassified and require a periodic report. After approval, all PMAs require a submission of an annual report. On average, approximately half of the submitted PMAs (18), require associated post-approval studies, i.e., followup of patients used in clinical trials to support the PMA or additional preclinical information, that is labor-intensive to compile and complete; the remaining PMAs require minimal information. Based on experience and consultation with industry, FDA has estimated that preparation of reports and information required by this section requires 2,430 hours.

• *Reports in § 814.84(b)*

Post-approval requirements described in § 814.82(a)(7) require submission of an annual report for each approved PMA. FDA estimates that respondents will average about 10 hours in preparing their reports to meet this requirement. This estimate is based on FDA's experience and consultation with industry. Thus, FDA estimates that the periodic reporting burden required by this section will take 6,480 hours.

Statutory Reporting Burden Estimate (FDAMA)

The total statutory reporting burden under the requirements of sections 201, 202, 205, 208, and 209 of FDAMA is estimated to be 1,230 hours. This burden estimate was based on actual real and estimated FDA data tracked from FY 2005 through FY 2009, and an estimate was also derived to forecast future expectations with regard to this statutory data.

Recordkeeping in § 814.82(a)(5) and (a)(6)

The recordkeeping burden under this section requires the maintenance of records, used to trace patients and the organization and the indexing of records into identifiable files to ensure the device's continued safety and effectiveness. These records are required only of those manufacturers who have an approved PMA and who had original clinical research in support of that PMA. For a typical year's submissions, 70 percent of the PMAs are eventually approved with 90 percent of these having original clinical trial data. Therefore, approximately 25 PMAs a year would be subject to these requirements. Also, because the requirements apply to all active PMAs, all holders of an active PMA application must maintain these records.

PMAs have been required since 1976, and there are 698 active PMAs that could be subject to these requirements, based on actual FDA data. Each study has approximately 200 subjects, and at an average of 5 minutes per subject, there is a total burden per study of 1,000 minutes, or 17 hours. The aggregate burden for all 698 holders of approved original PMAs, therefore, is 11,866 hours.

The applicant determines which records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practices for medical devices regulation (part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required as conditions of approval to ensure the device's continuing safety and effectiveness.

Dated: June 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–13763 Filed 6–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2009–E–0165 and FDA–2009–E–0169]

Determination of Regulatory Review Period for Purposes of Patent Extension; ABLAVAR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ABLAVAR (previously the trade name of the product was VASOVIST) and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims the human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ABLAVAR (gadofosveset trisodium). ABLAVAR is indicated for use as a contrast agent in magnetic resonance angiography to evaluate aortoiliac occlusive disease in adults with known or suspected peripheral vascular disease. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for ABLAVAR (U.S. Patent Nos. 6,676,929 and 7,060,250) from Epix Pharmaceuticals, Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 29, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ABLAVAR represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ABLAVAR is 4,508 days. Of this time, 2,673 days occurred during the testing phase of the regulatory review period, while 1,835 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 21, 1996. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 21, 1996.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 15, 2003. FDA has verified the applicant's claim that the new drug application (NDA) 21–711 was submitted on December 15, 2003.

3. *The date the application was approved*: December 22, 2008. FDA has verified the applicant's claim that NDA 21–711 was approved on December 22, 2008.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,806 days of patent term extension for U.S. Patent No. 6,676,929 and 924 days of patent term extension for U.S. Patent No. 7,060,250.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by August 9, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 6, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 23, 2010.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2010–13655 Filed 6–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Funding Opportunity: Affordable Care Act Medicare Beneficiary Outreach and Assistance Program Funding for Title VI Native American Programs

Purpose of Notice: Availability of funding opportunity announcement.

Funding Opportunity Title/Program Name: Affordable Care Act Medicare Beneficiary Outreach and Assistance Program Funding for Title VI Native American Programs.

Announcement Type: Initial.

Funding Opportunity Number: HHS–2010–AoA–MI–1022.

Statutory Authority: The Medicare Improvements for Patients and Providers Act of 2008—Section 119, Public Law 110–275 as amended by the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.071. Discretionary Projects

DATES: The deadline date for the submission of applications is July 30, 2010.

I. Funding Opportunity Description

AoA will provide a grant of $1,000 to each Older Americans Act Title VI Native American program awardee. The purpose of these grants will be for the coordination of at least one community announcement and at least one outreach event to inform and assist eligible Native American elders about the benefits available to them through Medicare Part D, the Low Income Subsidy, the Medicare Savings Program, or Medicare prevention benefits and screenings. The example of $1,000 per event is for illustrative purposes only. There is data available from the National Association of Area Agencies on Aging (n4a) and studies performed by the National Council on Aging (NCOA) that reflect these costs for planning and implementing a community event for Medicare Part D and LIS outreach activities.

A detailed description of the funding opportunity may be found at *http://*

www.aoa.gov/doingbus/fundopp/fundopp.aspx

II. Award Information

1. Funding Instrument Type

These awards will be made in the form of grants to Title VI Native American Programs.

2. Anticipated Total Priority Area Funding per Budget Period

AoA intends to make available, under this program announcement, grant awards for $1,000 to 246 projects at a federal share of approximately $246,000 total for a project period of 1 year.

III. Eligibility Criteria and Other Requirements

1. Eligible Applicants

Only current Older Americans Act Title VI Native American Program grantees are eligible to apply for this funding.

2. Cost Sharing or Matching

Cost Sharing does not apply.

3. DUNS Number

All grant applicants must obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/.*

4. Intergovernmental Review

Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Application and Submission Information

1. Address to Request Application

Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Washington, DC 20201, attention: Yvonne Jackson or by calling 202–357–3501, or online at *http://www.grants.gov.*

2. Address for Application Submission

Applications may be submitted by e-mail to *grants.office@aoa.hhs.gov*, by fax to 202–357–3467 or in hard copy by overnight delivery to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, Attn. Sean Lewis.

3. Submission Dates and Times

To receive consideration, applications must be submitted by 11:59 Eastern time by the deadline listed in the "Dates" section at the beginning of this Notice.

V. Responsiveness Criteria

Does not apply.

VI. Application Review Information

Does not apply.

VII. Agency Contacts

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration on Aging, Office for American Indian, Alaskan Native, and Native Hawaiian Programs, Washington, DC 20201, attention: Yvonne Jackson or by calling 202–357–3501, or by e-mail at *Yvonne.jackson@aoa.hhs.gov.*

Dated: May 18, 2010.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. 2010–13651 Filed 6–7–10; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0276]

Guidance for Industry: Enforcement Policy Concerning Rotational Warning Plans for Smokeless Tobacco; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Enforcement Policy Concerning Rotational Warning Plans for Smokeless Tobacco Products." The guidance is intended to provide information relating to FDA's enforcement policy concerning section 3 of the Comprehensive Smokeless Tobacco Health Education Act (Smokeless Tobacco Act), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act). This guidance will be implemented immediately, but remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit either electronic or written comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Enforcement Policy Concerning Rotational Warning Plans for Smokeless Tobacco Products" to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Gail Schmerfeld, Center for Tobacco Products, 9200 Corporate Blvd., Rockville, MD 20850–3229, 240–276–1717, e-mail: *Gail.Schmerfeld@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–31) into law. The Tobacco Control Act grants FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health generally and to reduce tobacco use by minors. Section 204 of the Tobacco Control Act amended section 3 of the Smokeless Tobacco Act (15 U.S.C. 4402) to prescribe new requirements for health warning labels that must appear on smokeless tobacco product packages and advertising, and to require that rotational warning plans for packaging and advertising for smokeless tobacco products be submitted to FDA, rather than to the Federal Trade Commission (FTC).

The new warning labels required by section 3 of the Smokeless Tobacco Act must begin to rotate in advertising for smokeless tobacco products beginning on June 22, 2010, and must be distributed and displayed on the packaging of smokeless tobacco products manufactured on or after June 22, 2010, as set forth in section 3(b)(3) of the Smokeless Tobacco Act (section 204(b) of the Tobacco Control Act and section 3(b)(3) of the Smokeless Tobacco Act). In addition, on or after July 22, 2010, manufacturers may not introduce any smokeless tobacco product into

domestic commerce unless its packaging complies with section 3 of the Smokeless Tobacco Act (Id.). Among the requirements in section 3(b)(3) is that the rotation of label statements on packaging and advertising for each brand of smokeless tobacco must be "in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer" to, and approved by, FDA (Id.).

At this time, as an exercise of enforcement discretion, FDA does not intend to commence or recommend enforcement of the requirement that a smokeless tobacco manufacturer, distributor, importer, or retailer must have an FDA-approved rotational warning plan, so long as a rotational warning plan has been submitted to FDA by July 22, 2010. FDA believes that allowing additional time for the review of rotational warning plans will permit an orderly transition of regulatory authority from FTC to FDA to review and approve rotational warning plans. During such transition between June 22, 2010, and July 22, 2010, affected companies may wish to contact FDA to discuss the submission of their rotational warning plans in order to make the subsequent approval process more orderly and efficient. FDA intends to provide further public notice prior to revising or rescinding this enforcement policy after the transition from FTC to FDA has been accomplished for the submission and review of rotational warning plans. This enforcement policy pertains only to the requirement that smokeless tobacco manufacturers, distributors, importers, or retailers must have an FDA-approved rotational warning plan. FDA expects compliance with regard to all other requirements of section 3 of the Smokeless Tobacco Act, including the requirements relating to size, formatting, location, and use of required warning statements.

II. Significance of Guidance

FDA is issuing this guidance document as a level 1 guidance consistent with FDA's good guidance practices regulations (21 CFR 10.115). This guidance is being implemented immediately without prior public comment under 10.115(g)(2) because the agency has determined that prior public participation is not feasible or appropriate. This document provides guidance on statutory provisions that take effect June 22, 2010. It is important that FDA explain its enforcement policy concerning the submission and approval of rotational warning plans for smokeless tobacco products before that date.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

An electronic version of this guidance document is available on the Internet at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: June 4, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–13819 Filed 6–4–10; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0247]

Investigational New Drug Applications; Co-development of Investigational Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is establishing a public docket to obtain input on methods to co-develop two or more distinct investigational drugs intended to be used in combination to treat a disease or condition. FDA is planning to develop guidance for industry and other affected parties on the co-development of two or more novel drugs intended to be used in combination (but not as not fixed-dose combinations) and is seeking public input to identify the affected parties' information needs concerning such co-development. Accordingly, FDA is seeking comment on general methodologic and regulatory issues that arise in various scenarios when co-developing two or more investigational drugs intended to be used in combination. FDA is also seeking comment on methodologic and regulatory issues when co-developing two or more investigational drugs intended to be used in combination for specific therapeutic areas, including oncology, anti-infectives, seizure disorders, cardiovascular diseases, and any other therapeutic category in which such co-development is likely to occur.

DATES: Submit either electronic or written comments by September 7, 2010.

ADDRESSES: 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*.

FOR FURTHER INFORMATION CONTACT: Colleen L. Locicero, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4200, Silver Spring, MD 20993–0002, 301–796–2270.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is aware of growing interest in co-developing two or more distinct, novel investigational drugs intended to be used in combination to treat a disease or condition (but not as fixed-dose combinations under 21 CFR 300.50). At a September 2009 conference co-hosted by the "Friends of Cancer Research" in partnership with the Engelberg Center for Health Care Reform at the Brookings Institution, and supported by the American Society for Clinical Oncology (ASCO), the American Association for Cancer Research (AACR) Susan G. Komen for the Cure, and the Lance Armstrong Foundation (Brookings Conference), which was attended by FDA scientists, there was considerable interest in approaches to developing new oncology therapies intended to be used in combination. In addition, on April 30, 2010, FDA held a public hearing in accordance with part 15 (21 CFR part 15) devoted, in part, to obtaining information about study designs and appropriate populations for developing two or more novel, direct-acting antivirals intended to be used in combination for the treatment of chronic hepatitis C. FDA is also aware of efforts to try to develop two or more investigational drugs intended to be used in combination to treat tuberculosis. FDA is further aware of general uncertainty about the evidentiary requirements and regulatory criteria applicable to such co-development efforts. Accordingly, FDA is planning to develop generally applicable guidance (not restricted to oncology or any other specific therapeutic category) to address

methodologic and regulatory issues related to the co-development of two or more investigational drugs intended to be used in combination.

II. Issues on Which FDA is Seeking Comment

All material submitted to this docket will be publicly available. To facilitate development of guidance that meaningfully addresses the concerns of those who may co-develop drugs intended to be used in combination, FDA is seeking input on the following issues, and any other issues relevant to developing FDA guidance:

1. General methodologic and regulatory issues that arise in the co-development of two or more drugs intended to be used in combination where the drugs are directed at providing a therapeutic effect on the same symptom or manifestation of the disease or condition of interest, including relevance and utility of clinical or animal findings for either drug alone;
2. General methodologic and regulatory issues that arise in the co-development of two or more drugs intended to be used in combination where the drugs are directed at providing a therapeutic effect for the same disease or condition, but act on different symptoms or manifestations of that disease or condition, including relevance and utility of clinical or animal findings for either drug alone;
3. General methodologic and regulatory issues that arise in the co-development of two or more drugs intended to be used in combination where one or more of the drugs is intended to enhance the effectiveness of the other, but one or more of the drugs does not or may not have an independent therapeutic effect, including relevance and utility of clinical or animal findings for either drug alone; and
4. Methodologic and regulatory issues that arise in the co-development of two or more drugs intended to be used in combination for specific therapeutic categories, including oncology, anti-infectives, seizure disorders, cardiovascular diseases, and any other therapeutic category in which such co-development is likely to occur.

III. Submission of Comments

Interested parties may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necesary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–13769 Filed 6–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0128]

Prescription Drug User Fee Act; Meetings on Reauthorization; Request for Notification of Stakeholder Intention to Participate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for notification of participation.

SUMMARY: The Food and Drug Administration (FDA) is issuing this notice to request that public stakeholders—including patient and consumer advocacy groups, health care professionals, and scientific and academic experts—notify FDA of their intent to participate in periodic consultation meetings on reauthorization of the Prescription Drug User Fee Act (PDUFA). The statutory authority for PDUFA expires in September 2012. At that time, new legislation will be required for FDA to continue collecting user fees for the prescription drug program. The Federal Food, Drug, and Cosmetic Act (the act) requires that FDA consult with a range of stakeholders in developing recommendations for the next PDUFA program. The act also requires that FDA hold continued discussions with patient and consumer advocacy groups at least monthly during FDA's negotiations with the regulated industry. The purpose of this request for notification is to ensure continuity and progress in these discussions by establishing consistent stakeholder representation.

DATES: Submit notification of intention to participate by June 25, 2010. The first stakeholder meeting will be held on July 1, 2010, from 9 a.m. to 11 a.m. Stakeholder discussions will continue at least monthly during reauthorization negotiations with the regulated industry.

ADDRESSES: Submit notification of intention to participate in monthly stakeholder meetings by e-mail to *PDUFAReauthorization@fda.hhs.gov*. The first stakeholder meeting will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, rm. 1503C, Silver Spring, MD 20993.

FOR FURTHER INFORMATION CONTACT: Patrick Frey, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Bldg. 51, rm. 1174, Silver Spring, MD 20993, 301–796–3844, FAX: 301–847–8443.

SUPPLEMENTARY INFORMATION:

I. Introduction

The authority for PDUFA expires in September 2012. Without new legislation to reauthorize the program, FDA will no longer be able to collect user fees to fund the human drug review process. Section 736B(d)(1) (21 U.S.C. 379h-2(d)(1)) of the act requires that FDA consult with a range of groups in developing recommendations for the next PDUFA program, including scientific and academic experts, health care professionals, and representatives from patient and consumer groups. FDA initiated this process of consultation on April 12, 2010, by holding a public meeting where stakeholders and other members of the public were given an opportunity to present their views on reauthorization (75 FR 12555, March 16, 2010). This meeting and written comments submitted to the docket have provided critical input as the Agency prepares for reauthorization discussions. Section 736B(d)(3) of the act further requires that FDA continue meeting with these stakeholders at least once every month during negotiations with the regulated industry to continue discussions of their views on the reauthorization, including suggested changes to the PDUFA program.

FDA is issuing this **Federal Register** notice to request that stakeholders—including patient and consumer advocacy groups, health care professionals, and scientific and academic experts—notify FDA of their intent to participate in periodic consultation meetings on reauthorization of PDUFA. FDA believes that consistent stakeholder representation at these meetings will be important to ensuring progress in these discussions. If you wish to participate in this part of the reauthorization process, please designate one or more representatives from your organization who will commit to attending these meetings and preparing for the discussions as needed. Stakeholders who identify themselves through this notice will be included in all future stakeholder discussions while FDA

negotiates with the regulated industry. If a stakeholder decides to participate in these monthly meetings at a later time, they may still participate in remaining monthly meetings by notifying FDA (see **ADDRESSES**). These stakeholder discussions will satisfy the requirement in section 736B(d)(3) of the act.

II. Additional Information on PDUFA

There are several sources of information on FDA's Web site that may serve as useful resources for stakeholders participating in the periodic consultation meetings:

- Information on the April 2010 public meeting on PDUFA Reauthorization, the **Federal Register** notice announcing the meeting, and the transcript of the meeting are available at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm117890.htm.* The slide presentations from the meeting can be found at *http://www.regulations.gov* using Docket No. FDA–2010–N–0128.
- FDA created a webinar on the PDUFA program, drug development, and FDA's drug review in PDUFA IV. These presentations are available at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm207597.htm.*
- Key **Federal Register** documents, PDUFA-related guidances, legislation, performance reports, and financial reports and plans are posted at *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/default.htm.*
- The Food and Drug Administration Amendments Act of 2007 (FDAAA)-specific information is available at: *http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FoodandDrugAdministrationAmendmentsActof2007/default.htm*

III. Notification of Intent to Participate in Periodic Consultation Meetings

If you intend to participate in continued periodic stakeholder consultation meetings regarding PDUFA Reauthorization, please provide notification by e-mail to *PDUFAReauthorization@fda.hhs.gov* by June 25, 2010. Your e-mail should contain complete contact information, including name, title, affiliation, address, e-mail address, phone number, and notice of any special accommodations required because of disability. Stakeholders will receive confirmation and additional information about the first meeting once FDA receives their notification.

Dated: June 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–13671 Filed 6–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0259]

Array-Based Cytogenetic Tests: Questions on Performance Evaluation, Result Reporting and Interpretation; Public 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 the following public meeting: Array-Based Cytogenetic Tests: Questions on Performance Evaluation, Result Reporting and Interpretation. The purpose of the public meeting is to seek input on challenges related to performance evaluation, determination of clinical significance, result reporting, and interpretation for array-based cytogenetic tests.

Date and Time: The meeting will be held on June 30, 2010, from 1:30 p.m. to 5 p.m.

Location: The meeting will be held at Hyatt Regency Bethesda, 7400 Wisconsin Ave., 1 Bethesda Metro Center, Bethesda, MD.

Contact: Susan Monahan, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4321, Silver Spring, MD 20903, 301–796–5661, e-mail: *Susan.Monahan@fda.hhs.gov*; or Zivana Tezak, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5668, Silver Spring, MD 20903, 301–796–6206, e-mail: *Zivana.Tezak@fda.hhs.gov*.

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number), and written material and requests to make oral presentations, to the contact person by June 21, 2010. Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the public meeting will be provided on a space-available basis beginning at 7 a.m.

If you wish to make an oral presentation during the open comment session at the meeting, you must indicate this at the time of registration. FDA has included general discussion topics and specific questions for comment in section III of this document, Topics for Input. You should also identify which discussion topic you wish to address in your presentation. FDA will do its best to accommodate requests to speak. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for a joint presentation. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin.

If you need special accommodations due to a disability, please contact Susan Monahan or Zivana Tezak (see *Contact*) at least 7 days in advance.

Comments: FDA is holding this public meeting to obtain input on a number of questions regarding review and interpretation issues for array-based cytogenetic testing.

Regardless of attendance at the meeting, interested persons may submit either electronic or written comments on any discussion topic(s) to the open docket. The deadline for submitting comments to the docket is July 30, 2010. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section III of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

Many human genetic disorders are a result of the gain or loss of human genetic material, which may manifest as congenital anomalies, dysmorphic features, developmental disabilities, etc. Traditionally, chromosomes were analyzed using a method called karyotyping. In addition, molecular methods such as fluorescence in situ hybridization (FISH) provide the information about chromosome abnormalities at specific loci. The recent

development of deoxyribonucleic acid (DNA) array methodologies, such as microarray-based comparative genomic hybridization (aCGH) and single-nucleotide polymorphism (SNP) arrays allow a high-resolution evaluation of DNA copy number alterations associated with chromosome abnormalities. Array-based cytogenetic testing is currently being implemented in the clinical setting as a method for detecting pathological genomic copy number changes.

FDA regulation and review of in vitro diagnostic devices has traditionally been a single marker-based, indication-specific process that ensures safety and effectiveness of the product. However, the results obtained from array-based cytogenetic tests are not necessarily predefined and may not be associated with known clinical syndromes. Evaluating complex devices such as array-based cytogenetic tests challenges the traditional method of FDA review.

II. Meeting Overview

During the meeting, FDA staff will present a brief background and overview of in vitro diagnostic (IVD) regulation. Specific questions related to review challenges for array-based cytogenetic tests are listed in section III of this document, Topics for Input. After the open comment session, the meeting will close with a round-table discussion between FDA staff and selected participants representing a range of constituencies. The participants in the round-table discussion will engage in a dialogue on discussion topics (see section III of this document), and provide closing thoughts. The participants will not be asked to develop consensus opinions during the discussion, but rather to provide their individual perspectives. Others in attendance at the meeting will have an opportunity to listen to the round-table discussion.

In advance of the meeting, additional information, including a meeting agenda, will be made available on the Internet. This information will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov*. This information will also be available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list).

III. Topics for Input

FDA seeks input on the following issues:

1. Clinical significance

a. The resolution of array-based cytogenetic tests and the presence of copy number variations (CNVs) in the apparently healthy population poses challenges for result interpretation. What criteria should be used to determine the clinical significance of CNVs (e.g., when categorized as benign, pathogenic, or of unknown significance)?

b. Should there be different requirements implemented for interpreting the clinical significance of deletions vs. duplications vs. translocations?

2. Result reporting and interpretation

a. Should result output be limited to results associated with known syndromes that can be adequately validated clinically and analytically?

b. What criteria (e.g., minimum overlap, size, etc.) should be used to conclude findings are indicative of known syndrome?

c. Should the performing, ordering and/or result interpretation of these tests be limited to certain professionals (e.g., clinical cytogeneticists)?

d. How does FDA ensure that the results are interpreted correctly?

3. Additional and confirmatory testing

a. Should any array-based cytogenetic testing of an affected individual include testing of parents where possible?

b. Should a second followup test (e.g., FISH) be required for result confirmation prior to reporting array-based cytogenetic results?

4. Incidental findings

Laboratories are obliged to report clinically significant findings unrelated to the test order, when identified. How can the reporting of results for diseases or conditions outside of the indications for use be restricted?

5. Clinical evaluation for approval of array-based cytogenetic devices

a. Would validation of a group of CNVs associated with well-known syndromes be acceptable as a representation of all types of detectable CNVs?

b. If yes, then which syndromes should be included and how many CNVs would be a representative number?

c. What should be used as the reference genome?

d. What studies should be performed to understand clinical specificity?

6. Use of database(s) in result reporting

a. How can the accuracy of information used in the determination of results be assured?

i. Who should develop and maintain a curated database of known/probable CNV changes and benign findings in the population?

ii. FDA regulations require that all aspects of a test involved in result output are under design controls in accordance with the Quality System regulations. When implementing the database for result reporting, how can it be assured that the database is adequately maintained and meets appropriate quality standards?

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. 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: June 3, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–13768 Filed 6–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Planning Centers for Interdisciplinary Research in Benign Urology (IR–BU) (P20).

Date: July 9, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington, DC Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Hematology Center Application Review.

Date: July 26–27, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Program Projects in IBD.

Date: July 26, 2010.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 2, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13734 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; National Cooperative Drug Discovery and Development Groups.

Date: July 16, 2010.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health,Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: *June 1, 2010.*

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13726 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; NINR HIV RFA Review Meeting.

Date: July 8, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Mario Rinaudo, MD, Scientific Review Administrator, Office of Review, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd (DEM 1), Suite 710, Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; NINR End of Life RFA Review Meeting.

Date: July 15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd, Rm 710, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; NINR Epigenetic RFA Review Meeting.

Date: July 19, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tamizchelvi Thyagarajan, PhD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd, Rm 710, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 26, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13712 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Basic Sciences National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences National Cancer Institute.

Date: July 12, 2010.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20814.

Contact Person: Florence E. Farber, PhD, Executive Secretary, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2205, Bethesda, MD 20892, 301–496–7628, *ff6p@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsc/bs/bs.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13710 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

Date: July 13, 2010.

Time: 9 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, PhD, Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, 6116 Executive Boulevard, Room 2201, Bethesda, MD 20892, (301) 496–7628, *wojcikb@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsc.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13709 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Neurodevelopment, Synaptic Plasticity and Neurodegeneration.

Date: June 24–25, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Vilen A. Movsesyan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040M, MSC 7806, Bethesda, MD 20892, 301–402–7278, *movsesyanv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR07–020: Understanding and Promoting Health Literacy.

Date: June 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biomaterials, Delivery Systems, and Nanotechnology.

Date: June 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Alexander Gubin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046B, MSC 7892, Bethesda, MD 20892, 301–408–9655, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Biomedical Sensing, Measurement and Instrumentation [SSMI] (SBIR/STTR).

Date: June 28, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1032, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special: Pilot and Feasibility Clinical Studies in Digestive Diseases and Nutrition.

Date: June 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry and Biophysics.

Date: June 28–29, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Visual Systems.

Date: June 28, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington, DC, 923 16th Street, NW., Washington, DC 20006.

Contact Person: George Ann McKie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, 301–996–0993, *mckiegeo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ARRA: RFA–OD–10–003—Career Development Awards in the Basic Behavioral and Social Sciences.

Date: June 28, 2010.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: F07 Immunology Fellowship AREA.

Date: June 28–29, 2010.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; OD–10–005 Director's Opportunity 5 Themes Immunology.

Date: June 28, 2010.

Time: 8:30 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Calbert A. Laing, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Grant Applications: Immunology.

Date: June 28–29, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; OD–10–005: Director's Opportunity 5 Themes Genetics and Genomics.

Date: June 28, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Michael M. Sveda, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; OD–10–005 Director's Opportunity 5 Themes Infectious Diseases A.

Date: June 28, 2010.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander D. Politis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Vision Sciences and Technology.

Date: June 28–29, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington DC, 923 16th Street, NW., Washington, DC 20006.

Contact Person: George Ann McKie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, 301–996–0993, *mckiegeo@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 2, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13707 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institute of Child Health and Human Development

Special Emphasis Panel, Maintenance of Child Health and Developmental Data Files.

Date: June 25, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To provide concept review of proposed concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 28, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13743 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee H—Clinical Groups.

Date: July 19–20, 2010.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, MD, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892, (301) 594–1279, *meekert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13708 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Minority Programs Review Subcommittee A.

Date: June 28–29, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, Bethesda, MD 20814.

Contact Person: Mona R. Trempe, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–3998, *trempemo@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 2, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13703 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; ARRA—Behavioral Economics C.E.R.—Pilot Research.

Date: June 25, 2010.

Time: 1 p.m.to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute On Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Deputy Chief And Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: June 4, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13701 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performances, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: June 27–29, 2010.

Time: June 27, 2010, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Time: June 28, 2010, 8:30 a.m. to 12:40 p.m.

Agenda: To review and evaluate the Intramural Laboratories with site visits of the Section on Cognitive Neuroscience, the Section on the Neurobiology of Learning and Memory, and the Unit on Learning and Plasticity and meetings with the PIs, Training Fellows, and Staff Scientists.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Time: June 28, 2010, 1 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Time: June 28, 2010, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Time: June 29, 2010, 8:30 a.m. to 12:40 p.m.

Agenda: To review and evaluate the Intramural Laboratories with site visits of the Unit on Cognitive Neurophysiology and Imaging, the Section on Neural Coding and Computation, the Section on Critical Brain Dynamics, and meetings with the PIs, Training Fellows, and Staff Scientists.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Time: June 29, 2010, 1 p.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Dawn M. Johnson, PhD, Executive Secretary, Division of Intramural Research Programs, National Institute of Mental Health, 10 Center Drive, Building 10, Room 4N222, Bethesda, MD 20892, 301–402–5234, *dawnjohnson@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 1, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–13741 Filed 6–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Issues in the Development of Medical Products for the Prophylaxis and/or Treatment of Acute Antibody Mediated Rejection in Kidney Transplant Recipients; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop regarding scientific issues in clinical development of medical products (i.e., human drugs, therapeutic biological products, and medical devices) for prophylaxis and/or treatment of acute antibody mediated rejection (AMR) in kidney transplant recipients. This public workshop is intended to provide information for and gain perspective from health care providers, academia, and industry on various aspects of development of medical products for prophylaxis and/or treatment of acute AMR in kidney transplant recipients, including clinical trial design and endpoints. The input from this public workshop will help in developing topics for further discussion.

Date and Time: The public workshop will be held on June 28, 2010, from 8 a.m. to 6:30 p.m. and on June 29, 2010, from 8 a.m. to 4 p.m.

Location: The public workshop will be held at the Crowne Plaza Hotel, 8777 Georgia Ave., Silver Spring, MD 20910. Seating is limited and available only on a first-come, first-served basis.

Contacts: Christine Moser or Ramou Mauer, Center for Drug Evaluation and Research, Food and Drug Administration, Office of Antimicrobial Products, 10903 New Hampshire Ave., Bldg. 22, rm. 6209, Silver Spring, MD 20993–0002, 301–796–1300 or 301–796–1600.

Registration: Registration is free for the public workshop. Interested parties are encouraged to register early because space is limited. Seating will be available on a first-come, first-served basis. To register electronically, e-mail registration information (including name, title, firm name, address, telephone, and fax number) to *AMRworkshop@fda.hhs.gov*. Persons without access to the Internet can call Christine Moser at 301–796–1300 or Ramou Mauer at 301–796–1600 to register. Persons needing a sign language interpreter or other special accommodations should notify Christine Moser or Ramou Mauer (see *Contacts*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: FDA is announcing a public workshop regarding medical product development for the prophylaxis and/or treatment of acute AMR in kidney transplant recipients. This public workshop will focus on scientific considerations in the clinical development of medical products for prophylaxis and/or treatment of acute AMR in kidney transplant recipients, including the following topics:

- Definition and diagnosis of acute AMR
- Importance of validation and standardization of devices and diagnostic testing to establish the diagnosis of AMR and to identify patients at high risk of AMR
- Results of clinical trials evaluating treatment of acute AMR
- Endpoints to be evaluated to assess outcome
- Outcomes achieved with currently used regimens

Additional discussion will include animal models in AMR, previous experiences in desensitization and prophylaxis of AMR, and chronic AMR.

The agency encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend this public workshop.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug

Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. 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. Transcripts will also be available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm206132.htm* approximately 45 days after the workshop.

Dated: June 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–13669 Filed 6–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3312–EM; Docket ID FEMA–2010–0002]

Massachusetts; Amendment No. 1 to Notice of an Emergency Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Massachusetts (FEMA–3312–EM), dated May 3, 2010, and related determinations.

DATES: *Effective Date:* May 5, 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 the incident period for this emergency is closed effective May 5, 2010.

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. 2010–13746 Filed 6–7–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1917–DR; Docket ID FEMA–2010–0002]

Oklahoma; 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 Oklahoma (FEMA–1917–DR), dated May 24, 2010, and related determinations.

DATES: *Effective Date:* May 24, 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 May 24, 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 Oklahoma resulting from severe storms, tornadoes, and straight-line winds during the period of May 10–13, 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 Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gregory W. Eaton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Carter, Cleveland, McIntosh, Okfuskee, Oklahoma, Pottawatomie, and Seminole Counties for Individual Assistance.

All counties within the State of Oklahoma 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. 2010–13720 Filed 6–7–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1912–DR; Docket ID FEMA–2010–0002]

Kentucky; 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 Kentucky (FEMA–

1912–DR), dated May 11, 2010, and related determinations.

DATES: *Effective Date:* May 28, 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 Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 11, 2010.

Bourbon, Christian, Clark, and Hardin Counties for Individual Assistance.

Bracken, Carroll, Gallatin, Harrison, Lyon, Marshall, McLean, Morgan, Robertson, Trigg, and Union Counties for Public Assistance.

Crittenden, Lee, Livingston, and Wolfe Counties for Individual Assistance and Public Assistance.

Butler, Clinton, Cumberland, Edmonson, Estill, Hopkins, Larue, Ohio, Russell, Taylor, and Wayne Counties for Individual Assistance (already designated for Public Assistance).

Franklin and Montgomery Counties for Public Assistance (already designated for Individual 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. 2010–13740 Filed 6–7–10; 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; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Connecticut (FEMA–1904–DR), dated April 23, 2010, and related determinations.

DATES: *Effective Date:* May 28, 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 Connecticut is hereby amended to include the Individual Assistance program for 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 23, 2010.

New Haven and Windham Counties for Individual Assistance.

Fairfield, Middlesex, and New London Counties for Individual Assistance (already designated for Public Assistance, including direct Federal 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. 2010–13744 Filed 6–7–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Internal Agency Docket No. FEMA–1916–DR; Docket ID FEMA–2010–0002]

Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1916–DR), dated May 14, 2010, and related determinations.

DATES: *Effective Date:* May 28, 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 Mississippi is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 14, 2010.

Panola County 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. 2010–13699 Filed 6–7–10; 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. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–1900–DR), dated April 19, 2010, and related determinations.

DATES: *Effective Date:* May 28, 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 area 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.

Grant County 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. 2010–13716 Filed 6–7–10; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1917–DR; Docket ID FEMA–2010–0002]

Oklahoma; 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 Oklahoma (FEMA–1917–DR), dated May 24, 2010, and related determinations.

DATES: *Effective Date:* May 28, 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 Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 24, 2010.

Creek and Garvin Counties for Individual 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. 2010–13742 Filed 6–7–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID NRC–2010–0080]

NUREG–0654/FEMA–REP-, Rev. 1, Supplement 3, Guidance for Protective Action Recommendations for General Emergencies; Draft for Comment

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of meeting and extension of public comment period.

SUMMARY: The Federal Emergency Management Agency (FEMA) and the Nuclear Regulatory Commission (NRC) are reopening the comment period and announcing the date, time and location for one in a series of public meetings that will be held to discuss the proposed Supplement 3 to NUREG–0654/FEMA–REP–1, Rev.1, Guidance for Protective Action Recommendations for General Emergencies (NUREG Supp 3). NUREG Supp 3 addresses onsite and offsite nuclear power plant preparedness.

DATES: *Meeting Date:* The meeting will be held on Wednesday, June 9, 2010 from 1 p.m.–4 p.m. (Central Daylight Time).

Registration Date: Those interested in participating in this meeting by teleconference or webconference should call or e-mail the person listed below in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible, but no later than 1 p.m. (Eastern Standard Time) on Tuesday, June 8, 2010.

Comment Period: The public comment period originally scheduled to close on May 24, 2010, has been extended to August 9, 2010.

ADDRESSES: The meeting will be held at the Radisson Hotel La Crosse, 200 Harborview Plaza, La Crosse, Wisconsin 54601; Ph: 608–784–6680.

You may submit comments on the proposed Supplement 3, identified by Docket ID NRC–2010–0080, by visiting *http://www.regulations.gov.* Follow the instructions listed on how to submit comments. (**Note:** This process applies to all government requests for comments—even though as in the case of this draft guidance document, they may not be for regulatory purposes). For further information and methods for submitting comments, see the "Announcement of Issuance for Public Comment, Availability" (at 75 FR 10524, on March 8, 2010) or call or e-mail the contact person listed below in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Michelle Ralston, Emergency

Management Specialist, Professional Services and Integration Branch, Technological Hazards Division, Protection and National Preparedness, *michelle.ralston@dhs.gov,* (202) 212–2310.

SUPPLEMENTARY INFORMATION: These meetings will be conducted jointly by the Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA) and will address Supplement 3 to NUREG–0654/FEMA–REP–1, Rev.1, Guidance for Protective Action Recommendations for General Emergencies (NUREG Supp 3). Draft NUREG Supp 3 has been proposed by these two agencies to address emergency planning and preparedness for Nuclear Power Plants. This document addresses both onsite (the plants themselves) and offsite (State, local, Tribal offsite response organizations) planning and preparedness. FEMA and the NRC are soliciting comments for the joint document through the notice of availability, titled "Announcement of Issuance for Public Comment, Availability" (75 FR 10524, published on March 8, 2010). The document is available at *http://www.regulations.gov* (Docket ID NRC–2010–0080). Please note that the public comment period on this document has been extended to August 9, 2010.

NUREG–0654/FEMA–REP–1, Rev. 1, is a joint FEMA/NRC policy document that contains the Evaluation Criteria that FEMA and the NRC use to determine compliance with the 16 Planning Standards that are located in FEMA's regulations at 44 CFR 350.5, and the NRC's regulations at 10 CFR part 50. The agencies use these Planning Standards, and associated Evaluation Criteria, to measure the adequacy of emergency preparedness plans of Nuclear Power Plant (NPP) owners and operators and the State, local, and Tribal jurisdictions in which they are sited.

NUREG Supp 3 provides additional guidance directed to NPP licensees, State, local, and Tribal jurisdictions. Elements of this draft guidance include increased offsite response organization involvement in the development of protective action strategies, consideration of staged evacuation as the initial protective action at General Emergency, increased use of shelter-in-place for certain scenarios, and guidance to improve communications with the public before and during an emergency. The substance of this joint draft guidance aligns with changes proposed in the NRC Notice of Proposed Rulemaking entitled "Enhancements to Emergency Preparedness Regulations" (74 FR 23254, published on May 18, 2009), and Interim Staff Guidance as well as the changes proposed in FEMA's draft Radiological Emergency Preparedness Program Manual and Supplement 4 to NUREG–0654/FEMA–REP–1, Rev.1 (74 FR 23198 published on May 18, 2009).

The purpose of these public meetings is to (1) Introduce the proposed draft guidance jointly; (2) answer questions about the proposed draft guidance document and to describe the next steps in the guidance document process; (3) ensure openness during the guidance document process; (4) provide additional opportunities for public participation in the guidance document process; and, (5) build positive relations, confidence, and trust in the guidance document process.

Public Meeting Date, Time, and Location:

Wednesday, June 9, 2010.

Meeting Location: Radisson Hotel La Crosse, 200 Harborview Plaza, La Crosse, Wisconsin 54601; Ph: 608–784–6680.

Times: 1 p.m.–4 p.m. (Central Daylight Time); Please note that the meeting may close early if all business is finished.

Two additional meetings, with precise times and locations yet to be determined, are tentatively scheduled for the month of July, 2010. When these meeting times and locations are confirmed, a notice will be published in the **Federal Register.**

Teleconferencing: Interested members of the public unable to attend the meeting may participate by telephone via a toll-free teleconference. For details, please call the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section. Those interested in participating in this meeting by teleconference should call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible, but no later than 1 p.m. (Eastern Standard Time) on Tuesday, June 8, 2010.

Webconferencing: Interested members of the public unable to attend the meeting may participate remotely on the internet. For details, please call the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible, but no later than 1 p.m. (Eastern Standard Time) on Tuesday, June 8, 2010.

Information on Services for Individuals With Disabilities

FEMA provides reasonable accommodations to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this meeting (*e.g.,* sign language), or need this meeting notice or other information from the meeting in another format, please notify the person listed above in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible so that arrangements can be made.

Timothy W. Manning,

Deputy Administrator, Protection and National Preparedness, Federal Emergency Management Agency.

[FR Doc. 2010–13711 Filed 6–7–10; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–50]

Energy Conservation for PHA-Owned or Leased Project-Audits, Utility Allowances

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

In support of national energy conservation goals, Public Housing Agencies (PHAs) establish allowances for PHA-furnished utilities and for resident-purchased utilities. PHAs document, and provide for resident inspection, the basis upon which allowances and schedules surcharges (and revisions thereof) are established. PHAs complete energy audits, benefit/cost analyses for individual vs. master metering. PHAs review tenant utility allowances.

DATES: *Comments Due Date:* July 8, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.

Comments should refer to the proposal by name and/or OMB approval Number (2577–0062) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy

McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Energy Conservation for PHA-owned or Leased Project-Audits, Utility Allowances.

OMB Approval Number: 2577–0062.

Form Numbers: HUD–50078.

Description of the Need for the Information and its Proposed Use: In support of national energy conservation goals, Public Housing Agencies (PHAs) establish allowances for PHA-furnished utilities and for resident-purchased utilities. PHAs document, and provide for resident inspection, the basis upon which allowances and schedules surcharges (and revisions thereof) are established. PHAs complete energy audits, benefit/cost analyses for individual vs. master metering. PHAs review tenant utility allowances.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4130	1		19.2		79,330

Total Estimated Burden Hours: 79,330.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *June 2, 2010.*

Leroy McKinney, Jr.,

Departmental Reports Management Officer Office of the Chief Information Officer.

[FR Doc. 2010–13693 Filed 6–7–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–49]

Operating Fund Subsidies Allocation Formula

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Section 9(f) of the United States Housing Act of 1937 establishes an Operating Fund for the purpose of making assistance available to public housing agencies (PHAs) which assistance is determined using a formula approach under the Operating Fund Program. PHAs compute their operating subsidy eligibility by completing the following HUD prescribed forms, as applicable, each fiscal year: Calculation of Utilities Expense Level (HUD–52722); Operating Fund Calculation of Operating Subsidy (HUD–52723); and Calculation of Subsidies for Operations: Non-Rental Housing (HUD–53087). HUD uses the information on these forms to determine the operating subsidy obligation and proration level for each PHA. The three forms listed in this collection are automated in the Subsidy and Grant Information System (SAGIS).

DATES: *Comments Due Date:* July 8, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0029) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Operating Fund Subsidies Allocation Formula.

OMB Approval Number: 2577–0029.

Form Numbers: HUD–52722, HUD–52723, and HUD–53087.

Description of the Need for the Information and its Proposed Use: Section 9(f) of the United States Housing Act of 1937 establishes an Operating Fund for the purpose of making assistance available to public housing agencies (PHAs) which assistance is determined using a formula approach under the Operating Fund Program. PHAs compute their operating subsidy eligibility by completing the following HUD prescribed forms, as applicable, each fiscal year: Calculation of Utilities Expense Level (HUD–52722);

Operating Fund Calculation of Operating Subsidy (HUD–52723); and Calculation of Subsidies for Operations: Non-Rental Housing (HUD–53087). HUD uses the information on these forms to determine the operating subsidy obligation and proration level for each PHA. The three forms listed in this collection are automated in the Subsidy and Grant Information System (SAGIS).

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	13,919	1		0.75		10,439

Total Estimated Burden Hours: 10,439

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 2, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–13694 Filed 6–7–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–48]

Housing Counseling Outcomes Study

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This request is for the clearance of survey instruments designed to provide statistically accurate information on outcomes realized by clients of HUD-funded housing counseling agencies seeking assistance to either purchase a home (pre-purchase clients) or to resolve or prevent a mortgage delinquency (foreclosure mitigation clients). Fourteen-hundred and thirty counseling clients have already been recruited to voluntarily participate in the study. In granting their informed consent to participate in the study, these counseling clients agreed to be contacted by telephone 12 months following the recipt of counseling to complete a survey about their conseling experience and their current housing situation. The purpose of this survey is to gather information needed to both document the share clients realizing different outcomes following counseling and to analyze how these outcomes vary with the characteristics of clients and the services they receive.

DATES: *Comments Due Date:* July 8, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Housing Counseling Outcomes Study.

OMB Approval Number: 2528–Pending.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use:

This request is for the clearance of survey instruments designed to provide statistically accurate information on outcomes realized by clients of HUD-funded housing counseling agencies seeking assistance to either purchase a home (pre-purchase clients) or to resolve or prevent a mortgage delinquency (foreclosure mitigation clients). Fourteen-hundred and thirty counseling clients have already been recruited to voluntarily participate in the study. In granting their informed consent to participate in the study, these counseling clients agreed to be contacted by telephone 12 months following the recipt of counseling to complete a survey about their conseling experience and their current housing situation. The purpose of this survey is to gather information needed to both document the share clients realizing different outcomes following counseling and to analyze how these outcomes vary with the characteristics of clients and the services they receive.

Frequency of Submission: One Time.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	978	1		0.5		489

Total Estimated Burden Hours: 489.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *June 2, 2010.*

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–13695 Filed 6–7–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–FHC–2010–N067; 71490–1351–0000–L5–FY10]

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application and proposed incidental harassment authorization; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from the Alaska Department of Transportation and Public Facilities and the Aleutians East Borough for authorization to take small numbers of marine mammals by harassment incidental to the Akutan Airport's Airport Construction and Hovercraft Operation in Akutan and Unalaska, Alaska. In accordance with provisions of the Marine Mammal Protection Act of 1972 (MMPA), as amended, we request comments on our proposed authorization for the applicant to incidentally take, by harassment, small numbers of northern sea otters for a period of 1 year, beginning May 1, 2010. We anticipate no take by injury or death and include none in this proposed authorization, which would be for take by harassment only.

DATES: Comments and information must be received by July 8, 2010.

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

1. *By mail to:* Douglas Burn, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

2. *By fax to:* 907–786–3816.

3. *By electronic mail (e-mail) to: R7_MMM_Comment@FWS.gov.* Please include your name and return address in your message. If you do not receive a confirmation from the system that we have received your message, contact us directly at the telephone numbers above.

4. By hand-delivery to the above address.

FOR FURTHER INFORMATION CONTACT: To request copies of the application, the list of references used in this notice, and other supporting materials, contact Douglas Burn at the address or telephone numbers in **ADDRESSES**, or by e-mail at *Douglas_Burn@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA, as amended (16 U.S.C. 1371 (a)(5)(A) and (D)), authorize the Secretary of the Interior to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, provided that we make certain findings and either issue regulations or, if the taking is limited to harassment, provide a notice of a proposed authorization to the public for review and comment.

We may grant authorization to incidentally take marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. As part of the authorization process, we prescribe permissible methods of taking and other means of affecting the least practicable impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such takings.

The term "take," as defined by the MMPA, means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, means "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [the MMPA calls this Level A harassment], or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [the MMPA calls this Level B harassment]."

The terms "small numbers," "negligible impact," and "unmitigable adverse impact" are defined in 50 CFR 18.27, the Service's regulations governing take of small numbers of marine mammals incidental to specified activities. "Small numbers" is defined as "a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock." "Negligible impact" is defined as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." "Unmitigable adverse impact" is defined as "an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) Causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals where the take will be limited to harassment. Section 101(a)(5)(D)(iii) establishes a 45-day time limit for Service review of an application, followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, we must either issue or deny issuance of the authorization. We refer to these authorizations as Incidental Harassment Authorizations (IHAs).

Previous Federal Action

On July 9, 2008, we received a joint application from the Alaska Department of Transportation and Public Facilities and the Aleutians East Borough (Applicants) for the taking by harassment of northern sea otters (*Enhydra lutris kenyoni*) incidental to the Akutan Airport, Alaska Airport Construction and Hovercraft Operation (Project). The request was published in the **Federal Register** on August 27, 2008 (73 FR 50634). On November 10, 2008, the Service issued IHAs to the Applicants authorizing Level B harassment of northern sea otters for a period of 1 year, the last date of which is April 30, 2010. Due to funding constraints, no construction activities or hovercraft operations have been conducted to date or will be conducted during the remainder of this period. Therefore no incidental take of sea otters occurred under the existing IHAs.

Summary of Request

On January 25, 2010, we received a joint application from the Alaska Department of Transportation and Public Facilities and the Aleutians East Borough (Applicants) to reissue the existing authorization for an additional 1-year period for the taking by harassment of northern sea otters incidental to the Project. The activities described in this joint application request are the same as those proposed in 2008. Therefore, if issued, the IHA will be basically the same.

Under the proposed action, the Applicants would construct a new airport on the southwestern portion of Akun Island, which would serve the community of Akutan, approximately 7 miles to the west. Access to the Akun airport location would be provided by hovercraft from the community of Akutan to Surf Beach, which offers a protected landing area. Marine service by hovercraft between the community of Akutan and Surf Bay on Akun Island would satisfy passenger comfort and weather operability goals. When not in use, the hovercraft would be stored in a building at the head of Akutan Harbor. Staff would access the hovercraft storage area at the head of the harbor by traveling in a skiff. A 3,000-foot-long road would connect the hovercraft landing pad on Surf Beach to the runway located on the bench above the beach. A diesel bus would be used to transport passengers between the hovercraft and aircraft. The bus would be fueled on site and stored at the airport when not in use.

A detailed description of the proposed action is contained in a Final Environmental Assessment (FEA) and Finding of No Significant Impact/ Record of Decision (FONSI/ROD) prepared by the Applicants for the Federal Aviation Administration (FAA) and issued in December 2007 (73 FR 4040; January 23, 2008). A Biological Opinion for the proposed Akutan Airport Project was issued by the Service in May 2007.

Description of the Activity

Akutan Airport, Alaska—Airport Construction and Hovercraft Operation

a. Timing of Construction and Hovercraft Operation

Construction of the airport and related transportation of construction materials would commence in May 2010 and continue through the third quarter (between October and December) of 2012. Hovercraft testing could commence as early as the first quarter (between January and March) of 2010, with sustained operations commencing in the fourth quarter of 2012, after completion of construction.

b. Geographic Location of Action

The community of Akutan is located on a small bay on Akutan Island in the eastern region of the Aleutian Islands (73 FR 50636). The city of Akutan has a population of about 741. The community is located 35 miles east of Unalaska and 766 miles southwest of Anchorage. The proposed location for the new airport to serve the community of Akutan is on the southwestern portion of Akun Island, approximately 7 miles east of the community. The hovercraft route would run between the community of Akutan, across Akun Strait, to a landing site on the shore of Surf Bay on Akun Island.

Description of Habitat and Marine Mammals Affected by the Activity

Three monthly surveys for sea otters were conducted in winter (January–March) 2006 as part of the field investigations for the Akun Alternative by HDR Alaska, Inc. in Akutan Harbor, Akun Strait, and Surf Bay along the proposed Akun airport hovercraft route. Sea otter numbers were highest in January (22), with declines in February (17), and by March, only 7 otters were observed. Preferred habitat appeared to include protected areas in Akutan Harbor near the community of Akutan and along nearshore habitats at Akun and Green Island. Most of the otters sighted were individuals, and only one female with a pup was observed during the winter surveys. A detailed description of the habitat, status, distribution, and seasonal distribution of northern sea otters is contained in the FEA, the Biological Assessment for the proposed IHA, and the Biological Opinion (FWS 2007) for the proposed Akutan Airport Project.

Since issuance of the IHAs in November 2008, additional sea otter distribution information has become available (USGS 2008). Sea otter distribution remained consistent over the period of review, the years 2004, 2006, and 2008. Areas around Green Island appear to support relatively large numbers of sea otters, suggesting that disturbances in this area should be minimized during construction and hovercraft operations.

Status and Distribution of Affected Species

In North America, the northern sea otter is found along the coasts of Washington, British Columbia, and Alaska. Present distribution extends from the north coast of Washington State into the north Vancouver Island area of British Colombia. In Alaska, northern sea otters occur in the coastal waters from southeast Alaska to the Aleutian Island chain (Riedman and Estes 1990). Currently there are three population stocks of northern sea otters in Alaska. Since the mid-1980s, the southwest population stock has undergone an overall 55–67 percent decline (Doroff *et al.* 2003; Burn *et al.* 2003; Burn and Doroff 2005; Estes *et al.* 2005; USFWS 2005). The animals found in the Aleutian Islands have experienced the greatest declines. More specifically, the population in the Rat Island group, located in the central Aleutian Island chain, declined by about 94 percent; aerial survey counts of the Rat Island group decreased from 270 in 1959 to 11 in 2000 (Kenyon 1969; Doroff *et al.* 2003). The reasons for this decline are not well understood and are under investigation. Consequently, on August 9, 2005, the southwestern Alaska distinct population segment (DPS) of northern sea otters was listed as threatened under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.;* 70 FR 46366). Critical habitat for this species was designated on October 8, 2009 and became effective on November 9, 2009 (74 FR 51988).

Potential Impacts of the Airport Construction and Hovercraft Operation on Sea Otters

The proposed activities have the potential to disturb resting and foraging activities of sea otters, particularly in waters that are protected in the near shore habitat, which is used for resting, pup rearing, and foraging. The incremental effects of the hovercraft operation will be minimal in Akutan Harbor, which presently has considerable amounts of vessel traffic. In contrast, Surf Bay has relatively little vessel traffic. This fact may explain why surveys indicate that the majority of sea otters observed along the hovercraft route were in the proximity of Surf Bay. As a result, we expect most of the impacts from incidental harassment to occur in the Surf Bay area.

The responses of marine mammals to airport construction and hovercraft operations vary among species. Sea otters have not been reported as particularly sensitive to sound and/or movement disturbance, especially in comparison to other marine mammals such as pinnipeds (U.S. Air Force and USFWS 1988; Efroymson and Suter 2001). However, observations of sea otters indicate their responses to disturbance are highly variable (A. Doroff, USFWS, pers. comm.). If any sea

otters are present during project operations, some of them may be temporarily disturbed by noise or hovercraft operating in the area. This could result in an otter entering the water from land and/or diving, which they do as part of their normal behavior pattern. The short-term displacement of any hauled-out animals that is likely to occur as a result of project noise and personnel is not anticipated to affect the overall fitness of any individual animal.

Potential Effects on Habitat

Hovercraft landings would be constructed primarily in areas above the mean high tide line to minimize adverse effects on northern sea otters and their habitat. Surf Beach landing site construction will impact about 0.4 intertidal acres and about 0.01 subtidal acres. Construction at the head of Akutan Harbor will impact about 0.1 intertidal acres and about 0.6 subtidal acres.

Potential Impacts on Subsistence Needs

In the Aleutian Islands, rural residents use a variety of plant and animals resources for subsistence purposes. The MMPA provides for a subsistence take of marine mammals by Alaska Natives. Although northern sea otters are harvested for subsistence purposes in the Aleutians, information from the Service's marine mammal Marking, Tagging, and Reporting Program (MTRP) indicates that on average, less than one sea otter per year is harvested from Akutan. We do not anticipate that the project described in this application would have any adverse effect on subsistence uses or needs.

Mitigation Measures

As described in correspondence between FAA and the Service (FAA 2007; FWS 2007), the Applicants would be required to implement the following measures to avoid, minimize, and mitigate the effects of the proposed action on northern sea otters:

a. A Hovercraft Shall Be Used To Transport Passengers to and From the Airport

As described in the Biological Assessment, hovercrafts produce less wake and less underwater noise than other marine vessels. Peer-reviewed scientific literature concludes that a hovercraft is considerably quieter underwater than a similar-sized conventional vessel, and that hovercraft may be an attractive alternative to conventional vessels if underwater sounds cause concerns. In-air sound may constitute a source of disturbance for listed sea otters.

b. The Hovercraft Landings Shall Be Located To Minimize Impacts to Intertidal and Subtidal Areas

Construction of hovercraft landings shall occur primarily in areas away from intertidal and subtidal areas to avoid adverse effects on northern sea otters and their habitat. Construction of the Surf Beach landing site would impact about 0.4 intertidal acres and about 0.01 subtidal acres. Construction at the head of Akutan Harbor would impact about 0.1 intertidal acres and about 0.6 subtidal acres. Such construction is likely to be more environmentally sensitive than construction of fixed, in-water docks or other related facilities.

c. No Dredging or Pile Driving Is Anticipated During the Construction of the Hovercraft Landings

Both dredging and pile driving have the potential to harass northern sea otters due to habitat or noise disturbance. We anticipate that the use of a hovercraft would avoid the need to construct in-water facilities such as moorings, piers, or docks that could require dredging or pile driving.

d. The Hovercraft Shall Be Operated According to a Route Operational Manual, Which Shall Require Avoidance of Sensitive Areas and Species

The Applicants will be required to develop a Route Operational Manual in consultation with the Service. The purpose of the Route Operational Manual is to develop hovercraft routes and operational procedures that avoid and minimize the likelihood of northern sea otter disturbance. As described below, the Applicants propose to develop an initial Route Operational Manual to ensure initial hovercraft operations avoid adverse effects to listed northern sea otters and other protected marine mammals. The Route Operational Manual would require Service approval prior to initiation of hovercraft operation, and operator compliance with the Route Operational Manual will be required as a condition of airport design approval and Clean Water Act 404 permit issuance.

e. All Fueling and Hovercraft Maintenance Activities Shall Be Conducted to the Maximum Extent Feasible at Least 100 Feet Away From Akutan Harbor and Surf Bay, and Fuel Storage Shall Be at Least 100 Feet Away From Akutan Harbor and Surf Bay

Northern sea otters are susceptible to the adverse effects of oiling due to fuel spills because otters depend on their insulation of dense fur to keep warm. Otters likewise may ingest oil during grooming and feeding. To address this issue, the Applicants shall conduct all fueling activities at the maximum distance feasible (i.e., at least 100 feet away from Akutan Harbor and Surf Bay). Fuel storage shall also occur at least 100 feet away from these locations. The Applicants shall comply with all applicable Federal and State fuel handling and storage requirements, further reducing the risk that any spill reaches sensitive northern sea otter habitat.

f. To Prevent Contamination, Hovercraft Maintenance Activities Shall Occur in the Hovercraft Storage Building or on the Hovercraft Landing

As discussed above, sea otters are susceptible to the adverse effects of oiling due to fuel spills because otters depend on their insulation of dense fur to keep warm. Otters likewise may ingest oil or other compounds during grooming or feeding. To address the risk of spills or contamination associated with hovercraft maintenance, the Applicants shall conduct all maintenance activities either on hovercraft landing areas, above intertidal or subtidal areas or in the hovercraft storage building. The Applicants shall comply with all applicable Federal and State hazardous materials handling and storage requirements, further reducing the risk that any contamination reaches sensitive northern sea otter habitat.

g. Completion of an Initial Route Operational Manual Shall Be Expedited

The Applicants shall expedite completion of an initial Route Operational Manual, which shall be developed in consultation with the Service prior to initial operation of the hovercraft. The Route Operational Manual will outline specific, detailed procedures to avoid and minimize impacts to sea otters. The Route Operational Manual shall identify hovercraft routes and provide a clearly written protocol that all hovercraft operators will be required to follow during initial hovercraft operations. The Applicants shall submit a draft initial Route Operation Manual to the Service for review and approval at least 30 days prior to commencing hovercraft trials during the spring of 2010.

During Route Operational Manual development, the Applicants will consult with the hovercraft manufacturer to ensure that hovercraft operations occur in the most environmentally sensitive manner possible. Through these discussions, the parties and the manufacturer may

identify additional, cost-effective measures to further reduce vessel noise.

h. Northern Sea Otter Avoidance Areas Shall Be Established

The Applicants shall identify northern sea otter avoidance areas in consultation with the Service. These avoidance areas will serve to help delineate areas of likely northern sea otter occurrence to allow for their avoidance. Avoidance areas will be established through the use of preconstruction survey data collected by the Applicants in 2006.

i. Hovercraft Speed and Course Shall Be Altered

If a northern sea otter is observed within a set distance (*e.g.,* a minimum of 1,200 feet) of the hovercraft (distances to be determined based on consultation with the Service) and based on the otter's position and the otter's relative course of travel the otter is likely to approach the hovercraft, the hovercraft's speed or course shall, when practicable and safe, be changed to avoid impacts to the species. Northern sea otter activities and movements relative to the hovercraft will be closely monitored to ensure that an animal does not (1) travel within a set distance (*e.g.,* a minimum of 600 feet) of a departing hovercraft or (2) travel within a set distance (*e.g.,* a minimum of 300 feet) of an approaching hovercraft (the "potential disturbance area" or "PDA"). If either of these events occurs, further mitigation measures must be taken (*e.g.,* further course alterations or power down).

j. Power-Down Procedures Shall Be Used

A power down involves decreasing the speed of the hovercraft to avoid interactions with, and potential disturbance of, northern sea otters. If a northern sea otter is detected (1) within a set distance (*e.g.,* a minimum of 600 feet) of a departing hovercraft or (2) within a set distance (*e.g.,* a minimum of 300 feet) of an approaching hovercraft, and the vessel's course or speed shall, consistent with applicable design and operational requirements, decrease its speed to the slowest practicable speed before the animal enters the PDA. Power-down procedures shall be developed in consultation with the hovercraft manufacturer and the Service to ensure procedures are safe and within the operating parameters of the hovercraft.

k. Ramp-Up Procedures Shall Be Used

"Ramp-up" procedures shall be implemented when starting up the hovercraft, to provide additional protection to northern sea otters located near hovercraft landing areas. These procedures will allow individual animals to vacate the area to reduce the risk of injury, and to further reduce the risk of potentially startling sea otters with a sudden intensive sound. Ramp-up shall occur such that the sound associated with hovercraft operations will increase at a rate of about 6 dB per 5 minutes. The Applicants shall confer with the hovercraft manufacturer to develop ramp-up procedures consistent with this guideline.

l. Low-Light Operations Shall Be Utilized

The Applicants shall work with the Service to develop night-time or low-light operating procedures to avoid and minimize impacts to northern sea otters and other species.

Findings

We propose the following findings regarding this action:

Small Numbers Determination and Estimated Take by Incidental Harassment

For small take analysis, the statute and legislative history do not expressly require a specific type of numbers analysis, leaving the determination of "small" to the agency's discretion. Factors considered in our small numbers determination include:

(1) *The number of northern sea otters inhabiting the waters in the impact area is expected to be small relative to the size of the southwest Alaska population stock.* Skiff-based surveys conducted in 2006 recorded up to 22 otters in proximity to the proposed hovercraft route. The current estimate for the size of the southwest Alaska population stock is approximately 48,000 individuals (USFWS 2008). The number of northern sea otters that could potentially be taken by harassment in association with the proposed activity is less than 0.05 percent of the estimated population size.

(2) *The area where the activity would occur is small relative to the range of the southwest Alaska population stock of sea otters.* Surf Bay on Akun Island is approximately 7 km in length. The southwest Alaska population stock ranges from Attu Island in the west to lower Cook Inlet in the east, a distance of more than 2,700 km. Therefore, Surf Bay comprises less than 0.3 percent of the total range in linear km of the southwest Alaska population stock of the northern sea otter.

(3) *The area where the activity would occur will impact a relatively small fraction of the habitat of the southwest Alaska population stock of sea otters.* As sea otters typically inhabit nearshore marine areas, shoreline length is a readily available metric that can be used to quantify sea otter habitat. The total length of shoreline within the range of the southwest Alaska stock of northern sea otters is approximately 19,531 km. By comparison, the shoreline of Surf Bay is approximately 7 km in length, which is less than 0.04 percent of the total available habitat.

(4) *Monitoring requirements and mitigation measures are expected to significantly limit the number of incidental takes.* Monitoring information collected during initial hovercraft operations will provide the Service and the Applicants with more current information about sea otter distribution and abundance at Surf Bay on Akun Island. In the event that larger numbers of sea otters than have previously been observed are encountered at consistent locations, the Route Operational Manual will be required to be revised to minimize incidents of harassment.

Negligible Impact

The Service finds that any incidental take by harassment that is reasonably likely to result from the proposed project would not adversely affect the southwest Alaska stock of northern sea otters through effects on rates of recruitment or survival, and would, therefore, have no more than a negligible impact on the stock. In making this finding, we considered the best available scientific information, including: (1) The biological and behavioral characteristics of the species; (2) the most recent information on distribution and abundance of sea otters within the area of the proposed activity; (3) the potential sources of disturbance during the proposed activity; and (4) the potential response of northern sea otters to disturbance.

The mitigation measures outlined above are intended to minimize the number of sea otters that may be disturbed by the proposed activity. Any impacts to individuals are expected to be limited to Level B harassment of short-term duration. Response of sea otters to disturbance would most likely be common behaviors such as diving and/or swimming away from the source of the disturbance. No take by injury or death is anticipated. We find that the anticipated harassment caused by the proposed activities is not expected to adversely affect the species or stock through effects on annual rate of recruitment or survival.

Our finding of negligible impact applies to incidental take associated

with the proposed activity as mitigated through this authorization process. This authorization establishes monitoring and reporting requirements to evaluate the potential impacts of the authorized activities, as well as mitigation measures designed to minimize interactions with, and impacts to, northern sea otters.

Impact on Subsistence

We find that the anticipated harassment caused by the project would not have an unmitigable adverse impact on the availability of northern sea otters for taking for subsistence uses during the period of the activity. In making this finding, we considered the timing and location of the project and subsistence harvest patterns, as reported through the MTRP, in the proposed project area.

Marine Mammal Monitoring

The applicant would be required to conduct marine mammal monitoring during the Airport Construction and Hovercraft Operation, in order to implement the mitigation measures that require real-time monitoring, and to satisfy monitoring required under the MMPA. Project personnel would be required to record information regarding location and behavior of all sea otters observed during operations. When conditions permit, information regarding age (pup, adult) and any tagged animals would also be required to be recorded. The Applicants also propose to form an Akutan marine mammal working group in coordination with the City of Akutan, the Aleutians East Borough, the Service, and NMFS. This working group would consist of representatives from affected native organizations, the City of Akutan, the FAA, and the Services. The working group would provide a forum to discuss hovercraft monitoring results and other issues pertaining to airport operations and northern sea otter conservation.

The working group shall discuss, among other things: (1) Any proposed changes in hovercraft operations to provide both the FAA and the Service with community perspectives on airport operations, (2) monitoring frequency and duration based upon monitoring results and related factors, and (3) completion of peer reviews for reports that evaluate and interpret monitoring data. The Applicants will coordinate the formation of the working group, and will be responsible for organizing meeting agendas, establishing meeting locations, and facilitating community involvement at such meetings. Working group meetings shall commence within 60 days after FAA's approval of airport construction, and shall occur on a quarterly basis for a minimum of 5 years after hovercraft operations commence.

Monitoring and Reporting

The Applicants shall implement the following monitoring and reporting program to increase knowledge regarding the species, and to assess the level of take caused by the proposed action:

a. Vessel-Based (Hovercraft) Monitoring During Initial Trial Operations

All hovercraft activities conducted prior to the construction of the airport and commencement of flight service will be considered "trial operations." Vessel-based monitoring will be conducted by a qualified Service-approved observer. Vessel-based monitoring is distinguished from other forms of monitoring in that it will be conducted from the hovercraft itself, as opposed to from other platforms (*e.g.,* land, skiff). Methods for observing, estimating distances to northern sea otters and other marine species, and recording data quickly and accurately will be tested prior to hovercraft operations at Akutan. Reticle binoculars (*e.g.,* 7 × 50 Bushnell or equivalent) and laser range finders (Leica LRF 1200 laser range finder or equivalent) are considered standard equipment for observers on board ships with marine mammal observers. Final observation methods will be approved by the Service.

Vessel-based observers will begin monitoring at least 30 minutes prior to the planned start of the hovercraft and during all periods of hovercraft operations to ensure the effectiveness of ramp-up as a mitigation measure. Observers will also monitor the safety areas prior to hovercraft operation. If northern sea otters are observed within the safety areas, hovercraft operations will be altered in accordance with procedures contained in the Route Operational Manual to avoid or minimize noise-related disturbance to animals occurring in the area.

Data for each northern sea otter, other marine mammals, and Steller's eiders observed in the action area during the period of hovercraft operations will be collected and provided to the Service in GIS format for mapping and analysis. Numbers of northern sea otters observed, frequency of observation, sea state, any behavioral changes due to hovercraft operations, and other pertinent variables will be recorded and entered into a custom database using a notebook computer. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered, and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, or other programs for additional processing and archiving.

Results from the vessel-based observations will provide: (1) A basis for real-time mitigation; (2) information needed to estimate the number of northern sea otters that are determined to have been harassed; (3) data on the occurrence, distribution, and activities of marine mammals in the area where hovercraft operations are conducted; and (4) data on the behavior and movement patterns of northern sea otters seen at times with and without hovercraft activity.

b. Baseline Skiff Surveys

The Applicants will conduct baseline skiff surveys in April of the year that construction begins. These surveys will document pre-activity distribution and abundance of sea otters in the project area prior to the start of construction. A minimum of three skiff-based line transect surveys will be conducted during each survey event. Additionally, a survey event will be conducted each April during the construction phase of the project and the April after construction is completed to document distribution and abundance after each construction year. Surveys will be conducted from a skiff or vessel and will encompass marine waters from a depth of 40 meters to mean high tide.

c. Reporting

Reports on vessel- and land-based activities during construction and vessel-based monitoring will be faxed or e-mailed to the Service on a regular basis. Reports will describe hovercraft operations and construction activities, and northern sea otter monitoring activities during the reporting period. Frequency and specific content of reports will be determined based on consultation with the Service.

Endangered Species Act

The proposed activity will occur within the range of the southwest Alaska DPS of the northern sea otter, which is presently listed as threatened under the ESA, as amended. The FAA and the Service's Anchorage Fish and Wildlife Field Office in Anchorage, Alaska, had consulted under Section 7 of the ESA, and concluded that the proposed activity will not jeopardize the southwest Alaska DPS of the northern sea otter. However, at the time the consultation occurred, critical habitat had not been designated. Therefore, we

are reinitiating consultation with the Applicants to take into consideration the rescheduled project dates and potential impacts to critical habitat. We will also reinitiate and complete intra-Service section 7 consultation prior to finalization of the IHA, which will include consideration of the new dates and potential impacts to critical habitat.

National Environmental Policy Act (NEPA)

The applicant provided an FEA on the project. The Service finds that this FEA meets NEPA standards for analyzing the effects of the issuance of this IHA. To obtain a copy of the FEA, contact the individual identified in the **ADDRESSES** section.

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, Secretarial Order 3225, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. On July 24, 2008, we contacted the Native Village of Akutan to offer Government-to-Government consultation on this project. The Tribal Administrator declined the offer, stating that their Tribe fully supports the development of an airport on Akun Island.

Proposed Authorization

The Service proposes to issue an IHA for small numbers of northern sea otters harassed incidentally by the Applicants while conducting the Akutan Airport, Alaska, Airport Construction and Hovercraft Operation. The final IHA would specify the starting date and ending date (1 year later) for the authorization. Authorization for incidental take beyond the period specified in the final IHA will require a request for renewal.

The final IHA would also incorporate the mitigation, monitoring, and reporting requirements discussed in this proposal. The Applicants will be responsible for following those requirements. These authorizations do not allow the intentional taking of northern sea otters.

If the level of activity exceeds that described by the Applicants, or the level or nature of take exceeds those projected here, the Service will reevaluate its findings. The Secretary may modify, suspend, or revoke an authorization if the findings are not accurate or the conditions described herein are not being met.

Request for Public Comments

The Service requests interested persons to submit comments and information concerning this proposed IHA. Consistent with section 101(a)(5)(D)(iii) of the MMPA, we are opening the comment period on this proposed authorization for 30 days (see **ADDRESSES**).

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 25, 2010.

Gary Edwards,

Acting Regional Director, Alaska Region.

[FR Doc. 2010–13649 Filed 6–7–10; 8:45 am]

BILLING CODE 4310–55–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 May 15, 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 June 23, 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.

Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ARKANSAS

Pulaski County

Main Street Commercial District, The 300 block of Main St bounded by E 3rd on the N and E 4th on the S, Little Rock, 10000396

CALIFORNIA

Mendocino County

Ford, Jerome B., House, 735 Main St, Mendocino, 10000394

FLORIDA

Citrus County

The Masonic Temple of Citrus, Lodge #18, F. and A.M., 111 W Main St, Inverness, 10000387

INDIANA

Cass County

Atkinson, Josephus, Farm, 4474 W. County Rd 400 S., Clymers, 10000373

Hamilton County

Thornhurst Addition, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Bounded by 650 to 742 W Main St, Thornhurst Dr and Rogers Ct, Carmel, 10000378

Lake County

Nichols, Charles E., House, 231 W Commercial Ave, Lowell, 10000375

Northern States Life Insurance Company, 5935 Hohman Ave, Hammond, 10000376

Porter County

Haste-Crumpacker House, 208 N Michigan St, Valparaiso, 10000374

Randolph County

Union City School, (Indiana's Public Common and High Schools MPS) 310 N Walnut St, Union City, 10000379

Wabash County

Peabody Memorial Tower, 400 W 7th St, North Manchester, 10000377

LOUISIANA

Calcasieu Parish

Cash Grocery and Sales Company Warehouse, 801 Enterprise Blvd, Lake Charles, 10000395

East Baton Rouge Parish Rabalais House, 1300 Steele Blvd, Baton Rouge, 10000388

MASSACHUSETTS

Berkshire County

Fitch-Hoose House, 6 Gulf Rd, Dalton, 10000390

Bristol County

Hazelwood Park, 597–603 Brock Ave, New Bedford, 10000389

Suffolk County

Second Church in Boston, 874, 876, 880 Beacon St, Boston, 10000391

MISSOURI

Clay County

Colonial Hotel, 328 E Broadway, Excelsior Springs, 10000392

NORTH DAKOTA

McHenry County

Denbigh Station and Experimental Forest, State Hwy 2, Denbigh, 10000380

PENNSYLVANIA

Allegheny County

Hamnett Historic District, Roughly bounded by Rebecca Ave, rear property lines on the east side of Center St, Sewer Way, Lytle Way * * *, Wilkinsburg, 10000408

Berks County

Hamburg Historic District, Roughly bounded by Franklin, Windsor, Walnut and Second Sts, Quince, Primrose, Peach and Plum Alleys and Mill Creek, Hamburg, 10000398

Cumberland County

Newville Historic District, Roughly bounded by Cove Alley, Big Spring Creek, the Cumberland Valley Railroad right-of-way, Washington St, Newville, 10000397

Dauphin County

Camp Curtin Memorial Methodist Episcopal Church, 2221 N Sixth St, Harrisburg, 10000400

Lebanon County

Colebrook Iron Master's House, 5200 Elizabethtown Rd, South Londonderry, 10000405

Salem Evangelical Lutheran Church, 119 N Eighth St, Lebanon, 10000402

Lehigh County

Martin Tower, 1170 8th Ave, Bethlehem, 10000401

Northampton County

Heller, Michael and Margaret, House, 1890–1892 Friedensville Rd, Lower Saucon, 10000399

Philadelphia County

Callowhill Industrial Historic District, Roughly bounded by Pearl St, N Broad St, Hamilton St, and the Reading Railroad Viaduct, Philadelphia, 10000403

H.W. Butterworth and Sons Company Building, 2410 E York St, Philadelphia, 10000406

Steel Heddle Manufacturing Company Complex, 2100 W Allegheny Ave, Philadelphia, 10000404

Wayne County

Bellemonte Silk Mill, 230 Welwood Ave, Hawley, 10000407

SOUTH DAKOTA

Lake County

Washington School, (Schools in South Dakota MPS) 514 N Washington, Madison, 10000411

Lincoln County

Elster, Anthon W., House, 27765 476th Ave, Canton, 10000412

Minnehaha County

Hilmoe, Hans J., Barn, 47170 Homestead St, Baltic, 10000410

Pennington County

Rapid City High School, 615 Columbus St, Rapid City, 10000409

VERMONT

Windsor County

Slayton-Morgan Historic District, Address Restricted, Woodstock, 10000386

VIRGINIA

Albemarle County

Daughters of Zion Cemetery, Corner of First and Oak Sts, Charlottesville, 10000382

Prince Edward County

Worsham High School, 8832 Abilene Rd, Farmville, 10000384

Russell County

Blackford Bridge, Chestnut Rd (Rte 652), Lebanon, 10000381

Winchester Independent City

George Washington, The, Hotel, 103 E Piccadilly St, Winchester, 10000383

WISCONSIN

Door County

Plum Island Life-Saving and Light Station, Plum Island, Washington, 10000385

[FR Doc. 2010–13618 Filed 6–7–10; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–770–773 and 775 (Second Review)]

Stainless Steel Wire Rod From Italy, Japan, Korea, Spain, and Taiwan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on stainless steel wire rod from Italy, Japan, Korea, Spain, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews effective July 1, 2009 (74 FR 31765, July 2, 2009) and determined on October 5, 2009, that it would conduct full reviews (74 FR 54068, October 21, 2009). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 30, 2009 (74 FR 62588). The hearing was held in Washington, DC, on April 8, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on May 28, 2010. The views of the Commission are contained in USITC Publication 4154 (May 2010), entitled *Stainless Steel Wire Rod from Italy, Japan, Korea, Spain, and Taiwan: Investigation Nos. 731–TA–770–773 and 775 (Second Review).*

By order of the Commission.

Issued: June 2, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–13552 Filed 6–7–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation, and Liability Act

Notice is hereby given that on June 02, 2010, a proposed Consent Decree (the "Decree") in *United States* v. *Frank Romano, et. al.,* Civil Action No. 1:08-cv-00314, was lodged with the United States District Court for the District of New Jersey.

In a complaint, filed on January 17, 2008, the United States alleged that Frank Romano and Paul Romano were liable pursuant to Section 107(a)(2) and

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Shara L. Aranoff, Vice Chairman Daniel R. Pearson, and Commissioner Deanna Tanner Okun dissenting with respect to Italy. Vice Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun dissenting with respect to Korea and Spain.

of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a)(2), for response costs incurred by the Environmental Protection Agency ("EPA") in cleaning up the Pioneer Smelting Superfund Site located at Factory Road, Route 532, in Chatsworth, New Jersey.

Pursuant to the Decree, Frank Romano and Paul Romano, will jointly be responsible for paying the United States $12,000, payable in three annual installments of $4,000, to resolve any claim the United States has associated with costs incurred by EPA at the Pioneer Smelting Superfund Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Frank Romano.,* D.J. Ref. 90–11–2–09344.

During the public comment period, the Decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–13772 Filed 6–7–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree With American Municipal Power, Inc. Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on May 18, 2010, a proposed Consent Decree in *United States of America* v. *American Municipal Power, Inc. ("AMP"),* Civil Action No. 2:10–cv–438, was lodged with the United States District Court for the Southern District of Ohio.

The Consent Decree addresses alleged violations of the Clean Air Act, 42 U.S.C. 7401–7671 *et seq.,* and state and federal implementing regulations, which occurred at the R.H. Gorsuch Generating Station, a coal-fired power plant owned and operated by AMP in Marietta, Ohio. The alleged violations arise from the construction of modifications at the power plant and operation of the plant in violation of the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) provisions of the Clean Air Act, 42 U.S.C. 7475, 7503, the New Source Performance Standards provisions of the Clean Air Act, 42 U.S.C. 7411, Title V of the Act, 42 U.S.C. 7661 *et seq.,* and the Title V permit for the plant. The complaint alleges that AMP failed to obtain appropriate permits and failed to install and apply required pollution controls to control emissions of various air pollutants.

The proposed Consent Decree would resolve the claims alleged in the Complaint filed in this matter in exchange for AMP's commitment to permanently shutdown and retire all four units at the Gorsuch Station, pay a $850,000 civil penalty, and spend $15 million on energy efficiency projects to mitigate the alleged adverse effects of its past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *American Municipal Power, Inc.,* D.J. Ref. 90–5–2–1–09886

The Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Ohio, located at 280 North High Street, Columbus, Ohio 43215; or at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604–4590. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–13550 Filed 6–7–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

This is notice that on March 23, 2010, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of Coca Leaves (9040), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for the manufacture of a bulk controlled substance for distribution to its customer.

As explained in the Correction to Notice of Application pertaining to Rhodes Technologies, 72 FR 3417 (2007), comments and requests for hearings on applications to import narcotic raw material are not appropriate.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: May 28, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–13732 Filed 6–7–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on January 31, 2010, Meda Pharmaceuticals Inc., 705 Eldorado Street, Decatur, Illinois 62523, made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance as a finished drug product in dosage form only for distribution to its customers. The company does not import the listed controlled substance in bulk active pharmaceutical ingredient (API) form.

There are no domestic sources of Nabilone in finished drug product form available in the United States. The U.S. Food and Drug Administration has approved this product for medical use in the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than July 8, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: May 28, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–13756 Filed 6–7–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 21, 2009, and published in the **Federal Register** on October 29, 2009 (74 FR 55858), Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phenylacetone (8501)	II
Coca Leaves (9040)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Noroxymorphone (9668)	II
Poppy Straw Concentrate (9670)	II

The company plans to import the listed controlled substances as raw materials for use in the manufacture of bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Johnson Matthey, Inc. to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Johnson Matthey, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: May 28, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–13737 Filed 6–7–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated January 27, 2010, and published in the **Federal Register** on February 5, 2010, (75 FR 6062), Wildlife Laboratories, 1401 Duff Drive, Suite 400, Fort Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Etorphine Hydrochloride (9059), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Wildlife Laboratories to import the basic class of controlled substance is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Wildlife Laboratories to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: May 28, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–13738 Filed 6–7–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated October 20, 2009 and published in the **Federal Register** on October 28, 2009 (74 FR 55583), Cody Laboratories, Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414–9321, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import narcotic raw materials for manufacturing and further distribution to its customers. The company is registered with DEA as a manufacturer of several controlled substances that are manufactured from raw opium, poppy straw, and concentrate of poppy straw.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Cody Laboratories, Inc. to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Cody Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: May 28, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–13747 Filed 6–7–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 12, 2010, Boehringer Ingelheim Chemicals Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805–9372, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers for formulation into finished pharmaceuticals.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than August 9, 2010.

Dated: May 28, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–13752 Filed 6–7–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 1, 2009, and published in the **Federal Register** on December 11, 2009 (74 FR 65789), Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cedarburg Pharmaceuticals, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cedarburg Pharmaceuticals, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: May 28, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–13751 Filed 6–7–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 2, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection requests (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 each 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 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—Employment and Training Administration (ETA), 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: Employment and Training Administration.

Type of Review: Revision and Extension of a currently approved collection.

Title of Collection: Domestic Agricultural In-Season Wage Report.

OMB Control Number: 1205–0017.

Agency Form Number: ETA–232 and ETA–232A.

Affected Public: State, Local, or Tribal Governments and Farms.

Total Estimated Number of Respondents: 38,855.

Total Estimated Annual Burden Hours: 16,301.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: The Department of Labor's Employment and Training Administration needs prevailing wage rates in order to determine the appropriate rate agricultural employers should pay foreign and domestic farmworkers. The State Workforce Agencies are charged with collecting the data from agricultural employers. The wage rates cover agricultural (crop and livestock) and logging jobs. Domestic migrant and local seasonal as well as foreign H–2A farmworkers are hired for these jobs. For additional information, see related notice published in the **Federal Register** on March 8, 2010 (75 FR 10504).

Agency: Employment and Training Administration.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Workforce Investment Act: National Emergency Grant (NEG) Assistance—Application and Reporting Procedures.

OMB Control Number: 1205–0439.

Agency Form Numbers: ETA–9103–1; ETA–9103–2a; ETA–9103–2b; ETA–9103–3; ETA–9103–4; ETA–9104; ETA–9105; ETA–9106; and ETA–9107.

Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 150.

Total Estimated Annual Burden Hours: 1,031.

Total Estimated Annual Costs Burden (does not include hour costs): $0.

Description: This information collection contains policies and application and reporting procedures for states and local entities to enable them to access funds for National Emergency Grant (NEG) programs. NEGs are discretionary grants intended to complement the resources and service capacity at the state and local area levels by providing supplemental funding for workforce development and employment services and other adjustment assistance for dislocated workers and other eligible individuals as defined in sections 101, 134 and 173 of WIA and in the Trade Act as amended by the Trade and Globalization Assistance Act of 2009. For additional information, see related notice published in the **Federal Register** on February 2, 2010 (75 FR 5346).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–13570 Filed 6–7–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

June 1, 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 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—Occupational Safety and Health Administration (OSHA), 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: Occupational Safety and Health Administration.

Type of Review: Existing collection in use without an OMB Control Number.

Title of Collection: OSHA Training Institute Education Centers Program, and OSHA Outreach Training Program Data Collection.

OMB Control Number: Pending.

Affected Public: Business or other for-profits and Individuals or Households.

Estimated Number of Respondents: 13,025.

Estimated Total Annual Burden Hours: 11,135.

Estimated Total Annual Costs Burden (Operation and Maintenance): $0.

Description: OSHA's Office of Training and Educational Programs is designed to recognize and promote excellence in safety and health training. The OSHA Training Institute's (OTI) Education Centers offer courses for the private sector and other Federal agency personnel at locations throughout the United States. OSHA extends its training reach to workers through its various Outreach Training Programs. Through the Outreach Training Programs, qualified individuals complete an OSHA trainer course and become authorized to teach student courses. The collection of information requirements contained in these programs are necessary to evaluate the applicant organization and to implement, oversee, and monitor the OTI Education Centers and Outreach Training Programs, courses and trainers. For additional information, see the related 60-day preclearance notice published in the **Federal Register** on September 22, 2009 (Vol. 74, page 48293). PRA documentation prepared in association with the preclearance notice is available on *http://www.regulations.gov* under docket number OSHA–2009–0022.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–13611 Filed 6–7–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,391]

Harris Stratex Networks Corporation, Currently Known As Aviat U.S., Inc., dba Aviat Networks, Inc., Production Division, Including On-Site Leased Workers From Manpower, Green Resources and Volt Technical Resources, San Antonio, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 9, 2008, applicable to workers of Harris Stratex Networks Corporation, Production Division, including on-site leased workers from Manpower, Green Resources, and Volt Technical Resources, San Antonio, Texas. The notice was published in the **Federal Register** on December 30, 2008 (73 FR 79914).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of Truepoint 5000 XCVR microwave radios and are separately identifiable from workers producing other microwave radios.

New information shows that following an earlier merger, Harris Stratex Networks, Inc. is currently known as Aviat U.S., Inc., dba Aviat Networks, Inc. Workers separated from employment at the subject firm have their wages reported under a separate unemployment insurance (UI) tax account under the name Aviat U.S., Inc., dba Aviat Networks, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports following a shift in production to Malaysia and Taiwan.

The amended notice applicable to TA–W–64,391 is hereby issued as follows:

"All workers of Harris Stratex Networks Corporation, currently known as Aviat U.S., Inc., dba Aviat Networks, Inc., Production Division, engaged in employment related to the production of Truepoint 5000 XCVR microwave radios, including on-site leased workers from Manpower, Green Resources, and Volt Technical Services, San Antonio, Texas, who became totally or partially separated from employment on or after November 6, 2007, through December 9, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974."

Signed at Washington, DC, this 25th day of May 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–13638 Filed 6–7–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request establishment and clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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 on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by August 9, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be

addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Request for Clearance for Evaluation of the National Science Foundation's (NSF) Robert Noyce Teacher Scholarship (Noyce) Program.

Title of Collection: Evaluation of the Robert Noyce Teacher Scholarship Program.

OMB Control No.: 3145–(NEW)

Expiration Date of Approval: Not applicable.

Abstract: The National Science Foundation (NSF) requests a three-year clearance for research, evaluation and data collection (e.g., surveys and interviews) about the Noyce Program. NSF established the Robert Noyce Teacher Scholarship Program to encourage talented STEM majors and professionals to become K–12 mathematics and science teachers. The Noyce Program awards scholarships, stipends, fellowships and internships to support the preparation of K–12 teachers in mathematics and science. For specific details and the most updated information regarding Noyce program operations, please visit the NSF Web site at: *http://www.nsf.gov/funding/pgm_summ.jsp?pims_id=5733.*

The study will survey Principal Investigators of the Noyce Program, Science, Technology, Engineering, or Mathematics (STEM) Faculty involved in the Noyce Program, Noyce Recipients, and K–12 Principals in schools where former recipients are teaching. Noyce recipients may be undergraduates majoring in a science, technology, engineering, or mathematics (STEM) discipline; STEM post-baccalaureates; STEM professionals; or exemplary mathematics and science teachers, who have master's degrees. The Noyce program evaluation will include all awards made between 2003 and 2009.

NSF has contracted a program evaluation of the Noyce Program, to be conducted by Abt Associates Inc. Through this evaluation of the Noyce Program, NSF aims to examine and document:

(1) The strategies and programs Noyce grantees use to recruit and retain teacher candidates, both during teacher preparation and during the induction period;

(2) The institutional change occurring within STEM departments regarding the preparation of future mathematics and science teachers;

(3) The relationships between characteristics of the Noyce Program, types of Noyce recipients, characteristics of the schools in which Noyce recipients teach, and recipients' plans to teach in high-need schools and to pursue leadership roles; and

(4) The impacts of the Noyce program on teacher recruitment and retention and on teacher effectiveness.

The methods of data collection will include both primary and secondary data collections. Primary data collection will include surveys and telephone interviews; secondary data sources include open sources, records at NSF and grantee institutions, and state departments of education and teacher retirement funds. There is a bounded (or limited) number of respondents within the general public who will be affected by this research, including current and former Noyce grantees and associated faculty, STEM majors, post-baccalaureates, or professionals eligible who are supported by Noyce funding, and K–12 principals and district administrators. NSF will use the Noyce program evaluation data and analyses to provide information and/or respond to requests from Committees of Visitors (COV), Congress and the Office of Management and Budget, particularly as related to the Government Performance and Results Act (GPRA) and the Program Assessment Rating Tool (PART) or its replacement. NSF will also use the program evaluation to share the broader impacts of the Noyce program with the general public.

Respondents: Individuals, Federal Government, State, Local or Tribal Government and not-for-profit institutions.

Estimated Number of Respondents: 5,000.

Burden on the Public: 2,400 hours.

Dated: June 3, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–13774 Filed 6–7–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0190]

Notice Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) 50.92(c), this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0309.html.* Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-

issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E–Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Carolina Power and Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: March 23, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information. The proposed amendment would revise Technical Specification Section 6.9.1.6 to add the U.S. Nuclear Regulatory Commission (NRC)-approved topical report (TR) EMF–2103(P)(A), Revision 0, "Realistic Large-Break LOCA [Loss-of-Coolant Accident] Methodology for Pressurized Water Reactors," to the Core Operating Limits Report methodologies list. This change will allow the use of the thermal-hydraulic computer analysis code S–RELAP5 for the Final Safety Analysis Report (FSAR) Chapter 15 realistic large-break LOCA in the Shearon Harris Nuclear Power Plant, Unit 1 safety analyses. TR EMF–2103(P)(A), Revision 0, was approved by the NRC on April 9, 2003, for the application of the S–RELAP5 thermal-hydraulic analysis computer code to FSAR Chapter 15 realistic large-break LOCA.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The topical report has been reviewed and approved by the NRC for use in determining core operating limits and for evaluation of large break loss-of-coolant accidents. The core operating limits to be developed using the new methodologies for HNP [Shearon Harris Nuclear Power Plant, Unit 1] will be established in accordance with the applicable limitations as documented in the NRC Safety Evaluation Report. In the April 9, 2003, NRC SE [safety evaluation], the NRC concluded that the S–RELAP5 RLBLOCA [realistic large-break loss-of-coolant accident] methodology is acceptable for referencing in licensing applications in accordance with the stated limitations.

The proposed change enables the use of new methodology to re-analyze a large break loss-of-coolant accident. It does not, by itself, impact the current design bases. Revised analysis may either result in continued conformance with design bases or may change the design bases. If design basis changes result from a revised analysis, the specific design changes will be evaluated in accordance with HNP design change procedures and 10 CFR 50.59.

The proposed change does not involve physical changes to any plant structure, system, or component. Therefore, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fission product barriers during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated.

The proposed methodologies will ensure that the plant continues to meet applicable design and safety analyses acceptance criteria. The proposed change does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. As a result, no analysis assumptions are impacted and there are no adverse effects on the factors that contribute to offsite or onsite dose as a result of an accident. The proposed change does not affect setpoints that initiate protective or mitigative actions. The proposed change ensures that plant structures, systems, and components are maintained consistent with the safety analysis and licensing bases.

Therefore, this amendment does not involve a significant increase in the probability or consequences of a previously analyzed accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of plant systems, structures, or components. No new or different equipment is being installed and no installed equipment is being operated in a different manner. There is no change to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result, no new failure modes are being introduced.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There is no impact on any margin of safety resulting from the incorporation of this new topical report into the Technical Specifications. If design basis changes result from a revised analysis that uses these new methodologies, the specific design changes will be evaluated in accordance with HNP design change procedures and 10 CFR 50.59. Any potential reduction in the margin of safety would be evaluated for that specific design change.

Therefore, this amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Acting Branch Chief: Douglas A. Broaddus

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: March 25, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed changes revise the operating license and technical specifications (TSs) to implement an increase of approximately 1.65% in rated thermal power from the current licensed thermal power of 3458 megawatts thermal (MWt) to 3515 MWt. The proposed changes are based on increased feedwater flow measurement accuracy, which will be achieved by utilizing Cameron International (formerly Caldon) CheckPIus Leading Edge Flow Meter ultrasonic flow measurement instrumentation. The proposed changes also modify certain TS setpoints and channel surveillance requirements associated with average power range monitor simulated thermal power. Additionally, the proposed changes include a modification to the standby liquid control system (SLCS), that allows operators to select two pumps instead of three for the automatic start function on an anticipated transient without scram (ATWS) signal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below, with Nuclear Regulatory Commission (NRC) edits in square brackets:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes [other than those associated with the SLCS] do not affect system design or operation and thus do not create any new accident initiators or increase the probability of an accident previously evaluated. All accident mitigation systems will function as designed, and all performance requirements for these systems have been evaluated and were found acceptable. The SLCS performance requirements will be met with completion of the SLCS modification described in the proposed changes.

The primary loop components (*e.g.,* reactor vessel, reactor internals, control rod drive housings, piping and supports, and recirculation pumps) remain within their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a structural failure of these components.

The nuclear steam supply systems will continue to perform their intended design functions during normal and accident conditions. The balance of plant systems and components continue to meet their applicable structural limits and will continue to perform their intended design functions. Thus, there is no increase in the probability of a failure of these components. The safety relief valves and containment isolation valves meet design sizing requirements at the uprated power level. Because the integrity of the plant will not be affected by operation at the uprated condition, [Exelon Generation Company, LLC] EGC has concluded that all structures, systems, and components required to mitigate a transient remain capable of fulfilling their intended functions.

A majority of the current safety analyses remain applicable, since they were performed at power levels that bound operation at a core power of 3515 MWt. Other analyses previously performed at the current power level have either been

evaluated or re-performed for the increased power level. The results demonstrate that acceptance criteria of the applicable analyses continue to be met at the uprated conditions. The anticipated transient without scram event criteria will be met with completion of the SLCS modification described in the proposed changes. As such, all applicable accident analyses continue to comply with the relevant event acceptance criteria. The analyses performed to assess the effects of mass and energy releases remain valid. The source terms used to assess radiological consequences have been reviewed and determined to bound operation at the uprated condition.

The proposed changes add test requirements to TS instrument functions [that are changed by this license amendment and are] related to those variables that have a significant safety function to ensure that instruments will function as required to initiate protective systems or actuate mitigating systems at the point assumed in the applicable safety analysis. Surveillance tests are not an initiator to any accident previously evaluated. As such, the probability of any accident previously evaluated is not significantly increased. The added test requirements ensure that the systems and components required by the TS are capable of performing any mitigation function assumed in the accident analysis.

The SLCS modification does not affect the probability of an accident, as the control system is not an initiator in any accident. The modification maintains all of the assumptions in the analyses of events for which the system is designed. Thus, the response to these events is unaffected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced [that create a new or different accident than previously evaluated] as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system.

The proposed changes regarding instrument testing do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed, nor will there be a change in the methods governing normal plant operation). The change does not alter assumptions made in the safety analysis, but ensures that the instruments behave as assumed in the accident analysis. The proposed change is consistent with the safety analysis assumptions.

The SLCS system is not an initiator of any accidents.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Operation at the uprated power condition does not involve a significant reduction in a margin of safety. Analyses of the primary fission product barriers have concluded that relevant design criteria remain satisfied, both from the standpoint of the integrity of the primary fission product barrier, and from the standpoint of compliance with the required acceptance criteria. As appropriate, all evaluations have been performed using methods that have either been reviewed or approved by the Nuclear Regulatory Commission, or that are in compliance with regulatory review guidance and standards.

The proposed changes add test requirements that establish instrument performance criteria in TS that are currently required by plant procedures. The testing methods and acceptance criteria for systems, structures, and components, specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis including the updated final safety analysis report. There is no impact to safety analysis acceptance criteria as described in the plant licensing basis because no change is made to the accident analysis assumptions. The SLCS modification maintains all of the assumptions in the analyses of events for which the system is designed. Thus, the response to these events is unaffected.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, and with the changes noted above in square brackets, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Exelon Generation Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: February 25, 2010.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise Technical Specifications to allow temporary changes to the secondary containment boundary during shutdown conditions. Specifically, the proposed change would allow the Reactor Building secondary containment boundary associated with the Trunnion Room to be relocated from the Trunnion Room outer wall and door to the Reactor Building inner walls and penetrations located inside the Trunnion Room.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. [The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.]

The proposed changes do not involve any modifications to any structures, components, or systems that would affect the probability of an accident previously evaluated in the Oyster Creek Updated Final Safety Analysis Report (UFSAR). Therefore, the proposed changes do not significantly increase the probability of an accident previously evaluated.

The Secondary Containment structure and the [Standby Gas Treatment System (SGTS)], and any component thereof, are not accident initiators. No other accident initiator is affected by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

There are no changes or modifications in the function or operation of the SGTS being proposed to temporarily relocate the Trunnion Room Secondary Containment boundary during Cold Shutdown conditions. Therefore, changing the Secondary Containment boundary for the Trunnion Room will not result in any change to the frequency of an accident or transient previously evaluated in the UFSAR.

The malfunction of any portion of Secondary Containment, including the SGTS, would have the same results and consequences regardless of whether the Secondary Containment boundary is maintained at the Trunnion Room door or inside the Trunnion Room.

Relocating the Secondary Containment boundary during Cold Shutdown conditions will help to improve Secondary Containment integrity. Secondary Containment integrity is maintained by the single Trunnion Room door. The relocated Secondary Containment boundary established inside the Trunnion Room will be more substantial since the penetrations will be blocked and sealed. Less air will be drawn into the Reactor Building during SGTS operation and a larger negative pressure will be maintained in the Reactor Building. As a result, better Secondary Containment response would be expected during any postulated accidents or transients in this configuration.

Since the proposed change to relocate the Secondary Containment boundary will only be implemented when the plant is in a Cold Shutdown condition, when a pipe break

accident is not credible and isolation of the Main Steam and Feedwater Supply lines will be maintained by isolation of either the inboard or outboard isolation valves or other engineered isolation mechanisms/devices within Secondary Containment; any release from the [reactor pressure vessel] RPV or any attached system will be contained in the Reactor Building. Once the RPV head is removed, any gaseous release due to fuel damage from any accident or transient would be drawn into the Reactor Building and through the SGTS as designed. The drop of a fuel bundle and postulated release of fission product gases would be drawn into the Reactor Building and through the SGTS as designed. Because the Secondary Containment will be maintained under negative pressure (*i.e.,* greater than −0.25″ water column) when required and the penetrations inside the Trunnion Room will be blocked and sealed, all releases in the Reactor Building, including in the RPV and Spent Fuel Pool, will be contained within Secondary Containment and will not be released into the Trunnion Room. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated in the UFSAR.

Therefore, based on the above information, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. [The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.]

The proposed changes will not create the possibility for a new or different type of accident from any accident previously evaluated. The proposed changes do not involve any modifications to any structure, systems, or components that would create the possibility of an accident. The Secondary Containment, SGTS[,] and any related equipment important to safety will continue to operate as designed. Component integrity is not challenged. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. The systems affected by the changes are used to mitigate the consequences of an accident that would have already occurred. The proposed changes do not allow reduction of the mitigative function of these systems. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

This temporary configuration change removes the Trunnion Room outer wall and door as part of Secondary Containment during Cold Shutdown and allows the Technical Specifications (TS) required administrative controls for the Trunnion Room door to be relaxed. Secondary Containment integrity will be maintained in accordance with applicable TS requirements and any releases from the RPV or its attached systems will be contained within Secondary Containment and will not be released into the Trunnion Room. All releases within Secondary Containment will be processed by the SGTS. This activity does not change the design, function[,] or operation of any structure, system, or component important to safety other than removing the Trunnion Room as part of the Secondary Containment boundary. Therefore, the proposed activity does not create a possibility for an accident of a different type.

The Secondary Containment, with the exception of the SGTS, is a passive system that cannot and will not result in any malfunction of a structure, system, or component important to safety. No change to the function or operation of the SGTS is being considered as a result of the proposed change to temporarily relocate the Trunnion Room Secondary Containment boundary during Cold Shutdown conditions. Changing the Secondary Containment boundary for the Trunnion Room will not result in any malfunction to a structure, system, or component important to safety. Therefore, the proposed changes do not create a possibility for a malfunction of a structure, system, or component important to safety with a different result than any previously evaluated in the UFSAR.

Therefore, based on the above information, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. [The proposed changes do not involve a significant reduction in the margin of safety.]

The Secondary Containment provides protection to the public by containing any radioactive releases that result from transients or accidents contained in the [Oyster Creek Nuclear Generating Station] design bases. With the exception of the SGTS, the Secondary Containment is a passive system that cannot and will not result in any accident or transient evaluated in the UFSAR. No change to the function or operation of the SGTS is being proposed when relocating the Trunnion Room Secondary Containment boundary during Cold Shutdown conditions.

The proposed changes to relocate the Trunnion Room Secondary Containment boundary from the outer wall and door, to the inner walls and penetrations inside the Trunnion Room during Cold Shutdown conditions will not result in any change to the frequency of an accident or transient previously evaluated in the UFSAR.

TS administrative controls will be instituted in support of relocating the Secondary Containment boundary and TS required surveillance testing will be completed to ensure that Secondary Containment integrity can be maintained in the modified configuration within design parameters.

Secondary Containment integrity will be maintained as required, and any release from the RPV or any attached system will be contained in the Reactor Building. The Secondary Containment and SGTS will continue to function as designed in the event of an accident or transient that requires the Secondary Containment to act as a fission product barrier to prevent a radioactive release.

The proposed changes do not adversely impact the operation of any plant structure, system, or component important to safety. The Secondary Containment and the SGTS will continue to function and respond as designed. The proposed changes do not result in a departure from a method of evaluation described in the UFSAR used in establishing the design bases or in the safety analyses.

Therefore, based on the above information, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, and with the changes noted above in square brackets, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. J. Bradley Fewell, Associate General Counsel, Exelon Generation Company LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold Chernoff.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Carolina Power and Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC

20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It Is So Ordered.

Dated at Rockville, Maryland, this 1st day of June 2010.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/Activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+ 25 Answers to petition for intervention; + 7 requestor/petitioner reply).

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E–Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E–Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/Activity
20	Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt + 30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt + 25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt + 7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

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BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–338 and 50–339; Docket Nos. 50–280 and 50–281; NRC–2010–0116]

Virginia Electric and Power Company; North Anna Power Station, Unit Nos. 1 and 2; Surry Power Station, Unit Nos.1 and 2; Exemption

1.0 Background

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. NPF–4, NPF–7, DPR–32, and DPR–37, which authorize operation of the North Anna Power Station, Unit Nos. 1 and 2 (NAPS) and Surry Power Station, Unit Nos. 1 and 2 (SPS) located in Lake Anna, Virginia, and Surry, Virginia, respectively. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facilities consist of two pressurized-water reactors each located in Lake Anna, Virginia, and Surry, Virginia, respectively.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), Part 20, "Standards for Protection Against Radiation" Subpart H, "Respiratory Protection and Controls to Restrict Internal Exposure in Restricted Areas," establishes the requirements for implementing a respiratory protection program. These programmatic requirements ensure that worker doses from airborne radioactive materials are maintained as low as reasonably achievable.

In summary, by letter dated November 24, 2009, as supplemented by letter dated February 11, 2010, the licensee requested an exemption from 10 CFR 20.1703(a), 10 CFR 20.1703(g)(1), and certain requirements of 10 CFR part 20, Appendix A, Footnote "a," to use the Mine Safety Appliances, Inc. (MSA), model Firehawk 7 Air Mask self-contained breathing apparatus (SCBA) with a gas mixture of 35% oxygen and 65% nitrogen at SPS and NAPS. The licensee's letter dated November 24, 2009, contains proprietary information and accordingly is not available to the public. In addition, the licensee requested NRC authorization under 10 CFR 20.1703(b) to use these SCBAs in a configuration not certified by the National Institute for Occupational Safety and Health (NIOSH). The regulations in 10 CFR 20.1703(b) allow a licensee to seek authorization to use respiratory equipment that has not been tested and certified by NIOSH. When seeking authorization to use equipment not certified by NIOSH, the licensee is required to demonstrate by testing that a respirator is capable of safely providing the necessary level of protection under the anticipated conditions of use. An exemption from 20.1703(a) and an exemption from the protection factors listed in 10 CFR part 20, appendix A is not necessary when the NRC grants authorization under 20.1703(b) for use of the respiratory equipment.

3.0 Discussion

Pursuant to 10 CFR 20.2301, the Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of 10 CFR part 20, as it deems appropriate or necessary to protect health or to minimize danger to life or property.

Authorized by Law

This exemption would allow the use of MSA model Firehawk M7 Air Mask SCBA with a gas mixture of 35% oxygen and 65% nitrogen. Section 20.1703(b) permits a licensee to request NRC approval to use equipment which has not been tested or certified by NIOSH. The application must supply evidence that equipment is capable of providing the proposed degree of protection under the anticipated conditions of use. Dominion has demonstrated, by documented third-party testing conducted by the National Aeronautics and Space Administration and Interek, that the equipment will continue to provide the proposed degree of protection under the anticipated conditions of use. Dominion also has

over 30 years of trouble-free operating experience with 35/65 charged SGBA (MSA Model 401/Ultraiite/Custom 4500 model line).

As stated above, 10 CFR 20.2301, allows the NRC to grant exemptions from the requirements of 10 CFR part 20. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Hazard to Life or Property

The underlying purposes of 10 CFR 20.1703(g)(1) is to ensure that "Atmosphere-supplying respirators must be supplied with respirable air of Grade D quality or better as defined by the Compressed Gas Association" and that Grade D air criteria include oxygen content (v/v) of 19.5–23.5%. Section 20.1703(b) permits a licensee to request NRC approval to use equipment which has not been tested or certified by NIOSH. The application must supply evidence that the equipment is capable of providing the proposed degree of protection under the anticipated conditions of use. The licensee has demonstrated by documented third-party testing conducted by NASA and Intertek that the equipment will provide the proposed degree of protection under the anticipated conditions of use.

Based on the above, no new accident precursors are created by the use of MSA model Firehawk 7 Air Mask SCBA with a gas mixture of 35% oxygen and 65% nitrogen at SPS and NAPS, thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue hazard to life or property.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.2301, the exemption is authorized by law and there is no undue hazard to life or property. Therefore, the Commission hereby grants Virginia Electric and Power Company an exemption from the 10 CFR 20.1703(g)(1), and certain requirements of 10 CFR part 20, appendix A, Footnote "a", to use the MSA model Firehawk 7 Air Mask SCBA with a gas mixture of 35% oxygen and 65% nitrogen at SPS and NAPS.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (Environmental Assessment published in the **Federal Register** on March 22, 2010, 75 FR13600).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 28th day of May 2010.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Director Deputy, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–13676 Filed 6–7–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act; Notice of Meeting

DATE: Weeks of June 7, 14, 21, 28, July 5, 12, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of June 7, 2010

Wednesday, June 9, 2010

1:25 p.m.

Affirmation Session (Public Meeting) (Tentative).

a. Review of Final Rule Package, Export and Import of Nuclear Equipment and Material; Updates and Clarifications (10 CFR part 110, RIN 3150–AI16) (Tentative).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m.

Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting). (Contact: Cayetano Santos, 301–415–7270).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of June 14, 2010—Tentative

Thursday, June 17, 2010

9 a.m.

Briefing on Blending (Public Meeting). (Contact: George Deegan, 301–415–7834).

This meeting will be Webcast live at the Web address— *http://www.nrc.gov.*

Week of June 21, 2010—Tentative

Friday, June 25, 2010

9 a.m.

Briefing on Office of Nuclear Material Safety and Safeguards (NMSS)—Programs, Performance and Future Plans and Integrated Strategy on Spent Fuel Management (Public Meeting). (Contact: Hipolito Gonzalez, 301–492–3141).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of June 28, 2010—Tentative

There are no meetings scheduled for the week of June 28, 2010.

Week of July 5, 2010

There are no meetings scheduled for the week of July 5, 2010.

Week of July 12, 2010

There are no meetings scheduled for the week of July 12, 2010.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: June 3, 2010.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2010–13876 Filed 6–4–10; 4:15 pm]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collections for OMB Review; Comment Request; Payment of Premiums; Termination Premium

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of collection of information without change.

SUMMARY: Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information for the termination premium under its regulation on Payment of Premiums (29 CFR Part 4007) (OMB control number 1212–0064; expires October 31, 2010), without change. This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by August 9, 2010.

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

- *Federal eRulemaking portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *E-mail: paperwork.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or hand delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to PBGC's Web site (*http://www.pbgc.gov*).

The collection of information (Form T and instructions) and PBGC's premium payment regulation may be accessed on PBGC's Web site at *http://www.pbgc.gov.* Copies of the collection of information may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Staff Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4006(a)(7) of ERISA provides for a "termination premium" (in addition to the flat-rate and variable-rate premiums under section 4006(a)(3)(A) and (E) of ERISA) that is payable for three years following certain distress and involuntary plan terminations. PBGC's regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) implement the termination premium. Sections 4007.3 and 4007.13(b) of the premium payment regulation require the filing of termination premium information and payments with PBGC. PBGC has promulgated Form T and instructions for paying the termination premium.

In general, the termination premium applies where a single-employer plan terminates in a distress termination under ERISA section 4041(c) (unless contributing sponsors and controlled group members meet the bankruptcy liquidation requirements of ERISA section 4041(c)(2)(B)(i)) or in an involuntary termination under ERISA section 4042, and the termination date under section 4048 of ERISA is after 2005. The termination premium does not apply in certain cases where termination occurs during a bankruptcy proceeding filed before October 18, 2005.

The termination premium is payable for three years. The same amount is payable each year. The amount of each payment is based on the number of participants in the plan as of the day before the termination date. In general, the amount of each payment is equal to $1,250 times the number of participants. However, the rate is increased from $1,250 to $2,500 in certain cases involving commercial airline or airline catering service plans. The termination premium is due on the 30th day of each of three consecutive 12-month periods. The first 12-month period generally begins shortly after the termination date or after the conclusion of bankruptcy proceedings in certain cases.

Sections 4007.3 and 4007.13(b) of the premium payment regulation require the filing of termination premiums and related information. A filing must be made by a person liable for the termination premium. The persons liable for the termination premium are contributing sponsors and members of their controlled groups, determined on the day before the plan termination date. Interest on late termination premiums is charged at the rate imposed under section 6601(a) of the Internal Revenue Code, compounded daily, from the due date to the payment date. Penalties based on facts and circumstances may be assessed both for failure to timely pay the termination premium and for failure to timely file required related information and may be waived in appropriate circumstances. A penalty for late payment will not exceed the amount of termination premium paid late. Section 4007.10 of the premium payment regulation requires the retention of records supporting or validating the computation of premiums paid and requires that the records be made available to PBGC.

OMB has approved the termination premium collection of information (Form T and instructions) under control number 1212–0064 through October 31, 2010. PBGC intends to request that OMB extend approval of this collection of information for three years, without change. (In connection with this request for extension of OMB approval, Form T has been reformatted without substantive change, and current burden data and instructions for the hearing impaired have been added to the Form T instructions.) 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.

PBGC assumes that termination premium filings will be made with respect to one termination per year. Accordingly, PBGC assumes that it will receive each year an average of about one first-year, one second-year, and one third-year termination premium filing from an average of about three plan sponsor groups. Thus, PBGC estimates that the total annual burden of the collection of information will be about two-and-a-half hours and $16,625.

PBGC is soliciting public comments to—

- 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;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Issued in Washington, DC, June 2, 2010.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–13654 Filed 6–7–10; 8:45 am]

BILLING CODE 7709–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of Waiver to the Nonmanufacturer Rule for Liquid Propane Gas (LPG), North American Industry Classification System (NAICS) code 325120, Product Service Code (PSC) 6830.

SUMMARY: The U. S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Liquid Propane Gas. The basis for waiver is that no small business manufacturers are supplying this class of product to the Federal Government. The effect of a waiver would be to allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, service-disabled veteran-owned (SDVO) small businesses or Participants in SBA's 8(a) Business Development (BD) Program.

DATES: This waiver is effective June 23, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Garcia, Procurement Analyst, by telephone at (202) 205–6842; by Fax at (202) 481–1630; or by e-mail at *amy.garcia@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal supply contracts set aside for small businesses, SDVO small businesses, or Participants in the SBA's 8(a) BD Program must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. 13 CFR 121.1202(c). The SBA defines "class of products" based on the Office of Management and Budget's NAICS. In addition, SBA uses PSCs to further identify particular products within the NAICS code to which a waiver would apply.

The SBA received a request on December 10, 2010, to waive the Nonmanufacturer Rule for LPG, PSC 6830 (Compressed and Liquefied Gases), under NAICS code 325120 (Industrial Gases Manufacturing).

On March 23, 2010, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for the above listed item. SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. No comments were received in response to this notice. SBA has determined that there are no small business manufacturers of this class of products, and is therefore granting the waiver of the Nonmanufacturer Rule for LPG, PSC 6830 (Compressed and Liquefied Gases), under NAICS code 325120 (Industrial Gases Manufacturing).

Dated: June 1, 2010.

Karen Hontz,

Director, Office of Government Contracting.

[FR Doc. 2010–13652 Filed 6–7–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Miracor Diagnostics, Inc., Monaco Finance, Inc., MPEL Holdings Corp. (f/k/a Computer Transceiver Systems, Inc.), MR3 Systems, Inc., Mutual Risk Management, Ltd.; Order of Suspension of Trading

June 4, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Miracor Diagnostics, Inc. because it has not filed any periodic reports since the period ended September 30, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Monaco Finance, Inc. because it has not filed any periodic reports since the period ended September 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MPEL Holdings Corp. (f/k/a Computer Transceiver Systems, Inc.) because it has not filed any periodic reports since September 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MR3 Systems, Inc. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Mutual Risk Management Ltd. because it has not filed any periodic reports since the period ended December 31, 2001.

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 June 4, 2010, through 11:59 p.m. EDT on June 17, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–13823 Filed 6–4–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62205; File No. SR–FINRA–2010–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 4210 (Margin Requirements), FINRA Rule 4220 (Daily Record of Required Margin) and FINRA Rule 4230 (Required Submissions for Requests for Extensions of Time Under Regulation T and SEC Rule 15c3–3) in the Consolidated FINRA Rulebook

June 2, 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 May 14, 2010, Financial Industry Regulatory

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 FINRA. 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

FINRA is proposing to adopt (1) NASD Rules 2520, 2521, 2522, and IM–2522 regarding margin requirements, (2) NASD Rule 3160 regarding extension of time requests under Regulation T and SEC Rule 15c3–3, and (3) Incorporated NYSE Rule 432(a) regarding daily record of margin requirements as FINRA rules in the consolidated FINRA rulebook, subject to certain amendments, and to delete Incorporated NYSE Rule 431 (Margin Requirements), Incorporated NYSE Rule 431 Interpretations,[3] Incorporated NYSE Rule 432(b) and Incorporated NYSE Rule 434 (Required Submissions of Requests for Extension of Time for Customers). The proposed rule change would (1) Consolidate and renumber NASD Rules 2520, 2521, 2522 and IM–2522 as FINRA Rule 4210 (Margin Requirements), (2) renumber NASD Rule 3160 as FINRA Rule 4230 (Required Submissions for Requests for Extensions of Time Under Regulation T and SEC Rule 15c3–3), and (3) renumber Incorporated NYSE Rule 432(a) as FINRA Rule 4220 (Daily Record of Required Margin) in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[4] FINRA is proposing to adopt (1) NASD Rules 2520, 2521, 2522, and IM–2522 regarding margin requirements, (2) NASD Rule 3160 regarding extension of time requests under Regulation T and SEC Rule 15c3–3, and (3) Incorporated NYSE Rule 432(a) regarding daily record of margin requirements as FINRA rules in the Consolidated FINRA Rulebook, subject to certain amendments, and to delete Incorporated NYSE Rule 431 (Margin Requirements), Incorporated NYSE Rule 431 Interpretations,[5] Incorporated NYSE Rule 432(b) and Incorporated NYSE Rule 434 (Required Submissions of Requests for Extension of Time for Customers). The proposed rule change would (1) consolidate and renumber NASD Rules 2520, 2521, 2522 and IM–2522 as FINRA Rule 4210 (Margin Requirements), (2) renumber NASD Rule 3160 as FINRA Rule 4230 (Required Submissions for Requests for Extensions of Time Under Regulation T and SEC Rule 15c3–3), and (3) renumber Incorporated NYSE Rule 432(a) as FINRA Rule 4220 (Daily Record of Required Margin) in the Consolidated FINRA Rulebook.

Margin Requirements—NASD Rules 2520, 2521, 2522, and IM–2522 and Incorporated NYSE Rule 431

FINRA proposes to adopt the margin requirements set forth in NASD Rules 2520 through 2522 and IM–2522 as FINRA Rule 4210, subject to certain amendments, discussed below and to delete Incorporated NYSE Rule 431 (Margin Requirements). The proposed amendments, among other things, reflect certain requirements in Incorporated NYSE Rule 431.

NASD Rule 2520 (Margin Requirements) and Incorporated NYSE Rule 431, which are almost identical, prescribe requirements governing the extension of credit by members that offer margin accounts to customers, as generally permitted in accordance with Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T").[6] These rules promulgate the margin requirements that determine the amount of collateral customers are expected to maintain in their margin accounts, including strategy-based margin accounts and portfolio margin accounts. Maintenance margin requirements for equity, fixed income, warrants and option securities also are established under these rules.

Rule Structure

FINRA proposes to combine NASD Rules 2520, 2521, 2522 and IM–2522 into the single consolidated margin rule, FINRA Rule 4210. In addition, FINRA proposes to re-structure the rule to improve its organization and make it easier to read. First, FINRA proposes to incorporate NASD Rule 2521 (Margin—Exemption for Certain Members) as FINRA Rule 4210(h), which provides that any member for which another self-regulatory organization acts as the designated examining authority is exempt from FINRA Rule 4210. Second, FINRA proposes to incorporate NASD Rule 2522 (Definitions Related to Options, Currency Warrants, Currency Index Warrants and Stock Index Warrant Transactions) as FINRA Rule 4210(f)(2)(A), which contains definitions regarding margining options, currency warrants, currency index warrants and stock index warrant transactions.[7] In so doing, FINRA proposes to delete extraneous definitions and retain only those definitions that are pertinent to the new rule. Third, FINRA proposes to combine the margin provisions regarding currency warrants, currency index warrants and stock index warrants from NASD Rule 2520(f)(10) together with similar sections in paragraph (f)(2) of FINRA Rule 4210. All margin provisions regarding such warrants were combined in a single section in corresponding Incorporated NYSE Rule 431(f)(2), and FINRA proposes to follow this model. FINRA believes combining all provisions in a single section regarding such warrants will make the rule easier to read. Finally, FINRA proposes to incorporate NASD IM–2522 (Computation of Elapsed Days) as Supplementary Material to FINRA Rule

[3] Assuming SEC approval of the proposed rule change, FINRA expects to maintain the Incorporated NYSE Rule 431 Interpretations as interpretations to FINRA Rule 4210.

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See supra* note 3.

[6] *See* Regulation T Section 220.4.

[7] In this regard, FINRA proposes to adopt the model of Incorporated NYSE Rule 431 of consolidating relevant definitions into FINRA Rule 4210.

4210, which provides illustrations on how to calculate the number of elapsed days for accrued interest on Treasury bonds or notes.

Net Capital Calculations

FINRA proposes in several instances in FINRA Rule 4210[8] to specify that the member should reference SEC Rule 15c3–1 and, if applicable, FINRA Rule 4110 (Capital Compliance) when calculating net capital, charges against net capital and haircut requirements. Members that may be subject to greater net capital requirements pursuant to FINRA Rule 4110 would need to ensure they are in compliance with both the SEC and FINRA net capital provisions in calculating net capital and its impact on margin calculations. In addition, consistent with the corresponding Incorporated NYSE Rule 431 requirements, FINRA proposes to provide in FINRA Rule 4210(e)(5)(A) and (B) (regarding specialists' and market makers' accounts), (e)(6)(A) (regarding broker-dealer accounts) and (e)(6)(B)(i)c. (regarding joint back office arrangements) that when computing charges against net capital for transactions in securities covered by FINRA Rule 4210(e)(2)(F) (regarding transactions with exempt accounts involving certain "good faith" securities) and FINRA Rule 4210(e)(2)(G) (regarding transactions with exempt accounts involving highly rated foreign sovereign debt securities and investment grade debt securities), absent a greater haircut requirement that may have been imposed on such securities pursuant to FINRA Rule 4110(a), the respective requirements of those paragraphs may be used, rather than the haircut requirements of SEC Rule 15c3–1.

Joint Accounts Exemption

FINRA proposes to integrate Incorporated NYSE Rule 431 Supplementary Material .10 into FINRA Rule 4210(e)(3) regarding joint accounts in which the carrying member or a partner or stockholder therein has an interest. The provision permits a member to seek an exemption under the FINRA Rule 9600 Series if the account is confined exclusively to transactions and positions in exempted securities. The proposed rule change would provide that any such application shall include the complete description of the security; cost price, offering price and principal amount of obligations which have been purchased or may be required to be purchased; the date on which the security is to be purchased or on which there will be a contingent commitment to purchase the security; the approximate aggregate indebtedness; the approximate net capital; and the approximate total market value of all readily marketable securities (1) exempted and (2) non-exempted, held in member accounts, partners' capital accounts, partners' individual accounts covered by approved agreements providing for their inclusion as partnership property, accounts covered by subordination agreements approved by FINRA and customers' accounts in deficit.

Additional Requirements on Control and Restricted Securities and Relationship to FINRA Rule 4120 (Regulatory Notification and Business Curtailment)

FINRA proposes to adopt provisions from Incorporated NYSE Rule 431 pertaining to deductions from net capital on control and restricted securities, which are not contained in NASD Rule 2520.[9] These provisions, which would be set forth in FINRA Rule 4210(e)(8)(C)(ii), (iii) and (v), require that a member make deductions from its net capital if it extends credit over specified thresholds, discussed below, on control and restricted securities, and it must take such deductions into account when determining if it has reached any of the financial triggers specified in FINRA Rule 4120.[10] The proposed rule change also would make conforming amendments to FINRA Rule 4120(a)(1)(F) and (c)(1)(F) (Regulatory Notification and Business Curtailment) to clarify that a member must take into account the special deductions from net capital set forth in FINRA Rule 4210(e)(8)(C) in determining its status under FINRA Rule 4120. The margin provision specifically provides that the greater of the aggregate credit agreed to be extended in writing or the aggregate credit that is actually extended to all customers on control and restricted securities of any one issue that exceeds 10 percent of the member's excess net capital shall be deducted from net capital for purposes of determining a member's status under FINRA Rule 4120. The amount of such aggregate credit extended, which has been deducted in computing net capital under SEC Rule 15c3–1 and, if applicable, FINRA Rule 4110(a), need not be included in this calculation. FINRA, upon written application, may reduce the deduction to net capital under FINRA Rule 4120 to 25 percent of such aggregate credit extended that exceeds 10 percent but is less than 15 percent of the member's excess net capital. In addition, the aggregate credit extended to all customers on all control and restricted securities (reduced by the amount of such aggregate credit which has been deducted in computing net capital under SEC Rule 15c3–1 and, if applicable, FINRA Rule 4110(a)), shall be deducted from net capital on the following basis for purposes of determining a member's status under FINRA Rule 4120. First, to the extent such net amount of credit extended does not exceed 50 percent of a member's excess net capital, 25 percent of such net amount of credit extended shall be deducted. Second, 100 percent of such net amount of credit extended which exceeds 50 percent of a member's excess net capital shall be deducted. The amount to be deducted from net capital for purposes of determining a member's status under Rule 4120 shall not exceed 100 percent of the aggregate credit extended reduced by any amount deducted in computing net capital under SEC Rule 15c3–1 and, if applicable, Rule 4110(a).

Day Trading

FINRA proposes to adopt Supplementary Material .30 and .60 from Incorporated NYSE Rule 431 regarding day trading in proposed FINRA Rule 4210(f)(8)(B). FINRA proposes to integrate Supplementary Material .60 from Incorporated NYSE Rule 431 in FINRA Rule 4210(f)(8)(B)(iii) to provide that the day-trading buying power for non-equity securities may be computed using the applicable special maintenance margin requirements pursuant to other provisions of the margin rule. In addition, FINRA proposes to adopt Supplementary Material .30 from Incorporated NYSE Rule 431 as FINRA Rule 4210(f)(8)(B)(iv)b. to provide that in the event that the member at which a customer seeks to open an account or resume day trading in an existing account, knows or has a reasonable basis to believe that the customer will engage in pattern day trading, then the minimum equity required ($25,000) must be deposited in the account prior to commencement of day trading. FINRA also proposes to relocate

[8] *See, e.g.,* FINRA Rule 4210(e)(2)(D), (e)(2)(F), (e)(2)(G), (e)(4), (e)(5) and (e)(6). Incorporated NYSE Rule 431 referenced NYSE's net capital rules in these same sections, and FINRA proposes to follow this model.

[9] *See* Incorporated NYSE Rule 431(e)(8)(C)(ii), (iii) and (v).

[10] FINRA Rule 4120 is based on Incorporated NYSE Rules 325 and 326, which were referenced in Incorporated NYSE Rule 431(e)(8)(C)(ii), (iii) and (v). FINRA Rule 4120 requires carrying and clearing members to notify FINRA if any of the specified financial triggers in FINRA Rule 4120 are reached. The rule also addresses circumstances under which a member would be prohibited from expanding its business or required to reduce its business.

paragraph (f)(8)(C) of NASD Rule 2520 into FINRA Rule 4210(f)(8)(B)(iii) that specifies that day trading deficiencies must be met within five business days of the trade date.

Portfolio Margining

FINRA proposes to amend FINRA Rule 4210(g)(5) to highlight to members that portfolio margin-eligible participants, in addition to being required to be approved to engage in uncovered short option contracts pursuant to FINRA Rule 2360, must be approved to engage in security futures transactions pursuant to FINRA Rule 2370.

Conforming Amendments

FINRA proposes to add the terms "approved market maker," "market maker" and "market making" to FINRA Rule 4210(f)(10)(F) to conform to rule changes made by the NYSE.[11] The NYSE changes were made in connection with the operation of the NYSE's Market Model.[12] As a result of the implementation of these changes, the NYSE amended several of its rules, including NYSE Rule 431(f)(10)(F), to add the terms "approved market maker," "market maker" and "market making" to reflect the current DMMs operating on the NYSE. FINRA also proposes amending the definitions of the same terms used in FINRA Rule 4210(e)(5)(A) and (f)(10)(E) for consistency purposes.

Clarifying and Technical Amendments

Finally, FINRA proposes to make several technical changes to the margin rule text to update terminology and similar clarifications. First, FINRA proposes to add definitions to FINRA Rule 4210(f)(2)(A) regarding "listed" and "OTC" options and employ such terms throughout FINRA Rule 4210(f)(2).[13] FINRA is not proposing any substantive changes to the margin requirements for listed or over-the-counter options; rather, the proposed rule change would make the rule easier to read by creating such definitions and using the terms consistently throughout the rule text.

Second, in proposed FINRA Rule 4210(f)(2)(I)(iv), FINRA proposes several clarifications to terminology where no margin may be required if the specified options or warrants are carried "short" in the account of a customer, against an escrow agreement, and either are held in the account at the time the options or warrants are written, or received in the account promptly thereafter. The proposed rule change would clarify that with respect to such options or warrants, an escrow agreement is used, in a form satisfactory to FINRA, issued by a third party custodian bank or trust company, and in compliance with the requirements of Rule 610 of The Options Clearing Corporation. The corresponding provisions in Incorporated NYSE Rule 431[14] used the terms "letter of guarantee" and "escrow receipt" while NASD Rule 2520 used the term "letter of guarantee." While in this context such terms generally were used interchangeably, FINRA proposes to use the term "escrow agreement" to eliminate any potential confusion.[15] The proposed rule change also would replace the term "guarantor" with the term "custodian" to more accurately reflect the third party's role. In addition, the proposed rule change would revise the definition of what constitutes a qualified security by eliminating the reference to the list of Over-the-Counter Margin Stocks published by the Board of Governors of the Federal Reserve System as the Federal Reserve no longer publishes such a list.

Third, the proposed rule change would insert the term "aggregate" before exercise price throughout proposed FINRA Rule 4210(f)(2)(H) and (f)(2)(N) to clarify a calculation must be made in the strategies and spreads that are noted (*i.e.,* offsets, reverse conversions, butterfly spread, *etc.*). Finally, the proposed rule change would make various non-substantive changes to reflect the formatting, presentation and style conventions used in the Consolidated FINRA Rulebook.

Daily Record of Margin Requirements—Incorporated NYSE Rule 432(a)

FINRA proposes to adopt Incorporated NYSE Rule 432(a) (Daily Record of Required Margin) as FINRA Rule 4220 in substantially the form it exists today. Incorporated NYSE Rule 432(a) sets forth the requirements for daily recordkeeping of initial and maintenance margin calls that are issued pursuant to Regulation T and the margin rules. There is no corresponding NASD rule. FINRA believes that this is an important requirement to heighten FINRA's ability to monitor members' margin call practices. In addition, Incorporated NYSE Rule 432(b) prohibits a member from allowing a customer to make a practice of satisfying initial margin calls by the liquidation of securities. However, this provision is substantially similar to the provision in proposed FINRA Rule 4210(f)(7), except that the proposed FINRA rule provision does not contain the exception for omnibus accounts. Accordingly, FINRA proposes to eliminate Incorporated NYSE Rule 432(b) and modify paragraph (f)(7) of FINRA Rule 4210 to add that the prohibition on liquidations shall not apply to any account carried on an omnibus basis as prescribed by Regulation T.

Required Submissions of Requests for Extension of Time Under Regulation T and SEC Rule 15c3–3—NASD Rule 3160 and Incorporated NYSE Rule 434

FINRA proposes to adopt NASD Rule 3160 (Extensions of Time Under Regulation T and SEC Rule 15c3–3) as FINRA Rule 4230 with one modification discussed below and delete the substantively similar Incorporated NYSE Rule 434 (Required Submission of Requests for Extensions of Time for Customers). NASD Rule 3160 and Incorporated NYSE Rule 434 set forth requirements governing members' requests for extensions of time, as permitted in accordance with Regulation T and SEC Rule 15c3–3(n). These rules provide that when FINRA is the designated examining authority for a member, requests for extensions of time must be submitted to FINRA for approval, in a format FINRA requires. In addition, NASD Rule 3160 requires each

[11] *See* Securities Exchange Act Release No. 59077 (December 10, 2008), 73 FR 76691 (December 17, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Exchange Rule 104T to Make a Technical Amendment to Delete Language Relating to Orders Received by NYSE Systems and DMM Yielding; Clarifying the Duration of the Provisions of Rule 104T; Making Technical Amendments to Rule 98 and Rule 123E to Update Rule References for DMM Net Capital Requirements; Rescinding Paragraph (g) of Rule 123; and Making Conforming Changes to Certain Exchange Rules to Replace the Term "Specialist" with "DMM"; File No. SR–NYSE–2008–127).

[12] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SEC Approval Order of SR–NYSE–2008–46 approving certain rules to operate as a pilot scheduled to end October 1, 2009); *see also* Securities Exchange Act Release No. 60756 (October 1, 2009), 74 FR 51628 (October 7, 2009) (SR–NYSE–2009–100); Securities Exchange Act Release No. 61031 (November 19, 2009), 74 FR 62368 (November 27, 2009); and Securities Exchange Act Release No. 61724 (March 17, 2010), 75 FR 14221 (March 24, 2010) (extending the operation of the pilot until the earlier of the SEC approval to make permanent or September 30, 2010). As part of this new model, the functions formerly carried out by specialists on the NYSE were replaced by a new market participant, known as a Designated Market Maker ("DMM").

[13] The term "listed" as used with reference to a call or put option contract would mean an option contract that is traded on a national securities exchange and issued and guaranteed by a registered clearing agency. The term "OTC" as used with reference to a call or put option contract would mean an over-the-counter option contract that is not traded on a national securities exchange and is issued and guaranteed by the carrying broker-dealer. Accordingly, the proposed rule change would delete as unnecessary certain descriptive references in NASD Rule 2520(f)(2) to listed and OTC options.

[14] *See* Incorporated NYSE Rule 431(f)(2)(H)(iv).

[15] Such approach also is consistent with the CBOE rules. *See* CBOE Rule 12.3(d).

clearing member that submits extensions of time on behalf of broker-dealers for which it clears to submit a monthly report to FINRA that indicates overall ratios of requested extensions of time to total transactions that have exceeded a percentage specified by FINRA.[16] FINRA monitors the number of Regulation T and SEC Rule 15c3–3 extension requests for each firm to determine whether to impose prohibitions on further extensions of time.[17]

FINRA proposes to add a provision to proposed FINRA Rule 4230 to clarify that for the months when no broker-dealer for which a clearing member clears exceeds the extension of time ratio criteria (*i.e.,* 2%), the clearing member must submit a report indicating such. FINRA had previously requested such submissions but believes the submissions are essential to ensure FINRA has a complete and accurate understanding of correspondent firm extension requests.

As noted above, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 180 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[18] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify and streamline the margin requirements applicable to its members, as well as those rules addressing extension of time requests under Regulation T and SEC Rule 15c3–3.

[16] *See Notice to Members* 06–62 (November 2006). FINRA would retain the reporting threshold specified in *Notice to Members* 06–62 of requiring a report for all introducing or correspondent firms that have overall ratios of requests for extensions of time to total transactions for the month that exceed 2%. In the event FINRA adjusts the reporting threshold, or the limitation threshold stated in note 16 below, it would advise members of the new parameters in a *Regulatory Notice.*

[17] *See supra* note 15. FINRA will continue to prohibit further extension of time requests for (1) introducing or correspondent firms that exceed a 3% ratio of the number of extension of time requests to total transactions for the month and (2) clearing firms that exceed a 1% ratio of extension of time requests to total transactions.

[18] 15 U.S.C. 78*o*–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–FINRA–2010–024 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–FINRA–2010–024. 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 FINRA. 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–FINRA–2010–024 and should be submitted on or before June 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13662 Filed 6–7–10; 8:45 am]

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62204; File No. SR–CBOE–2010–049]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Eligible Order Types

June 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Substance of the Proposed Rule Change

The Exchange is proposing to amend its rules to clarify the applicability of various order types on the Exchange. The text of the proposed rule change 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.

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 modify Rule 6.53, *Certain Types of Orders Defined,* to clarify that one or more of the various order types may be made available on a class-by-class basis.[5] The proposed text would also clarify that certain order types may not be made available for all Exchange systems. The classes and/or systems for which the order types shall be available will be as provided in the Rules, as the context may indicate, or as otherwise specified via Regulatory Circular generally at least one day in advance.

The proposed rule change provides additional clarity and consistency in our rules, which already provide in various places that the Exchange may designate the eligible order types on a class-by-class basis for various systems/processes. For example, the proposed change is consistent with Rules 6.13A, *Simple Auction Liaison (SAL),* 6.14A, *Hybrid Agency Liaison 2 (HAL2),* and 6.53C(d), *Process for Complex Order RFR Auction* ("COA"), which provide that the Exchange, among other things, shall designate the eligible order types and classes in which SAL, HAL2 or COA will be activated. As another example, Rule 6.53(o), *Attributable Order,* provides that attributable orders may not be available for all Exchange systems and the Exchange will issue a Regulatory Circular specifying the systems for which the attributable order type shall be available.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [6] 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 Exchange believes the proposed change would provide more clarity on the applicability of eligible order types in a manner that is consistent with other provisions in the existing CBOE rules.

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

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,[7] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–049 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–CBOE–2010–049. 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

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Rule 6.53 sets out definitions for the following order types: market order; limit order; contingency order (market-if-touched order, market-on-close order, stop (stop-loss) order, stop-limit order); spread order; combination order; straddle order; not held order; one-cancels-the-other order; all-or-none order; fill-or-kill order; immediate-or-cancel order; opening rotation order; facilitation order; ratio order; attributable order; intermarket sweep order; AIM sweep order; sweep and AIM order; CBOE-only order; and reserve order.

[6] 15 U.S.C. 78f(b)(5).

[7] The Exchange has fulfilled the five day prefiling requirement.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

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 pm. 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 Number SR–CBOE–2010–049 and should be submitted on or before June 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13663 Filed 6–7–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62211; File No. SR–FINRA–2010–014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to FINRA Rule 9554 To Eliminate Explicitly the Inability-To-Pay Defense in the Expedited Proceedings Context

June 2, 2010.

On March 31, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to FINRA Rule 9554 to eliminate explicitly the inability-to-pay defense in the expedited proceedings context. The proposed rule change was published for comment in the **Federal Register** on April 26, 2010.[3] The Commission received three comments, all of which supported the proposed rule change.[4] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

FINRA proposed to amend FINRA Rule 9554 to eliminate explicitly the inability-to-pay defense in the expedited proceedings context when a member or associated person fails to pay an arbitration award to a customer.

FINRA Rule 9554 allows FINRA to bring expedited actions to address failures to pay FINRA arbitration awards.[5] Once a monetary award has been issued in a FINRA arbitration proceeding, the party that must pay the award has thirty days to do so.[6] If the party that must pay the award is a respondent, (*i.e.,* a member or an associated person, FINRA coordinates between FINRA Dispute Resolution's arbitration forum and FINRA's enforcement program to verify whether such respondent has done so. If the respondent has not paid, FINRA initiates an expedited proceeding by sending a notice explaining that the respondent will be suspended unless the respondent pays the award or requests a hearing.

A respondent that requests a hearing may raise a number of defenses to the suspension. One of the current defenses is establishing a bona fide inability-to-pay. When a respondent successfully demonstrates a bona fide inability-to-pay, it is a complete defense to the suspension. Consequently, the inability-to-pay defense currently precludes a harmed customer from obtaining payment of a valid arbitration award.

FINRA's expedited proceedings for failure to pay an arbitration award use the leverage of a potential suspension to help ensure that a member or an associated person promptly pays a valid arbitration award. However, if a respondent demonstrates a financial inability to pay the award—regardless of the reason—the leverage is removed. When FINRA's efforts to suspend a respondent who has not paid an award have been defeated, a claimant is much less likely to be paid. FINRA believes that by eliminating the inability-to-pay defense, it will increase the probability of customers having their awards paid, or, at a minimum, it should prompt meaningful settlement discussions between claimants and respondents.

The ability to work in the securities industry carries with it, among other things, an obligation to comply with the federal securities laws, FINRA rules, and orders imposed by the disciplinary and arbitration processes. Allowing members or their associated persons that fail to pay arbitration awards to remain in the securities industry presents regulatory risks and is unfair to harmed customers.

Although FINRA proposes to eliminate the inability-to-pay defense, a respondent would still have available the following four defenses:

- The member or person paid the award in full or fully complied with the settlement agreement;
- The arbitration claimant has agreed to installment payments or has otherwise settled the matter;
- The member or person has filed a timely motion to vacate or modify the arbitration award and such motion has not been denied; and
- The member or person has filed a petition in bankruptcy and the bankruptcy proceeding is pending or the award or payment owed under the settlement agreement has been discharged by the bankruptcy court.[7]

Regarding the last defense, FINRA believes that a federal bankruptcy court is the best forum for adjudicating a financial condition defense. Bankruptcy judges are experts in evaluating whether a debtor's obligations should be legally discharged. The bankruptcy process and associated filings are designed to consider fully and evaluate the financial condition of bankruptcy debtors.[8] In addition, bankruptcy filings, which are subject to federal perjury charges, provide greater penalties for hiding assets.[9] FINRA's lack of subpoena power over banks and other third parties raises practical concerns regarding its ability to confirm accurately the assets of the firm or person asserting the defense.[10]

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61938 (Apr. 19, 2010), 75 FR 21686 (Apr. 26, 2010).

[4] *See* letters from Michael T. Nommensen, dated May 14, 2010; William A Jacobson, Esq., Associate Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic, and Lennie Sliwinski, Cornell Law School class of 2011, dated May 15, 2010; and Scott R. Shewan, President, Public Investors Arbitration Bar Association ("PIABA"), dated May 17, 2010.

[5] Expedited actions allow FINRA to address certain types of misconduct quicker than would be possible using the ordinary disciplinary process. In general, expedited actions are designed to encourage respondents to comply with the law or take corrective action rather than sanction them for past misconduct. Moreover, as discussed in detail below, the Act uses a different standard of review for expedited actions than it does for disciplinary cases.

[6] FINRA Rule 10330(h).

[7] In its order approving changes to the predecessor to Rule 9554, the SEC noted that the issues raised in cases in which at least one of the aforementioned defenses is raised are narrow and generally limited to determining whether the respondent has proven any of these four defenses or an inability-to-pay the award. *See* Securities Exchange Act Release No. 40026 (May 26, 1998), 63 FR 30789 (June 5, 1998).

[8] *See* 4 *Collier on Bankruptcy,* ¶¶ 521.01, 521.09 (15th ed. 2009).

[9] *See* 18 U.S.C. 151–58 (2010). Bankruptcy fraud is punishable by a fine, or by up to five years in prison, or both. *Id.*

[10] The ability to legally discharge debts, the more thorough and accurate verification of a bankruptcy

Continued

The inability-to-pay defense emerged from a series of SEC decisions that require FINRA to consider the defense in disciplinary cases (as opposed to expedited actions), including disciplinary cases involving failures to pay arbitration awards and restitution.[11] The legal underpinnings that support the inability-to-pay defense in disciplinary cases are not, however, present in the expedited proceedings context. The aforementioned SEC decisions largely rely on the "excessive and oppressive" language in Section 19(e) of the Exchange Act in requiring FINRA to consider inability-to-pay. Section 19(e) of the Exchange Act provides authority to the SEC to review and affirm, modify or set aside any final disciplinary sanctions imposed by FINRA on its members. Section 19(e), however, does not apply to expedited proceedings. Expedited proceedings are reviewed under Exchange Act Section 19(f), which requires that "the specific grounds" on which FINRA based its action "exist in fact," that FINRA followed its rules, and that those rules are consistent with the Act. The different focus of these two standards and the more limited review for expedited actions are understandable and support eliminating the inability-to-pay defense in expedited actions.[12]

Unlike in disciplinary cases, FINRA is not imposing a monetary sanction in these expedited actions; it is suspending a respondent for failing to pay a previously imposed arbitration award. There also is an explicit procedural mechanism built into these expedited actions that allows a suspension to be lifted once respondents satisfy any of the four defenses listed above. The main goal is to encourage respondents to comply with the law or previously imposed orders, not to sanction them for past misconduct.

In sum, members and associated persons that fail to pay arbitration awards to customers should not be allowed to remain in the securities industry by relying on the inability-to-pay defense in expedited actions. This is especially true because they can avoid regulatory action by paying the award, reaching a settlement with the customers (which can include payment plans), moving to vacate the award, or filing for bankruptcy. Three commenters addressed the proposed rule change and all three urged the Commission to approve it.[13]

II. Discussion and Commission Findings

After careful review, the Commission finds the proposed rule change to be consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[14] In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules must 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. The proposal also is consistent with Section 15A(b)(7) of the Act,[16] which provides that FINRA must take appropriate action when members and associated persons violate provisions of the Act or FINRA rules.

The Commission believes that the proposed rule change will further FINRA's investor protection mandate by promoting a fair and efficient process for taking action to encourage members and associated persons to pay arbitration awards to customers. The Commission also believes that the proposed rule change will further FINRA's statutory obligation to take appropriate action when members and associated persons violate provisions of the Act or FINRA rules.

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–FINRA–2010–0014) 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. 2010–13764 Filed 6–7–10; 8:45 am]

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debtor's financial condition, and possible criminal prosecution for intentionally inaccurate disclosures, among other aspects, distinguish bankruptcy from inability-to-pay.

[11] *See Toney L. Reed,* 52 S.E.C. 944 (1996), *recons. denied,* Securities Exchange Act Release No. 39354 (Nov. 25, 1997); *Bruce M. Zipper,* 51 S.E.C. 928 (1993). In addition, the SEC had previously recognized that a bona fide inability-to-pay an arbitration award is an important consideration in determining whether any sanction for failing to pay an arbitration award is "excessive or oppressive." *See* Securities Exchange Act Release No. 40026 (May 26, 1998), 63 FR 30789 (June 5, 1998). (Without further discussion, the order cited the SEC's decision in *Zipper,* which was a disciplinary case, not an expedited action.)

[12] In *William J. Gallagher,* Securities Exchange Act Release No. 47501 (March 14, 2003), the SEC emphasized that expedited actions are reviewed under Section 19(f) of the Act not Section 19(e). The SEC stated, "Gallagher misconstrues the applicable review standard when he argues that [FINRA's] sanction is 'excessive and oppressive' and that [FINRA's] indefinite suspension order is inconsistent with the [FINRA] Sanction Guidelines, standards relevant in the Commission's review of [FINRA] disciplinary proceedings under Section 19(e) of the Exchange Act." *Id.* at *6. The SEC explained that its review is limited to analyzing whether "the specific ground on which [FINRA] based its suspension—failure to pay in full an arbitration award—'exists in fact[,]'" the "SRO's determination was in accordance with its rules, and * * * those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act." *Id.* at *5 & *7. In *Gallagher,* FINRA and the SEC rejected the respondent's claim of inability-to-pay on factual grounds. The issue of whether a respondent was permitted to raise the defense as a matter of law was neither raised nor decided.

[13] In its comment, PIABA also recommended that FINRA eliminate or restrict the bankruptcy defense in expedited proceedings. Those suggestions are outside the scope of the current proposed rule change.

[14] In approving the proposed rule change, the Commission has considered the rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78o–3(b)(6).

[16] 15 U.S.C. 78o–3(b)(7).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62207; File No. SR–ISE–2010–55]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amending the Direct Edge ECN Fee Schedule

June 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members [3] to pass through rebates/fees from other market centers. All of the changes described herein are applicable to ISE Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* on the Commission's Internet Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA.[4]

On May 1, 2010,[5] the Exchange amended the fees for orders that either route or re-route to the NYSE in response to an increase in NYSE's fee for removing liquidity to $0.0021 per share (from $0.0018 per share). As part of that amendment, the "Q" flag, which denotes an order type (ROUC) that routes to the NYSE, was increased from $0.0015 per share to $0.0018 per share on EDGA and EDGX to reflect the increase. To more closely reflect the costs of removing liquidity from the NYSE, the "Q" flag is now proposed to be further increased from $0.0018 to $0.0020 per share.

The changes discussed in this filing will become operative on June 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. ISE notes that DECN operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to DECN. ISE believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to DECN rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [8] and Rule 19b–4(f)(2)[9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–55 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–2010–55. 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–2010–55 and should be submitted on or before June 29, 2010.

[3] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[4] This fee filing relates to the trading facility operated by ISE and not EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge ECN LLC (EDGA and EDGX) will cease to operate in its capacity as an electronic communications network following the commencement of operations of EDGA Exchange, Inc. and EDGX Exchange, Inc. as national securities exchanges.

[5] *See* Securities Exchange Act Release No. 62050 (May 6, 2010), 75 FR 27029 (May 13, 2010) (SR–ISE–2010–37).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A). [sic]

[9] 17 CFR 19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13766 Filed 6–7–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62206; File No. SR–ISE–2010–56]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Amounts That Direct Edge ECN, in Its Capacity as an Introducing Broker for Non-ISE Members, Passes Through to Such Non-ISE Members

June 2, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I 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, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the amounts that Direct Edge ECN ("DECN"), in its capacity as an introducing broker for non-ISE Members, passes through to such non-ISE Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com,* on the Commission's Internet Web site at *http://www.sec.gov,* at ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA.[3] On May xx, [sic] 2010, the ISE filed for immediate effectiveness a proposed rule change to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members[4] to pass through charges from other market centers.[5] The changes made pursuant to SR–ISE–2010–55 became operative on June 1, 2010.

In its capacity as a member of ISE, DECN currently serves as an introducing broker for the non-ISE Member subscribers of DECN to access EDGX and EDGA. DECN, as an ISE Member and introducing broker, receives rebates and is assessed charges from DECN for transactions it executes on EDGX or EDGA in its capacity as introducing broker for non-ISE Members. Since the amounts of charges were changed pursuant to SR–ISE–2010–55, DECN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive and are charged will be the same as the amounts that ISE Members receive and are charged.

ISE is seeking accelerated approval of this proposed rule change, as well an effective date of June 1, 2010. ISE represents that this proposal will ensure that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will in effect be charged equivalent amounts and that the imposition of such amounts will begin on the same June 1, 2010, start date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposal will ensure that dues, fees and other charges imposed on ISE Members are equitably allocated to both ISE Members and non-ISE Members (by virtue of the pass-through described above).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. 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

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This fee filing relates to the trading facility operated by ISE and not EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge ECN LLC (EDGA and EDGX) will cease to operate in its capacity as an electronic communications network following the commencement of operations of EDGA Exchange, Inc. and EDGX Exchange, Inc. as national securities exchanges.

[4] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[5] On June 1, 2010, in SR–ISE–2010–55, the Exchange increased the "Q" flag from $0.0018 to $0.0020 per share to more closely reflect the costs of removing liquidity from the NYSE. By way of background, on May 1, 2010, in SR–ISE–2010–37, the Exchange amended the fees for orders that either route or re-route to the NYSE in response to an increase in NYSE's fee for removing liquidity to $0.0021 per share (from $0.0018 per share). As part of that amendment, the "Q" flag, which denotes an order type (ROUC) that routes to the NYSE, was increased from $0.0015 per share to $0.0018 per share on EDGA and EDGX to reflect the increase. *See* Securities Exchange Act Release No. 62050 (May 6, 2010), 75 FR 27029 (May 13, 2010) (SR–ISE–2010–37).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–56 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–2010–56. 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–2010–56 and should be submitted on or before June 29, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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.[8] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)[9] of the Act, which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.

As described more fully above, ISE recently amended DECN's fee schedule for ISE Members pursuant to SR–ISE–2010–55 (the "Member Fee Filing"). The fee change made pursuant to the Member Fee Filing became operative on June 1, 2010. DECN receives rebates and is charged fees for transactions it executes on EGDX or EDGA in its capacity as an introducing broker for its non-ISE member subscribers. The current proposal, which will apply beginning on June 1, 2010, will allow DECN to pass through the revised fee to the non-ISE member subscribers for which it acts an introducing broker. The Commission finds that the proposal is consistent with the Act because it will charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.

ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register.** As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the revised fee established for ISE member subscribers in the Member Fee Filing, resulting in equivalent fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised fee beginning on June 1, 2010, the revised fees will have the same effective date, thereby promoting consistency in the DECN's fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.**

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–ISE–2010–56) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13767 Filed 6–7–10; 8:45 am]

BILLING CODE 8011–01–P

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62209; File No. SR–NYSEArca–2010–42]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.82

June 2, 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 May 18, 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. 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 Rule 6.82 by revising the minimum financial requirements of Lead Market Makers. The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in brackets:

Rules of NYSE Arca, Inc.

* * * * *

Rule 6.82. Lead Market Makers

(a)–(b) No Change

(c) Obligations of Lead Market Makers:

Each LMM must meet the following obligations:

(1)–(11) No Change

(12) Maintain a cash or liquid asset position of at least *$1,000,000.* [$350,000, plus $25,000 for each issue over 8 issues that has been allocated to the LMM.] In the event that two or more LMMs are associated with each other and deal for the same LMM account, this requirement will apply to such LMMs collectively, rather than to each LMM individually;

(13)–(14) No Change

(d)–(h) No Change

* * * * *

[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 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 revise Rule 6.82. Specifically, NYSE Arca proposes to revise the minimum financial requirements of a Lead Market Maker ("LMM") contained in Rule 6.82(c)(12).

Minimum Financial Requirement for LMMs

LMMs on NYSE Arca are required to maintain a cash or net liquid asset position of at least $350,000. In addition, LMMs that have more than eight allocated issues are required to have an additional $25,000 in cash or net liquid assets for each additional allocated issue. The Exchange now proposes that instead of the base minimum financial requirement of $350,000 plus an additional $25,000 for each issue over eight, all LMMs will now be required to maintain cash or net liquidating balance of at least $1,000,000 ("$1 million"). The $1 million requirement will apply regardless of the number of issues an LMM is allocated.

Establishing a $1 million minimum financial requirement, applicable to LMMs regardless of the number of issues they may be allocated, is consistent with the financial obligations rules for Options Specialists on NYSE Amex LLC.[4] The rights and obligations of LMMs pursuant to the rules of NYSE Arca[5] are substantially similar to the rights and obligations of Specialists contained in the rules of NYSE Amex.[6] Accordingly, establishing a $1 million minimum financial requirement for Arca would further harmonize the rules of the two exchanges.

The Exchange notes that the proposed requirement to maintain at least $1 million in cash or liquid assets represents only the minimum financial obligation of an LMM. When allocating options issues to LMMs, the Exchange takes into consideration the "adequacy of capital"[7] of each LMM and could require an LMM to have a cash or liquid assets balance in excess of the $1 million, as a condition of being allocated a given options issue(s). Also, the Exchange may reallocate an options issue(s) if an LMM is to incur a material change to its financial situation.[8] Financial requirements established by the Exchange as a condition of issue allocation are separate from the $1 million minimum financial requirement of Rule 6.8(c)(12).

In addition to any LMM-specific financial obligation or requirement established by NYSE Arca, LMMs must maintain net capital sufficient to comply with the requirements of Exchange Act Rule 15c3–1.

The Exchange has conducted an analysis of financial positions for all OTP Holders presently registered as an LMM. Based on this analysis, the Exchange has determined that certain LMMs will realize a decrease in their present minimum financial requirement, while others may realize an increase. However, due to the fact that LMMs are represented by highly capitalized OTP Holders, the Exchange has concluded that any increase in the minimum financial requirement will not impose undue hardships on any OTP Holders at this time. In addition, the Exchange does not believe that the change to the minimum financial requirement creates an unnecessary burden, or onerous barrier to entry, for OTP Holders who in the future may seek approval to operate as an LMM.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is 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. This rule change is designed to make the minimum financial requirement for LMMs consistent with similar requirements at NYSE Amex while still maintaining a standard designed to ensure that OTP Holders on NYSE Arca are adequately capitalized to fulfill their obligations as LMMs.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) 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–2010–42.

[4] *See* NYSE Amex Rule 927NY(c)(10).

[5] *See* NYSE Arca Rules 6.82(c)–(d).

[6] *See* NYSE Amex Rules 927NY(c)–(d).

[7] *See* NYSE Arca Rule 6.82(e)(1).

[8] *See* NYSE Arca Rule 6.82(f)(1)(B).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

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–2010–42. 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–NYSEArca–2010–42 and should be submitted on or before June 29, 2010.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13765 Filed 6–7–10; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62195; File No. SR–ISE–2010–46]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

May 28, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site at *http://www.ise.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—The Exchange currently identifies on its Schedule of Fees certain ETF products whose options are listed only on ISE and for which the Exchange charges a fee of $0.18 per contract for customer transactions. Currently, the First Trust ISE Water ETF ("FIW"), the Claymore China Technology ETF ("CQQQ"), the ProShares UltraPro Short Dow30 ("SDOW"), the ProShares UltraPro Dow30 ("UDOW"), the ProShares UltraPro Short MidCap400 ("SMDD"), the ProShares UltraPro MidCap400 ("UMDD"), the ProShares UltraPro Short Russell2000 ("SRTY"), the ProShares UltraPro Russell2000 ("URTY"), the First Trust ISE Global Copper Index Fund ("CU") and the First Trust ISE Global Platinum Index Fund ("PLTM") are the only such ETFs listed on the Exchange's fee schedule. On May 18, 2010, ISE began listing options on the First Trust Amex Biotechnology Index Fund ("FBT"), the First Trust Financials AlphaDEX Fund ("FXO") and the First Trust NASDAQ 100 Weighted Index Fund ("QQEW"). As of the date of this filing, FBT, FXO and QQEW are singly listed on ISE. The Exchange therefore proposes to charge a fee of $0.18 per contract for customer transactions in options on FBT, FXO and QQEW. The Exchange also proposes to charge a Payment for Order Flow fee for transactions in options on these products.

(b) *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[3] in general, and furthers the objectives of Section 6(b)(4),[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

the Act[5] and Rule 19b–4(f)(2)[6] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–46 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–2010–46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at ISE's principal office and on its Internet Web site at *http://www.ise.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–46 and should be submitted on or before June 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–13664 Filed 6–7–10; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7039]

Notice of Receipt of Application for a New Presidential Permit

Title: Notice of Receipt of Application for a new Presidential Permit to reflect a Transfer of Ownership from Fraser Papers Inc. to Twin Rivers Paper Company Inc. of nine pipelines and a supporting truss bridge connecting pulp/paper plants in Madawaska, Maine and Edmundston, New Brunswick, Canada.

SUMMARY: The Department of State hereby gives notice that, on March 29, 2010, it received an application for a Presidential Permit for nine cross-border pipelines and a supporting truss bridge to reflect a change of ownership of these facilities from Fraser Paper Inc. to Twin Rivers Paper Company Inc. as the result of the sale of Fraser Papers assets to Twin Rivers' majority stockholder, Brookfield Asset Management, Inc. According to the application, both Twin Rivers Paper Company Inc. and Brookfield Asset Management, Inc. are organized under the Business Corporations Act (Ontario) and Brookfield Asset Management, Inc. is publicly traded on the New York and Toronto stock exchanges.

Seven pipelines, some dating from 1925, carry sulfite and groundwood pulp from Edmundston to Madawaska and return paper machine decker water from Madawaska to Edmundston. Two pipelines, installed in 1982, carry steam from Edmundston to Madawaska and return condensate back to Edmundston. According to information provided by the applicant, the truss bridge supporting the two 1982 pipelines was constructed at the same time as those pipelines; while the bridge has a walkway to allow for maintenance, it is neither a pedestrian nor a vehicle crossing. The change in ownership will not involve any new construction, any change in the existing international connections, or any changes in the operation of the pipelines or the bridge, and therefore will create no new environmental impacts. The Department of State's jurisdiction over this application is based upon Executive Order 11423 of August 16, 1968, as amended. As provided in E.O. 11423, the Department is circulating this application to relevant Federal and State agencies for review and comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account input from these agencies and other stakeholders, whether this proposed transfer of ownership of these cross-border facilities is in the U.S. national interest.

DATES: Interested members of the public are invited to submit written comments regarding this application on or before July 12, 2010 to Mr. David Rovinsky, Economic/Trade Officer, via e-mail at *RovinskyDJ@state.gov,* or by mail at WHA/CAN—room 3917, Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Mr. David Rovinsky, Economic/Trade Officer, via e-mail at *RovinskyDJ@state.gov* or by mail at WHA/CAN—room 3917, Department of State, 2201 C Street, NW., Washington, DC 20520. General information about Presidential Permits is available on the Internet at *http://www.state.gov/p/wha/rt/permit.*

SUPPLEMENTARY INFORMATION: This application is available for review in the Office of Canadian Affairs, Department of State, during normal business hours.

Dated: June 3, 2010.

Gary Sheaffer,

Deputy Director, Office of Canadian Affairs, Department of State.

[FR Doc. 2010–13700 Filed 6–7–10; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice: 7038]

Notice of Meeting of the Advisory Committee on International Law

A meeting of the Advisory Committee on International Law will take place on Monday, June 21, 2010, from 9:30 a.m. to approximately 5:30 p.m., at the George Washington University Law School (Michael K. Young Faculty Conference Center, 5th Floor), 2000 H St., NW., Washington, DC. The meeting will be chaired by the Legal Adviser of

the Department of State, Harold Hongju Koh, and will be open to the public up to the capacity of the meeting room. It is anticipated that the agenda of the meeting will cover a range of current international legal topics, including the International Criminal Court review conference and ad hoc international criminal tribunals; the law of war regarding detention, targeting, and prosecution; binding international agreements and non-binding arrangements; nuclear nonproliferation; international cooperation on piracy; the international responsibility of international organizations, and the International Law Commission. Members of the public will have an opportunity to participate in the discussion.

Members of the public who wish to attend the session should, by Tuesday, June 15, 2010, notify the Office of the Legal Adviser (telephone: 202–776–8323) of their name, professional affiliation, address, and telephone number. A valid photo ID is required for admittance. A member of the public who needs reasonable accommodation should make his or her request by June 14, 2010; requests made after that time will be considered but might not be possible to accommodate.

Dated: June 2, 2010.

David DeBartolo,

Executive Director, Office of Claims and Investment Disputes, Office of the Legal Adviser, Advisory Committee on International Law, Department of State.

[FR Doc. 2010–13704 Filed 6–7–10; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 7037]

Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Thursday, June 24, 2010, at 9:30 a.m. in Conference Room 1107, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public and will last until approximately 12 p.m.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas that are assisted by the Department of State and attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the projects selected for the 2009 and 2010 Educational Assistance Program, which are under development, and a presentation by Dr. Barry McCombs, Director, Colegio Nueva Granada, Bogota, Colombia on the school's community service learning program that helps provide a basic education to disadvantaged local students.

Members of the public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to June 14, 2010. Each visitor will be asked to provide his/her date of birth and either driver's license or passport number at the time of registration and attendance, and must carry a valid photo ID to the meeting. This data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

Any requests for reasonable accommodation should be made at the time of registration. All such requests will be considered, however, requests made after June 14th might not be possible to fill. All attendees must use the C Street entrance to the building.

Dated: June 2, 2010.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 2010–13714 Filed 6–7–10; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS404]

WTO Dispute Settlement Proceeding Regarding United States—Anti-Dumping Measures on Certain Shrimp From Viet Nam

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on April 7, 2010, the Socialist Republic of Vietnam ("Vietnam") requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") concerning a number of antidumping administrative reviews and new shipper reviews conducted by the Department of Commerce on imports of certain frozen warmwater shrimp from Vietnam (Investigation A–552–801), and various U.S. laws, regulations, administrative procedures, practices, and methodologies. That request may be found at www.wto.org contained in a document designated as WT/DS404/5. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 8, 2010 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2010–0008. If you are unable to submit comments using *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comments contain confidential information, then the comments should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: J. Daniel Stirk, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–9617.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is

providing notice that the establishment of a dispute settlement panel was requested pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes in this dispute. The panel was established on May 18, 2010. The panel would be expected to hold its meetings in Geneva, Switzerland, and would be expected to issue a report on its findings and recommendations within nine months.

Major Issues Raised by Vietnam

In its April 7, 2010 panel request, Vietnam makes a number of allegations concerning the antidumping investigation, administrative reviews, and sunset review conducted by the Department of Commerce on certain frozen warmwater shrimp from Vietnam, referring in particular to the use of what it describes as "zeroing" in those proceedings. Vietnam challenges the determinations by the Department of Commerce in (1) *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71,005 (December 5, 2004); (2) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review,* 72 FR 52,052 (September 12, 2007); (3) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Recission of Antidumping Duty Administrative Review,* 73 FR 52,273 (September 9, 2008); (4) *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Recission of Antidumping Duty Administrative Review,* 74 FR 47,191 (September 15, 2009); (5) *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, in Part, of the Fourth Administrative Review,* 75 FR 12,206 (March 15, 2010), including denial of all requests for revocation; and (6) *Initiation of Five-Year ("Sunset") Review,* 75 FR 103 (January 4, 2010). Vietnam also challenges certain U.S. laws and regulations, including (1) the Tariff Act of 1930, as amended, sections 771(18)(C)(i), 771(35)(A), 776(a)(2), 776(b), and 777A(c)(2)(B); (2) implementing regulations of the Department of Commerce, 19 CFR 351.204, 351.408, and 351.414; and Import Administration Antidumping Manual, Chapter 10, "Non-Market Economies."

Vietnam alleges that these laws and procedures are, as such and as applied in the determinations by the Department of Commerce, inconsistent with Articles I, II, VI:1, and VI:2 of the General Agreement on Tariffs and Trade 1994; Articles 1, 2.1, 2.4, 2.4.2, 5.8, 6.8, 6.10, 9.1, 9.3, 9.4, 11.1, 11.2, 11.3, 11.4, 18.1, 18.3, and 18.4, and Annex II of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement); Article XVI:4 of the WTO Agreement; part I.2 of Vietnam's Protocol of Accession to the WTO; and Article 31 of the Vienna Convention on the Law of Treaties.

Vietnam alleges that the United States acted inconsistently with the provisions identified above by applying so-called "zeroing" in the determination of the margins of dumping in the proceedings identified above, by repeatedly and consistently failing to provide most Vietnamese respondents seeking a review an opportunity to demonstrate the absence of dumping by being permitted to participate in a review, and by requiring companies to demonstrate their independence from government control and applying an adverse facts available rate to companies failing to do so in all reviews.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2010–0008. If you are unable to submit comments using *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2010–0008 on the home page and click "search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search results page, and click on the link entitled "Submit a Comment." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the "Help" link at the top of the home page.)

The *http://www.regulations.gov* Web site provides the option of providing comments by filling in a "Type Comment and Upload File" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is necessary and sufficient to type "*See* attached" in the "Type Comment and Upload File" field.

A person requesting that information contained in a comment submitted by that person be treated as business confidential information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Business confidential information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to www.regulations.gov. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *http://www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on

the Web site of the World Trade Organization, *http://www.wto.org.*

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR. 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

Steven F. Fabry,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2010–13796 Filed 6–7–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Under Subpart B; Week Ending May 22, 2010

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart B (formerly subpart Q) during the Week Ending May 22, 2010. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0126.

Date Filed: May 18, 2010.

Due Date for Answers, Conforming Applications, or Motion To Modify Scope: June 8, 2010.

Description: Application of Carlsbad-Palomar Airlines, Inc. requesting a certificate of public convenience and necessity to engage in scheduled interstate air transportation of persons, property and cargo.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–13656 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

ITS Joint Program Office; IntelliDrive℠ Deployment Scenarios Workshop; Notice of Workshop

AGENCY: Research and Innovative Technology Administration, Department of Transportation.

ACTION: Notice.

This notice announces a two-day IntelliDrive Deployment Scenarios Workshop to present and discuss the four draft IntelliDrive deployment scenarios that have been recently developed in response to key stakeholder input. The purpose of the workshop is to provide input to the U.S. DOT as it refines IntelliDrive research plans about potential future paths for IntelliDrive deployment. Discussions will be framed around four scenarios developed through stakeholder inputs. The workshop will engage participants to identify advantages and disadvantages of each of the draft scenarios and critical policy and institutional research needs. The Tuesday session will provide an overview of the four draft scenarios. The Wednesday session will consist of break-out groups to explore each of the four scenarios in detail as well as a concluding session that summarizes the findings from the workshop. The workshop will be held on June 22–23, 2010, at the Washington Dulles Airport Marriott, 45020 Aviation Drive, Dulles, Virginia.

Following is the workshop preliminary agenda: Day one; (1) Welcome remarks; (2) Expected outcomes from the workshop; (3) Overview of IntelliDrive deployment scenarios; (4) Identification of major issues and parameters for day two discussion; and (5) Questions and answers and instructions for day two. Day two; (1) Break-out sessions on deployment scenarios; (2) Report on break-out sessions; and (3) Outcomes, key takeaways, and summary.

The workshop will be open to the public and registration is free of charge using the ITS America registration process (*http://www.itsa.org/itsa/files/pdf/Registrtion%20Form%20Deployment%205-13-10.pdf*). Please fax your completed registration form to Brei Whitty at 202–484–3483 no later than June 15, 2010.

Issued in Washington, DC, on the 2nd day of June 2010.

John Augustine,

Managing Director, ITS Joint Program Office.

[FR Doc. 2010–13658 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 117 (Sub-No. 7X)]

Elgin, Joliet & Eastern Railway Company—Abandonment Exemption—in Lake County, IN.

Elgin, Joliet & Eastern Railway Company (EJ&E) filed a verified notice of exemption under 49 CFR part 1152 subpart F–*Exempt Abandonments* to abandon its line of railroad between milepost 46.10 and milepost 48.28, a distance of 2.18 miles, in Hammond, Lake County, Ind. The line traverses United States Postal Service Zip Code 46320.

EJ&E has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad and The Union Pacific Railroad Co.—Abandonment Portion Goshen Branch Between Firth and Ammon, In Bingham and Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 8, 2010, unless stayed pending reconsideration.[1] Petitions to stay that do not involve environmental issues,[2]

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Board at least 50 days before an abandonment or discontinuance is to be consummated. EJ&E has indicated a proposed consummation date of July 6, 2010, but, because the verified notice was filed on May 19, 2010, the earliest this transaction may be consummated is July 8, 2010.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of

Continued

formal expressions of intent to file an OFA under 49 CFR 11152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 18, 2010. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 28, 2010, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to EJ&E's representative: Thomas J. Healey, 17641 S. Ashland Avenue, Homewood, IL 60430.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

EJ&E has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 11, 2010. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), EJ&E shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by EJ&E's filing of a notice of consummation by June 8, 2011, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: June 2, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–13761 Filed 6–7–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting; correction.

SUMMARY: On June 3, 2010, the FAA published a notice of a meeting of the Executive Committee of the Aviation Rulemaking Advisory Committee. The notice contained an inaccurate date in one section. This notice corrects that error.

FOR FURTHER INFORMATION CONTACT: Gerri Robinson, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9678; fax (202) 267–5057; e-mail *Gerri.Robinson@faa.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 2010–13326, published June 3, 2010, (75 FR 31509) make the following correction:

On page 31509, in the second column, under the heading **SUPPLEMENTARY INFORMATION**, revise the date "December 9, 2009" to read "June 16, 2010."

Issued in Washington, DC, on June 3, 2010.

Pamela A. Hamilton-Powell,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 2010–13762 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0063; Notice 1]

Foreign Tire Sales, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Foreign Tire Sales, Inc. (FTS) [1], as importer of record for ProMeter brand medium truck radial replacement tires manufactured by Shandlong Linglong Rubber Company Limited has determined that certain replacement tires manufactured during the period between the 15th week of 2008 and 22nd week of 2009 do not fully comply with paragraph S6.5(d) of 49 CFR 571.119 Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles With a GVWR of More than 4,536 Kilograms (10,000 pounds) and Motorcycles.* FTS has filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (*see* implementing rule at 49 CFR part 556), FTS has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of FTS's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 2,659 size 285/75R–24.5 14 ply (steer and drive) and 295/75R–22.5 14 ply (steer and drive) ProMeter brand medium truck radial tires manufactured during the period between the 15th week of 2008 and 22nd week of 2009 with DOT Numbers: 285/75R–24.5—OU4CFTS1508–0U4CFT2209 and 295/75R–22.5—OU34FTS1508–0U34FTS2209. FTS stated that it believed that 100% of the 2,659 tires involved contained the identified non-compliance.

FTS sold these tires to eleven customers who are distributors. Three of the eleven distributors have not sold any tires to their customers.

In a supplemental letter dated April 14, 2010, FTS submitted corrections of typographical errors in its petition and stated that subsequent to submitting its petition it had decided to remedy all of the subject tires that it held in its possession as well as those that had not been sold by its customers (tire distributers). FTS also revised its estimate of the number of affected tires that had been sold and not retrieved for remedy as 2000. Therefore, it is only those 2000 tires for which FTS is requesting exemption because it claims that the remaining 659 tires have been remedied.

Paragraph S6.5(d) of 49 CFR 571.119 (FMVSS 119) requires in pertinent part:

S6.5 Tire markings. Except as specified in this paragraph, each tire shall be marked on

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Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

[1] Foreign Tire Sales, Inc. is an importer of replacement motor vehicle equipment, incorporated under the laws of the State of New Jersey, with offices at 2204 Morris Avenue, Suite L–5, Union, New Jersey.

each sidewall with the information specified in paragraphs (a) through (j) of this section. The markings shall be placed between the maximum section width (exclusive of sidewall decorations or curb ribs) and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area which is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width falls within that area, the markings shall appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings shall be in letters and numerals not less than 2 mm (0.078 inch) high and raised above or sunk below the tire surface not less than 0.4 mm (0.015 inch), except that the marking depth shall be not less than 0.25 mm (0.010 inch) in the case of motorcycle tires. The tire identification and the DOT symbol labeling shall comply with part 574 of this chapter. Markings may appear on only one sidewall and the entire sidewall area may be used in the case of motorcycle tires and recreational, boat, baggage, and special trailer tires * * *

(d) The maximum load rating and corresponding inflation pressure of the tire, shown as follows:

(Mark on tires rated for single and dual load): Max load single _____kg (_____lb) at _____kPa (_____psi) cold. Max load dual _____kg (_____lb) at _____kPa (_____psi) cold.

(Mark on tires rated only for single load): Max load _____kg (_____lb) at _____kPa (_____psi) cold.

FTS describes the noncompliance as its failure to provide accurate load and inflation information as required by FMVSS No. 119. The maximum load rating and corresponding inflation pressure that are erroneously marked on the FTS tires and the correct information for the non-conforming tires are as follows:

295/75R22.5/14 is marked:

Max. Load Single 2800 kg (6175 lbs) at 720 kPa (105 psi) cold.

Max. Load Dual 2650 kg (5840 lbs) at 720 kPa (105 psi) cold.

295/75R22.5/14 should be marked:

Max. Load Single 2800 kg (6175 lbs) at 760 kPa (110 psi) cold.

Max. Load Dual 2575 kg (5675 lbs) at 760 kPa (110 psi) cold.

285/75R24.5/14 is marked:

Max. Load Single 3000 kg (6610 lbs) at 720 kPa (105 psi) cold.

Max. Load Dual 2725 kg (6005 lbs) at 720 kPa (105 psi) cold.

285/75R24.5/14 should be marked:

Max. Load Single 2800 kg (6175 lbs) at 760 kPa (110 psi) cold.

Max. Load Dual 2575 kg (5675 lbs) at 760 kPa (110 psi) cold.

FTS states that the non-compliance of their tires was brought to their attention on June 9, 2009, "when new molds were ordered and the old molds were compared to the new molds."

FTS also states that it has advised the manufacturer to hold any additional non-conforming tires and to change the inaccurate information before exporting them to the United States.

FTS argues that the inaccurate markings on the tires are inconsequential because the difference between the proper load ranges and inflation pressures are minimal. FTS bases their conclusion on their testing of the subject tires using the inaccurate information noted on their tires, and FTS asserts that the tires "greatly exceed all FMVSS testing result requirements." Specifically, FTS points out that they subjected the tested tires to a modified FMVSS No. 119 endurance test which they state "is far more demanding than the requirements of FMVSS 119."

FTS submitted with their application for exemption from notification and recall a copy of the original Chinese and English translation of the eight endurance test reports. FTS states that "These tests performed using the load inflation information which appears on the subject tires clearly indicates that even at the wrong inflation pressure, these tires greatly exceed FMVSS 119 and are safe." FTS additionally states that "the mislabeling of the tires poses absolutely no safety issue since even if a user of the tires inflates the tire to the load inflation pressure contained on the side wall of the subject tire, we know that the tire greatly exceeds all requirements (*i.e.* the tires ran almost three times longer than required by FMVSS 119 at loads increased by 10% every ten hours (nine times over 130 hours))."

Based on the foregoing, FTS requests that NHTSA deem this issue as "incidental mislabeling" and that it has no bearing on the safety of the tires, and that FTS be exempted from providing notification as required by 49 U.S.C. 30118 and remedy as required by 49 U.S.C. 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 am to 5 pm except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 8, 2010.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: June 2, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–13612 Filed 6–7–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 1, 2010.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 8, 2010 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0019.

Type of Review: Revision of a currently approved collection.

Title: (Electronic Pre-Printed Information), Claim Against the United States for the Proceeds of a Government Check.

Form: FMS–1133.

Abstract: The FMS–1133 form is used to collect information needed to process an individual's claim for non-receipt of proceeds from a government check. Once the information is analyzed, a determination is made and a recommendation to the program agency to either settle or deny the claim.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 11,278 hours.

Bureau Clearance Officer: Wesley Powe, Financial Management Service, 3700 East West Highway, Room 135, Hyattsville, MD 20782; (202) 874–7662.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–13673 Filed 6–7–10; 8:45 am]

BILLING CODE 4830–01–P

TENNESSEE VALLEY AUTHORITY

[Meeting No. 10–03]

Sunshine Act Meeting Notice

June 10, 2010.

The TVA Board of Directors will hold a public meeting on June 10, 2010, at Lane College, Graves Auditorium, 545 Lane Avenue, Jackson, Tennessee 38301, to consider the matters listed below. The public may comment on any agenda item or subject at a public listening session which begins at 8:30 a.m. CDT. Immediately following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. **Please Note:** Speakers must pre-register online at TVA.gov or sign in before the meeting begins at 8:30 a.m. on the day of the meeting. The Board will answer questions from the news media following the Board meeting.

Status: Open

Agenda

Old Business

Approval of minutes of April 16, 2010, Board Meeting

New Business

1. Chairman's Remarks
2. President's Report
3. Report of the Finance, Strategy, Rates, and Administration Committee
   A. Executive Goals
   B. Pricing of Alcoa power contract extension
4. Report of the Operations, Environment, and Safety Committee
5. Report of the Audit, Governance, and Ethics Committee
   A. Board governance update
6. Report of the Community Relations and Energy Efficiency Committee
   A. EnerNOC capacity expansion agreement
   B. Northeastern tributary reservoirs Land Management Plan
   C. Hornsby Hollow commercial recreation easement
   D. Regional Resource Stewardship Council charter renewal and revision

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: June 3, 2010.

Ralph E. Rodgers,

Acting General Counsel and Secretary.

[FR Doc. 2010–13875 Filed 6–4–10; 4:15 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0365]

Agency Information Collection (Request for Disinterment) Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the National Cemetery Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before *July 8, 2010.*

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0365" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0365."

SUPPLEMENTARY INFORMATION:

Title: Request for Disinterment, VA Form 40–4970.

OMB Control Number: 2900–0365.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 40–4970 to request removal of remains from a national cemetery for interment at another location. Interments made in national cemeteries are permanent and final. All immediate family members of the decedent, including the person who initiated the interment, (whether or not he/she is a

member of the immediate family) must provide a written consent before disinterment is granted. VA will accept an order from a court of local jurisdiction in lieu of VA Form 40–4970.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 29, 2010, at pages 15494–15495.

Affected Public: Individuals or households.

Estimated Annual Burden: 55.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 329.

Dated: June 2, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–13598 Filed 6–7–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0503)]

Agency Information Collection (Dental Patient Satisfaction Survey) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before *July 8, 2010.*

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (VA Form 10–0503)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–New (VA Form 10–0503)."

Title: Survey of Healthcare Experiences, Dental Patient Satisfaction Survey, VA Form 10–0503.

OMB Control Number: 2900–New (VA Form 10–0503).

Type of Review: New collection.

Abstract: VA Form 10–0503 will be used to obtain information needed to identify problem areas in dental health care services.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 2, 2010, at page 16912.

Affected Public: Individuals or households.

Estimated Annual Burden: 36,585.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,146.

Dated: June 2, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–13599 Filed 6–7–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

Agency Information Collection (Certificate of Delivery of Advance Payment and Enrollment) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 8, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0325" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0325."

SUPPLEMENTARY INFORMATION:

Title: Certificate of Delivery of Advance Payment and Enrollment, VA Form 22–1999V.

OMB Control Number: 2900–0325.

Type of Review: Extension of a currently approved collection.

Abstract: VA will make payments of educational assistance in advance when the veteran, servicemember, reservist, or eligible person has specifically requested such payment. The school in which a student is accepted or enrolled delivers the advance payment to the student and is required to certify the deliveries to VA. VA Form 22–1999V serves as the certificate of delivery of advance payment and to report any changes in a student's training status. Schools are required to report when a student fails to enroll; has an interruption or termination of attendance; or unsatisfactory attendance, conduct or progress to VA.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 2, 2010, at pages 16911–16912.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 35 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 64.

Estimated Total Number of Respondents: 425.

Dated: June 2, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–13600 Filed 6–7–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0300]

Agency Information Collection (Veterans Application for Assistance in Acquiring Special Housing Adaptations) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 8, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0300" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0300."

SUPPLEMENTARY INFORMATION:

Title: Veterans Application for Assistance in Acquiring Special Housing Adaptations, VA Form 26–4555d.

OMB Control Number: 2900–0300.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans who are disabled complete VA Form 26–4555d to apply for special housing or modification to their current dwellings. Grants are available to assist the veteran in making adaptations to their current residences or one they intend to live in as long as the veteran or a member of the veteran's family owns the home.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 29, 2010, at page 15494.

Affected Public: Individuals or households.

Estimated Annual Burden: 25 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 75.

Dated: June 2, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–13601 Filed 6–7–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0222]

Agency Information Collection (Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery) Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the National Cemetery Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before *July 8, 2010.*

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0222" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov*. Please refer to "OMB Control No. 2900–0222."

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery, VA Form 40–1330.

b. Claim for Government Medallion for Installation in a Private Cemetery, VA Form 40–1330M.

OMB Control Number: 2900–0222.

Type of Review: Revision of a currently approved collection.

Abstracts:

a. The next of kin or other responsible parties of deceased veterans complete VA Form 40–1330 to apply for Government provided headstones or markers for unmarked graves.

b. A family member complete VA Form 40–1330M to apply for a Government medallion to be affixed to privately purchased headstone or marker for a deceased veteran buried in a private cemetery.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 29, 2010, at pages 15493–15494.

Affected Public: Individuals or Households.

Estimated Annual Burden: 93,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 374,000.

Dated: June 2, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–13602 Filed 6–7–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Health Effects Not Associated With Exposure to Certain Herbicide Agents

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA)

hereby gives notice of a May 2008 determination by the Secretary of Veterans Affairs that evidence available at that time did not warrant a presumption of service connection based on exposure to herbicides used in the Republic of Vietnam during the Vietnam era for the following health outcomes: Cancers of the oral cavity (including lips and tongue), pharynx (including tonsils), or nasal cavity (including ears and sinuses); cancers of the pleura, mediastinum, and other unspecified sites within the respiratory system and intrathoracic organs; esophageal cancer; stomach cancer; colorectal cancer (including small intestine and anus); hepatobiliary cancers (liver, gallbladder and bile ducts); pancreatic cancer; bone and joint cancer; melanoma; non-melanoma skin cancer (basal cell and squamous cell); breast cancer; cancers of reproductive organs (cervix, uterus, ovary, testes, and penis; excluding prostate); urinary bladder cancer; renal cancer; cancers of brain and nervous system (including eye); endocrine cancers (thyroid, thymus, and other endocrine); leukemia (other than chronic lymphocytic leukemia (CLL)); cancers at other and unspecified sites; neurobehavioral disorders (cognitive and neuropsychiatric); movement disorders (including Parkinson's disease and amyotrophic lateral sclerosis (ALS)); chronic peripheral nervous system disorders; respiratory disorders; gastrointestinal, metabolic, and digestive disorders (changes in liver enzymes, lipid abnormalities, and ulcers); immune system disorders (immune suppression, allergy, and autoimmunity); ischemic heart disease; circulatory disorders (including hypertension); endometriosis; effects on thyroid homeostasis; certain reproductive effects, *i.e.,* infertility, spontaneous abortion, neonatal or infant death and stillbirth in offspring of exposed people, low birth weight in offspring of exposed people, birth defects (other than spina bifida) in offspring of exposed people, childhood cancer (including acute myelogenous leukemia) in offspring of exposed people; and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

The Secretary's determinations regarding individual diseases are based on all available evidence in a 2006 report of the National Academy of Sciences (NAS) and prior NAS reports. This notice generally states specific information only with respect to significant additional studies that were first reviewed by NAS in its 2006 report. Information regarding additional relevant studies is stated in VA's prior notices following earlier NAS reports, and generally will not be repeated here.

This notice relates only to the Secretary's May 2008 determination based on a 2006 report of the National Academy of Sciences (NAS) and prior NAS reports. Subsequent to the Secretary's May 2008 determination, NAS in 2009 issued a further report discussing additional evidence concerning Veterans and Agent Orange. Based on that 2009 report, VA in March 2010 proposed to establish presumptions of service connection based on herbicide exposure for three conditions (Parkinson's disease, ischemic heart disease, and b-cell leukemias). See 75 FR 14391 (Mar. 25, 2010). The discussion in this notice does not in any way affect those proposed presumptions, but merely explains the basis for the Secretary's prior May 2008 decision, as required by law.

FOR FURTHER INFORMATION CONTACT: Thomas Kniffen, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9725.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Public Law 102–4, 105 Stat. 11, directed the Secretary to seek to enter into an agreement with NAS to review and summarize the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible: (1) Whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam era; and (3) whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the health outcome. Section 3 of Public Law 102–4 also required that NAS submit reports on its activities every 2 years (as measured from the date of the first report) for a 10-year period.

Section 2 of Public Law 102–4, codified in pertinent part at 38 U.S.C. 1116(b) and (c), provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (*i.e.,* the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans to an herbicide agent (*i.e.,* a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. If the Secretary determines that a presumption of service connection is not warranted, he is to publish a notice of that determination, including an explanation of the scientific basis for that determination. The Secretary's determination must be based on consideration of the NAS reports and all other sound medical and scientific information and analysis available to the Secretary.

Section 2 of the Agent Orange Act of 1991 provided that the Secretary's authority and duties under that section would expire 10 years after the first day of the fiscal year in which NAS transmitted its first report to VA. The first NAS report was transmitted to VA in July 1993, during the fiscal year that began on October 1, 1992. Accordingly, VA's authority under section 2 of the Agent Orange Act of 1991 expired on September 30, 2002. In December 2001, however, Congress enacted the Veterans Education and Benefits Expansion Act of 2001, Public Law 107–103. Section 201(d) of that Act extended VA's authority under 38 U.S.C. 1116(b)–(d) through September 30, 2015.

Although 38 U.S.C. 1116 does not define "credible," it does instruct the Secretary to take into consideration whether the results [of any study] are statistically significant, are capable of replication, and withstand peer review. The Secretary reviews studies that report a positive relative risk, and studies that report a negative relative risk of a particular health outcome. He then determines whether the weight of evidence supports a finding that there is or is not a positive association between herbicide exposure and the subsequent health outcome. The Secretary does this by taking into account the findings and analyses of the NAS and aspects of the relevant studies, including the magnitude and the statistical significance of the findings, their capability of replication, and whether that study will withstand peer review.

Because of differences in statistical significance, confidence levels, control for confounding factors, bias, and other pertinent characteristics, some studies are more credible than others. The Secretary gives weight to more credible studies in evaluating the overall evidence concerning specific health effects.

Scope of This Notice

NAS issued its seventh report, entitled "Veterans and Agent Orange: Update 2006" (Update 2006), on July 27, 2007. As required by law, this notice explains a determination made by the Secretary in May 2008 that then-existing evidence, as summarized in Update 2006, did not warrant a presumption of service connection for several specific diseases. Among other things, this notice conveys the Secretary's determination that the evidence and analysis in Update 2006 and prior reports did not provide a basis for establishing presumptions of service connection, based on herbicide exposure, for movement disorders (including Parkinson's disease), ischemic heart disease, and leukemia (other than chronic lymphocytic leukemia).

Subsequent to the May 2008 determination that is the subject of this notice, VA in 2009 received another NAS report, entitled "Veterans and Agent Orange: Update 2008." Based on the 2009 report, the Secretary of Veterans Affairs has determined that presumptions of service connection based on herbicide exposure are now warranted for Parkinson's disease, ischemic heart disease, and b-cell leukemias, and VA published a proposed rule in the Federal Register of March 25, 2010 (75 FR 14391) to establish such presumptions. We emphasize that nothing in this notice affects the Secretary's more recent determination, based on additional evidence and analysis by NAS, to establish presumptions of service connection for those three diseases. The Secretary's May 2008 determinations are set forth here merely for the purpose of providing public notice of those determinations as required by statute.

Update 2006

Consistent with its prior reports, NAS in Update 2006 found that there was "sufficient evidence of an association" between herbicide exposure and five categories of diseases in Veterans. VA has previously established presumptions of service connection for each of these diseases. *See* 38 CFR 3.309(e). NAS, in Update 2006, categorized certain health outcomes to have "limited or suggestive evidence of an association." This category is defined to mean that evidence suggests an association between exposure to herbicides and the outcome, but a firm conclusion is limited because chance, bias, and confounding could not be ruled out with confidence. Health outcomes placed in the "limited or suggestive evidence of an association" category are laryngeal cancer; cancer of the lung, bronchus, or trachea; prostate cancer; multiple myeloma; early-onset transient peripheral neuropathy, prophyria cutanea tarda; type 2 diabetes (mellitus); and spina bifida in offspring of exposed people. VA has previously established presumptions of service connection for each of these diseases, *see* 38 CFR 3.309(e), with the exception of spina bifida, for which VA pays a monetary allowance under 38 CFR 3.814. NAS, in Update 2006, additionally categorized AL amyloidosis and hypertension as having limited or suggestive evidence of an association. VA recently established a presumption of service connection for AL amyloidosis. *See* 74 FR 21258 (May 7, 2009).

NAS, in Update 2006, categorized certain health outcomes as having inadequate or insufficient evidence to determine whether an association exists. This category is defined to mean that the available studies are of insufficient quality, consistency, or statistical power to permit a conclusion regarding the presence or absence of an association with herbicide exposure. The health outcomes that met this category are: Cancers of the oral cavity (including tongue), pharynx (including lips and tonsils), or nasal cavity (including ears and sinuses); cancers of the pleura, mediastinum, and other unspecified sites within the respiratory system and intrathoracic organs; esophageal cancer; stomach cancer; colorectal cancer (including small intestine and anus); hepatobiliary cancers (liver, gallbladder, and bile ducts); pancreatic cancer; bone and joint cancer; melanoma; non-melanoma skin cancer (basal cell and squamous cell); breast cancer; cancers of reproductive organs (cervix, uterus, ovary, testes, and penis; excluding prostate); urinary bladder cancer; renal cancer; cancers of brain and nervous system (including eye); endocrine cancers (thyroid, thymus, and other endocrine); leukemia (other than CLL); cancers at other and unspecified sites; neurobehavioral disorders (cognitive and neuropsychiatric); movement disorders (including Parkinson's disease and ALS); chronic peripheral nervous system disorders; respiratory disorders; gastrointestinal, metabolic, and digestive disorders (changes in liver enzymes, lipid abnormalities, and ulcers); immune system disorders (immune suppression, allergy, and autoimmunity); ischemic heart disease; circulatory disorders (excluding hypertension); endometriosis; effects on thyroid homeostasis; certain reproductive effects, *i.e.,* infertility, spontaneous abortion, neonatal or infant death and stillbirth in offspring of exposed people, low birth weight in offspring of exposed people, birth defects (other than spina bifida) in offspring of exposed people, and childhood cancer (including acute myelogenous leukemia) in offspring of exposed people.

The Secretary's determination that there is not a positive association between herbicide exposure and the diseases addressed in this notice is based upon the NAS's 2006 review and analysis of the relevant scientific evidence as summarized below, the additional analyses provided in this notice, and NAS's and VA's previous analyses of the scientific and medical literature set forth in earlier **Federal Register** notices at: 59 FR 341 (Jan. 4, 1994), 61 FR 41442 (Aug. 8, 1996), 64 FR 59232 (Nov. 2, 1999), 66 FR 2376 (Jan. 11, 2001), 67 FR 42600 (Jun. 4, 2002), 68 FR 27630 (May 30, 2003), 72 FR 32395 (May 20, 2007).

I. Cancer

Cancer of the Oral Cavity, Pharynx, or Nasal Cavity

NAS found that the new occupational studies of cancers of the oral and nasal cavities or pharynx were generally small and so yielded unstable estimates of risk. Integration of the evidence on this set of cancers is challenging because different studies group cases differently. Two studies of agricultural pesticide applicators found significant decreases in certain oral cancers rather than excess risk associated with exposure. Studies on Australian Vietnam Veterans showed some increases in risk, but the results were not adjusted for cigarette-smoking or alcohol use, both of which are known risk factors.

On the basis of its evaluation of the evidence reviewed in Update 2006 and in previous reports, NAS concluded that there was inadequate or insufficient information to determine whether there is an association between herbicide exposure and oral, nasal, and pharyngeal cancers.

Lip Cancer

NAS evaluated lip cancer as a separate entity for the first time in

Update 2006 and found that the available studies suffered from certain limitations. Some studies had very low specificity with respect to exposure to the compounds of interest. NAS noted that these studies defined exposure status almost exclusively in terms of occupation, and even the determination of occupation usually could not be regarded as rigorous.

Other studies used computer techniques to link records in comprehensive databases, such as those matching entries in tumor registries with compendiums of national censuses. NAS noted that these studies amass large samples that may have the effect of inflating power. Such investigations are useful for generating hypotheses, but NAS noted that suggestive findings must be replicated by studies with more refined designs that are capable of gathering more extensive information about the subjects to use in adjusting for confounders.

NAS further noted that the certainty of the diagnostic categories culled directly from death certificates or other databases may be questionable and that diagnoses of lip cancer might overlap with non-melanoma skin cancers in the sources from which the information was gathered for the studies discussed.

NAS also noted the studies in question did not adjust for smoking and sunlight exposure, as would be necessary before inferring that agricultural chemicals played a role in any observed association in an occupational group.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and lip cancer.

Tongue Cancer

NAS also evaluated tongue cancer as a separate category for the first time in Update 2006, and concluded that interpretation of the evidence on tongue cancer is constrained by the grouping of data on them with data on other oral cancers. Most of the studies with information on this specific tumor site observed only a small number of cases and therefore had unstable estimates of risk.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and tongue cancer.

Tonsil Cancer

NAS noted that there is a paucity of findings specifically related to tonsil cancer, because of the extreme rarity of this type of cancer and its occurrence in an anatomic region whose cancers are generally grouped fairly idiosyncratically. That the tissue type developing into a neoplasm at this location might generate a carcinoma, a lymphoma, or a sarcoma has further constrained NAS's ability to assemble a meaningful body of evidence addressing risk factors for this unusual type of cancer. NAS noted that further research, such as a case-control protocol, would be needed to evaluate whether tonsil cancer is associated with exposure to the herbicides used in Vietnam.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and tonsil cancer.

Cancer of the Pleura, Mediastinum, and Other Unspecified Sites Within the Respiratory System and Intrathoracic Organs

NAS's default category for any health outcome for which no epidemiologic research findings have been recovered has always been "inadequate evidence" of association, which in principle is applicable to specific cancers. Cancers of the pleura, mediastinum, and other unspecified respiratory cancers are rarely reported individually and are not as yet seen for the chemicals of interest, reflecting the paucity of information. NAS concluded there is inadequate or insufficient information to categorize such a disease outcome.

Esophageal Cancer

NAS noted that previous updates did not review the risk of esophageal cancer separately. In Update 2006, NAS concluded that the epidemiologic studies of esophageal cancer to date yielded no evidence of an increased risk associated with the compounds of interest, although updates of the health status of the Australian Vietnam Veterans presented an interesting but non-significant pattern of increased risk of esophageal cancer. No toxicologic studies provide evidence of biologic plausibility of an association between the compounds of interest and tumors of the esophagus.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and esophageal cancer.

Stomach Cancer

NAS found that the risk of stomach cancers had not been reviewed separately in previous updates. Among the newly reviewed studies, only one reported a significant relationship, which was between stomach cancer and the rather non-specific exposure of being a forestry worker. The NAS noted some evidence of biologic plausibility in animal models, but concluded that the epidemiologic studies to date do not support an association between exposure to the compounds of interest and stomach cancer.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and stomach cancer.

Colorectal Cancer

NAS found that previous updates had not reviewed the risk of colorectal cancers separately. In Update 2006, NAS found no evidence to suggest an association between the compounds of interest and colorectal cancer in the epidemiologic studies reviewed to date. The only significant increase in intestinal cancers noted in Update 2006 was a reported result concerning cancer of the small intestine based on cases in two exposed people. NAS explained that this is a very uncommon tumor and was reported in Update 2006 with the more common cancers of the large intestine and rectum for completeness of coverage. NAS found no evidence of biologic plausibility of an association between exposure to any of the compounds of interest and the development of tumors of the colon or rectum. NAS concluded that the available evidence does not support an association between the compounds of interest and colorectal cancer.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and colorectal cancer.

Hepatobiliary Cancers

For Update 2006, NAS found that no new reports of a definitive link between exposure to the compounds of interest and hepatobiliary tumors were found. One study suggested a reduced risk of hepatic cancers in Veteran populations, and one suggested an increased risk of cancer of the gallbladder among forestry

workers. However, given the relatively low incidence of hepatobiliary cancers in Western populations, NAS concluded that the evidence from epidemiologic studies remains inadequate to link the compounds of interest with hepatobiliary cancer.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and hepatobiliary cancer.

Pancreatic Cancer

NAS noted that one study reported increased rates of pancreatic cancer among Australian Vietnam National Service Veterans, but that the findings could be associated with increased rates of smoking and cannot be attributed to exposure to the compounds of interest. NAS noted that other reports have been largely negative.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and pancreatic cancer.

Bone and Joint Cancer

NAS reviewed results of several pertinent studies published since the previous update. The studies either reported a non-significant increase in risk of bone and joint cancer, observed too few events to estimate relative risk (RR) adequately, or did not present data that sufficiently linked observed results to specific compounds of interest to this report. NAS concluded that the new results add little to the previous body of results that, taken together, do not indicate an association between exposure to the compounds of interest and bone cancer.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and bone and joint cancer.

Skin Cancer–Melanoma

NAS found that new occupational studies were small and could not provide stable estimates of RR associated with herbicide exposure. NAS stated that the evidence from a number of studies of occupational and environmental populations is inconsistent, but that significant associations have been demonstrated in some studies of populations with well-characterized exposures to the compounds of interest. NAS noted, however, that the evidence of an association with melanoma in these studies may be limited by the possibility of bias or chance. Further, NAS noted that positive findings of a study of Australian Vietnam Veterans are limited by internal inconsistency, and that an increase in mortality reported by the Centers for Disease Control and Prevention Vietnam Experience Study is consistent but too small to be considered significant.

NAS stated that the results of the Air Force Health Study (AFHS) have long been anticipated as the most directly pertinent to the experience of US Vietnam Veterans, so NAS was impressed by recent reports of a strong dose-response relationship between serum TCDD concentrations and melanoma in this population. Some members of the committee were concerned, however, that the findings of the AFHS have not been presented in a complete and systematic fashion. Further, NAS noted that the two recent Ranch Hand studies are based on diagnoses rendered up to 1999 and 2003, respectively, but that there is some indication that more recent melanoma diagnoses among the control subjects greatly exceeds that of the Ranch Hands, which might produce quite different results. NAS therefore endorses further evaluation and longitudinal analysis of the entire data set on cancer outcomes generated in the important AFHS population. NAS noted that, despite the findings in the AFHS study, there was a persisting concern that there was little suggestion of an association in other relevant populations.

After extensive deliberation concerning new evidence and the results of studies reviewed in previous updates, NAS was unable to reach consensus as to whether the evidence concerning an association between herbicide exposure and melanoma met the criteria for being considered limited or suggestive or whether this health outcome should remain in the inadequate or insufficient classification primarily because the suggestive findings are almost exclusively from the AFHS, whose final data on both the Ranch Hand and comparison subjects have not yet been analyzed in a satisfactory and uniform manner.

As indicated in prior NAS reports and reiterated in Update 2006, occupational and environmental studies generally have not found a significant increase in the risk of melanoma associated with herbicide exposure, and the few significant findings are limited by methodological concerns. In its 2004 report, NAS noted that a 2004 study by Swaen *et al.* of herbicide applicators in the Netherlands reported a significantly increased incidence of all skin cancers, but the data were limited because they could not distinguish the effects of herbicide exposure from the significant confounding factor of sun exposure, which was likely to be common among herbicide applicators. In its 1996 update, NAS also noted that one occupational study of Danish herbicide-production workers reported a significant increased incidence of melanoma, but because of the small number of cases (4) and the lack of adequate information in the study, it was not considered to provide evidence of an association.

Although recent analyses of the Ranch Hand Veterans provides some evidence of an association, as noted in Update 2006, the evidence overall continues to weigh against an association. Occupational exposures, particularly among herbicide-production workers are ordinarily expected to exceed in duration and magnitude the types of exposures that would be seen in Vietnam Veteran populations. As NAS noted in Update 2006, the general lack of significant findings in occupational studies is a relevant consideration in interpreting the more recent findings concerning the Ranch Hand Veterans. Additionally, based on the indications in Update 2006 that more recent data concerning the Ranch Hand population could affect the findings of the recent studies suggests that further inquiry is needed before definitive conclusions can be drawn regarding the significance of those findings.

Skin Cancer—Basal-Cell and Squamous-Cell Cancer (Non-Melanoma)

NAS found that the new results demonstrate only a small RR that is not statistically significant, and the dose–response relationship also is not statistically significant.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and basal-cell or squamous-cell cancer.

Breast Cancer

NAS reviewed several new studies concerning breast cancer in Update 2006 and, with one exception, found that they did not provide evidence supporting an association between breast cancer and herbicide exposure. NAS found that recent results from the Agricultural Health Study (AHS) cohort

generally do not support the hypothesis that exposure to the compounds in Agent Orange increases breast-cancer incidence or mortality in women, although exposure to the specific compounds of interest was not specified. NAS noted that recent studies of environmental exposure found null associations, but that the exposures in some cases were of questionable relevance. NAS further noted that two studies of organochlorine concentrations in adipose tissue failed to find any evidence of increased risk in association with higher adipose concentrations; in fact, the more relevant study found the risk in the highest tercile of dioxin concentrations in breast fat was lower than in the lowest tercile of dioxin concentrations, although not significantly so.

NAS found that one study published since the last update does provide some evidence of an association between exposure to 2,4-D and breast-cancer risk in female farm workers in California. The study is limited by lack of detailed information on potential confounding factors and lack of evidence of a dose-response relationship, but it is large and the investigators were able to estimate individual exposures by linking work histories to an extensive database on pesticide use.

NAS considered the new information in the context of the cumulative data from studies reviewed in previous updates. NAS found that the results of four prior studies lend support to the hypothesis that there is an association between breast cancer and exposure to the compounds of interest. However, each study has limitations or weaknesses that keep its conclusions about the association in question from being definitive.

NAS noted that the recent data from a 2005 study by Mills and Yang, although not persuasive in themselves, lend additional weight to an association between the relevant herbicide exposures and breast-cancer risk. This study has reasonable size and relatively specific exposure information but is limited chiefly by the data available to control for confounding. Some members of the committee considered the body of evidence as a whole to be suggestive of an association; for others, the few modestly positive results associated with a diversity of exposures suggested chance findings rather than a coherent picture. Further laboratory and epidemiologic work on this association should be pursued.

The main reason for the unresolved division in the NAS opinion concerning the adequacy of the available evidence to support an association between breast cancer and exposure to the components of the herbicides sprayed in Vietnam was differing individual views about the specificity and relevance of the studied exposures for the population of primary concern to the committee, Vietnam Veterans. Overall, the committee was impressed by the positive results from earlier studies reviewed, but several members considered this a very small sample upon which to anchor an association. The degree to which the profile of chemicals contributing to total toxicity equivalency in the more positive epidemiologic studies differed from that of Vietnam Veterans diminished the conviction of some members that these results constituted fully relevant evidence.

After extensive deliberation concerning the new evidence and the results of studies reviewed in previous updates, NAS was unable to reach consensus as to whether the evidence of an association between exposure to the compounds of interest and breast cancer met the criteria for being considered limited or suggestive or whether concerns about chance, bias, and confounding remained so substantial that breast cancer should remain in the inadequate or insufficient classification.

Relatively few studies provide evidence of a positive association between herbicide exposure and breast cancer. As NAS noted, most of the recent studies do not support an association, although some of the studies are of questionable relevance and thus would not provide strong evidence against an association. Of the five positive studies identified by NAS, two are limited by potential confounding factors. As noted above, the 2005 study by Mills and Yang lacked data to control for confounding. A 2001 study by Revich *et al.* found an increased mortality from breast cancer among persons exposed to dioxins from working in or residing near a chemical plant, but the potential for confounding exists because the subjects were exposed to a number of other toxic chemicals. One of the positive studies, a 2000 Vietnam Veteran study by Kang *et al.,* reported an increase in breast cancer among female Vietnam Veterans, but the result was not statistically significant. The other two studies showed positive results, although the NAS noted some limitations related to study size and relevance of exposures. Although those studies provide some supportive evidence, the overall weight of the current evidence does not support an association between herbicide exposure and breast cancer.

Cancers of the Female Reproductive System

NAS found that two analyses of the same cohort found increased incidence of and mortality from ovarian cancer in women who had been engaged in pesticide application. The weight of those studies for the present purposes is limited by the lack of detail on chemical exposures and the absence of data that would allow for control of confounding. Future studies of ovarian cancer should be watched carefully, particularly studies that use biomarkers of exposure or more detailed chemical-exposure histories.

On the basis of its evaluation of the evidence in Update 2006 and in previous reports, NAS has concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and uterine, ovarian, or cervical cancer.

Testicular Cancer

NAS found that the evidence from epidemiologic studies is inadequate to link herbicide exposure and testicular cancer. The relative rarity of this cancer makes it difficult to develop risk estimates with any precision. Most cases occur in men 25–35 years old, and men who have received such a diagnosis could be excluded from military service; this could explain the slight reduction in risk observed in some Veteran studies.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and testicular cancer.

Bladder Cancer

NAS found that available analyses of an association between exposure to the compounds of interest and bladder-cancer risk are characterized by low precision because of the small numbers, low exposure specificity, and lack of ability to control for confounding. No new data have emerged since Update 2004 to alter the conclusion that the cumulative evidence of such an association is inadequate or insufficient.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and bladder cancer.

Renal Cancer

NAS found that available analyses of an association between exposure to the

compounds of interest and renal-cancer risk are limited by the small number of cases and lack of exposure specificity. No new data have emerged since Update 2004 to alter the committee's conclusion that the evidence is inadequate or insufficient to determine whether there is an association.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and renal cancer.

Cancer of the Eye and Orbit

NAS found that most of the epidemiologic studies of findings on eye cancer alone reported few or no cases, were of low power, and had statistically non-significant results. The studies with the largest numbers of cases did not indicate significant increases in risk associated with herbicide exposure. Some analyses of the Australian Vietnam Veterans showed excess risk, but it was probably due to excess exposure to UV radiation, which was not adjusted for. It should be noted that eye cancer is sometimes reported in a combined category with brain cancers.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and eye cancer. Any future findings for this cancer site will be tracked with results on brain cancer.

Brain Cancer

NAS found that since Update 2004, several relevant studies have been identified, including cohort and case-control designs. Many studies rely on surrogate indicators of exposure, such as occupational titles, but several studies estimated exposure to one or more of the compounds of interest on the basis of a job-exposure matrix or self-reported exposure history. Most used cancer-registry data with a high degree of diagnostic certainty. However, each study has limitations or weaknesses that keep its conclusions about the association in question from being definitive.

Most of the relevant prior cohort studies do not show substantial risk differences from the null hypothesis, but this may reflect the limited power of the cohort method to identify risk differences in rare diseases, such as brain cancer. However, with the accumulation of findings that deviate from consistency with the null hypothesis, the present committee can no longer retain the original VAO committee's conclusion that the available evidence is suggestive of no association.

On the basis of detailed evaluation of the epidemiologic evidence from new and previously reported studies of populations with potential herbicide exposure, NAS concluded that the categorization in prior updates (limited or suggestive evidence of no association) should be revised to inadequate or insufficient to determine whether there is an association between herbicide exposure and brain cancer and other nervous system cancers.

Endocrine Cancers

Update 2006 is the first to consider endocrine cancers as constituting a separate cancer type. NAS found several relevant studies that show low thyroid-cancer incidence and cancer mortality in various populations. The studies assessed exposure to one or more of the compounds of interest although the metrics often were based on surrogate indicators or self-reported exposure. Some of the cohort studies used cancer-registry data with a high degree of diagnostic certainty. Several of the studies show somewhat increased risks of thyroid or other endocrine cancers in association with the compounds of interest. The two studies with any indication of statistical significance both had mixed results. The authors were conducting analyses on large samples whose exposure was no better characterized than "agricultural worker" on a death certificate or census response, whereas in a third study, the risks of endocrine cancers were lower in phenoxy herbicide workers who also had exposure to TCDD. Most showed no substantial risk differences in association with the compounds of interest. Many of the studies had very small numbers of cases, and their limitations preclude risk estimation. There were no significant findings in Vietnam-Veteran studies. Thus, the studies reviewed do not provide sufficient evidence to determine whether there is an association between exposure to the compounds of interest and thyroid cancer.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and thyroid or other endocrine cancers.

Leukemia (Other Than CLL)

NAS found that the new studies did not provide any new evidence of an association between exposure to the compounds of interest and leukemia.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that, at the time of Update 2006, there was inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and leukemias other than CLL.

Acute Myelogenous Leukemia

NAS found that taken together, the occupational, environmental, and Veteran studies are limited by the paucity of reports related to the types of leukemia and to acute myelogenous leukemia (AML) in particular. In concluding its review of the available findings related to the occurrence of AML in Veterans exposed to the herbicides sprayed in Vietnam, NAS notes the finding in Update 2000 of limited or suggestive evidence of an association between exposure to the compounds of interest and AML in the children of Vietnam Veterans and the reversal of the finding in the report on AML. The recognition of an error in a key publication and new information on the illness resulted in reclassification of AML in children to inadequate evidence to determine whether there is an association.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and AML.

Cancers at Other and Unspecified Sites

NAS' default category for any health outcome for which no epidemiologic research findings have been recovered has always been "inadequate evidence" of association, which in principle is applicable to specific cancers. Cancers at other and unspecified sites are rarely reported individually and not as yet seen for the chemicals of interest, reflecting the paucity of information. NAS concluded there is inadequate or insufficient information to categorize such a disease outcome.

II. Reproductive and Developmental Effects

Fertility

NAS found that although there is much evidence of the biologic plausibility of disruption of male and female fertility by exposure to the chemicals of interest, there continues to be a lack of substantive epidemiologic data that demonstrate any association in human populations.

On the basis of its evaluation of the evidence reviewed in Update 2006, NAS concluded that there is inadequate or insufficient evidence of an association between herbicide exposure and altered hormone concentrations, menstrual-cycle abnormalities, decreased sperm counts or sperm quality, and sub-fertility or infertility.

Spontaneous Abortion

NAS found that no additional information was available to the committee responsible for Update 2006 to motivate changing the assessment of the last two committees. Given the age of the Vietnam-Veteran cohort, it is highly unlikely that additional information on this outcome among the population will appear.

In Update 2006, NAS concluded that paternal exposure to TCDD is not associated with risk of spontaneous abortion and that insufficient information is available to determine whether an association exists between the risk of spontaneous abortion and maternal exposure to TCDD or either maternal or paternal exposure to 2,4–D, 2,4,5–T, picloram, or cacodylic acid.

Stillbirth, Neonatal Death, and Infant Death

NAS found that the study reviewed for Update 2006 did not find significant associations between the relevant exposures and rates of infant or fetal deaths. The study was limited in that exposure was based on environmental concentrations of dioxin and individual exposure data were not obtained. Furthermore, several risk factors that could confound associations between exposure and outcome were not assessed.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and stillbirth, neonatal death, or infant death in offspring of exposed people.

Low Birth Weight and Preterm Delivery

NAS found that the three studies reviewed in Update 2006 did not find an association between exposure to the compounds of interest and the risk of low birth weight or prematurity. The two new weakly significant findings may simply be spurious results arising among many comparisons; a modest increase in average birth weight would not be construed as an adverse effect, and the small decrease in average gestation is of questionable biologic importance. Although the results overall suggest a lack of an association, they should be interpreted with caution because of some methodologic limitations, such as a long recall period in the cohort study and exposure misclassification in the environmental studies.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and low birth weight or preterm delivery in offspring of exposed people.

Birth Defects (Other Than Spina Bifida)

NAS found only one new occupational study of birth defects and exposures to the chemicals of interest, and the information generated was too sparse to provide additional insights into the risks of birth defects. Birth defects were addressed indirectly by a new environmental study, which found an association between residence in the areas with the highest soil dioxin concentrations and deaths before the first birthday due to any congenital abnormality, but this relationship did not carry over to deaths occurring in the first month or in the first week of life.

Only one study addressed birth defects among the offspring of female Vietnam War Veterans, who overall constitute fewer than 10,000 of the roughly 3 million U.S. Vietnam Veterans. NAS noted that, in general, the relatively small number of offspring among Vietnam Veterans seriously restricts the ability to detect statistically significant increases in specific birth defects. In addition, as the offspring of Veterans become older, the risk of diseases stemming from congenitally transmitted defects that alter normal physiologic function, such as endocrine and reproductive function, merits increasing attention.

Another study reported a substantially greater strength of association between exposure to Agent Orange and birth defects in the studies of Vietnamese populations than in those of non-Vietnamese populations. The non-Vietnamese study populations consisted of Vietnam Veterans, who were almost exclusively men, whereas the Vietnamese populations had a much greater likelihood of maternal exposure. This study also conducted subgroup meta-analyses based on presumed exposure intensity. Meta-analytic methods are the best approach to assessing the overall import of the studies of exposures to the chemicals of interest and the risk of specific birth defects. However, the numbers of cases reported were too small to allow meta-analysis of specific types of birth defects.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and birth defects (other than spina bifida) in offspring of exposed people.

Childhood Cancer

NAS found that the studies reviewed for this update did not find significant associations between the relevant exposures and childhood cancers. As with other outcomes in the offspring of Vietnam Veterans, the small number of these rare childhood cancers expected among the circumscribed number of Vietnam Veterans would seriously hinder detection of any actual increases. NAS reviewed newly available occupational and environmental studies but found the value of these studies to be limited by the questionable reliability of self-reported exposures or other factors.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and childhood cancers in offspring of exposed people.

III. Neurologic Disorders

Neurobehavioral (Cognitive and Neuropsychiatric) Disorders

NAS found that there is not consistent epidemiologic evidence of an association between neurobehavioral disorders (cognitive or neuropsychiatric) and Agent Orange exposure. Difficulties in case identification and diagnosis, misclassification of exposures because of a lack of contemporaneous measures, subject ascertainment and selection bias, and uncontrolled confounding from many comorbid conditions are common weaknesses in the studies reviewed. The variability of the test results over time, the weak and inconsistent associations, and a lack of consistent dose-response relationships also detract from evidence of an association between the compounds of interest and neurobehavioral disorders.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide

exposure and neurobehavioral disorders (cognitive or neuropsychiatric).

Movement Disorders, Including Parkinson's Disease

NAS found that epidemiologic studies have pursued various occupational exposures as potential risk factors for Parkinson's disease; pesticide use is among those receiving the most attention, but it has rarely been possible to isolate the effects of selected chemical herbicides, because exposures often are mixed and assessments usually are retrospective, relying on such broad categories as "ever exposed to any pesticide," which is not considered informative for this report. In addition, reported associations have been inconsistent, and only rarely has evidence supported dose-response relationships. Thus, the data are weakened for the committee's purposes by persistent methodologic limitations and by the lack of specificity for the compounds of interest.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that, at the time of Update 2006, there was inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and Parkinson's disease.

Peripheral Neuropathy

NAS found that epidemiologic studies that used appropriate comparison groups and standard techniques for diagnosis and assessment of exposure have not demonstrated consistent associations between exposure to the compounds of interest and the development of peripheral neuropathy. Several reports have shown no significant association, and in the reports that did indicate an association, chance, bias, or confounding could not be ruled out with confidence. In particular, diabetes might confound the results, inasmuch as many of the subjects with neuropathy also had diabetes, which is a known cause of neuropathy. Controlling for the effects of diabetes is a technical challenge because there is evidence of an association between diabetes and exposure to at least one of the compounds of interest; in many cases, diabetes could be in the causal pathway that links exposure and peripheral neuropathy.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and delayed or persistent peripheral neuropathy.

IV. Other Health Effects

Respiratory Disorders

NAS found that results of the new studies of mortality from nonmalignant respiratory diseases do not support the hypothesis that herbicides increase mortality from them. The results of one study showed a positive association, although it is based on only nine deaths in the high-exposure area, and this finding could have been due to chance or misclassification of causes of death. More important, although it recognizes that mortality studies are limited by small numbers of events and misclassification of causes of death, especially respiratory conditions, NAS does not believe that scientific conclusions can be based on health outcomes that are defined vaguely, for example, by combining a wide array of disparate respiratory health outcomes into one large category.

Two new cross-sectional studies have reported positive associations between exposure and the prevalence of various chest conditions. The nonspecificity of the types of respiratory conditions reported in one of the two studies makes it exceedingly difficult to draw any conclusions regarding specific respiratory conditions, and the lack of observed association with serum TCDD concentrations also argues against the existence of an association. The issue of nonspecificity is key to interpreting this study. The results of a second study were weakened by a definition of "wheeze" that was very broad and included any episode in the year before administration of the questionnaire. Further, only 28 percent of subjects reporting this symptom also reported having asthma or atopic conditions.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and the respiratory disorders specified.

Immune-System Disorders (Immune Suppression, Allergy, and Autoimmunity)

NAS found that TCDD is a well-known immunosuppressive agent in laboratory animals. Therefore, one would expect that exposure of humans to sufficiently high doses would result in immune suppression. However, several studies of various measures of human immune function have failed to reveal consistent correlations with TCDD exposure, and no detectable pattern of increased infectious disease has been documented in Veterans exposed to TCDD or other herbicides used in Vietnam. Although suppression of the immune response by TCDD could increase the risk of some cancers in Vietnam Veterans, there is no evidence to support that connection.

Epidemiologic studies have been inconsistent with regard to TCDD's influence on IgE production in humans (Update 2004). No animal or human studies have specifically addressed the influence of TCDD on autoimmune disease. One study of post-service mortality associated with various causes showed no increase in deaths of Vietnam Veterans that could be attributed to immune-system disorders.

Few effects of phenoxy herbicide exposure on the immune system have been reported in animals or humans, and clear association between phenoxy herbicide exposure and autoimmune or allergic disease has not been found.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and immune suppression, allergy, or autoimmune disease.

Lipid and Lipoprotein Disorders

NAS found that previously reviewed literature showed inconsistent changes in serum lipids or lipoproteins after exposure to the compounds of interest, and in most cases the sample sizes were insufficient to support any conclusions. The recent report on Ranch Hand Veterans shows that serum TCDD concentrations are positively associated with serum triglycerides; however, even in Ranch Hand Veterans with the highest TCDD exposure, the mean serum triglyceride concentration (130 mg/dL) is well below that considered to be abnormal (250 mg/dL). It is notable that the Ranch Hand Veterans with abnormally high serum triglycerides tend to be those with the highest TCDD exposure.

Hypertriglyceridemia is considered to be a major risk factor for acute pancreatitis when serum triglyceride concentrations exceed 1,000 mg/dL, and there is some evidence that it is an independent but weak risk factor for ischemic heart disease at concentrations over 150 mg/dL. More commonly, however, high serum triglyceride concentrations (150–500 mg/dL) are considered to be a consequence of other underlying diseases, particularly diabetes mellitus and metabolic syndrome, and hypertriglyceridemia is a

well recognized marker of these diseases, especially when associated with low high-density lipid (HDL) concentrations.

The VAO committee responsible for type 2 diabetes concluded that there was limited or suggestive evidence of an association between type 2 diabetes mellitus and exposure to herbicides in Vietnam. Although the latest Ranch Hand study adjusted the RR of hypertriglyceridemia for smoking and body-mass index (BMI), it failed to account for the presence of diabetes mellitus. Diabetes mellitus is strongly associated with hypertriglyceridemia, as discussed above, so it is plausible that the increased percentage of Ranch Hand Veterans with abnormally high serum triglycerides may be a consequence of diabetes mellitus. In that regard, the percentage of all Ranch Hand Veterans with a diagnosis of diabetes mellitus (about 23 percent) could include the percentage with hypertriglyceridemia (about 13 percent).

Hypertriglyceridemia itself was not considered a health outcome for Update 2006, but it was recognized that its presence may indicate the emergence of a more significant health concern, metabolic syndrome. Metabolic syndrome is characterized by obesity, high triglycerides (over 150 mg/dL), low HDL (under 40 mg/dL), hypertension (over 130/85 mm Hg), and high fasting plasma glucose or diagnosed diabetes mellitus. As noted above, NAS previously concluded that there is suggestive evidence of a link between exposure to herbicides in Vietnam and type 2 diabetes mellitus, whereas the Update 2006 has concluded that there is suggestive evidence of a link between exposure to herbicides in Vietnam and hypertension. Thus, an increasing number of Vietnam Veterans may be exhibiting at least three of the diagnostic criteria for metabolic syndrome: Hypertriglyceridemia, diabetes mellitus, and hypertension. It will be important to analyze the incidence of those individual outcomes as potential components of a larger disease syndrome.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and lipid or lipoprotein disorders.

Gastrointestinal, Metabolic, and Digestive Disorders (Changes in Liver Enzymes, Lipid Abnormalities, and Ulcers)

In Update 2006, NAS noted there is no evidence that Vietnam Veterans are at greatly increased risk for serious liver disease, and reports of increased risk of abnormal liver-function tests have been mixed. Although increased rates of gastrointestinal disease have not been reported, the possibility of a relationship between dioxin exposure and subtle alterations in the liver and in lipid metabolism cannot be ruled out.

On the basis of its evaluation of the evidence reviewed in Update 2006 and in previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and gastrointestinal and digestive diseases.

Hypertension

In Update 2006, NAS concluded that there was "limited or suggestive evidence of an association between exposure to the compounds of interest and hypertension." Prior NAS reports concluded that there was inadequate or insufficient evidence to determine whether there was an association between exposure to herbicides and any cardiovascular diseases, including hypertension. Because Update 2006 suggests that the evidence for an association between herbicide exposure and hypertension is stronger than at the time of prior reports, hypertension warrants close consideration.

As an initial matter, it must be noted that the NAS finding of "limited or suggestive evidence of an association" does not imply any view by NAS as to whether the scientific evidence establishes a "positive association" between herbicide exposure and hypertension within the meaning of 38 U.S.C. 1116(b). The NAS category of "limited or suggestive evidence" is defined to mean that "[e]vidence suggests an association between exposure to herbicides and the outcome, but a firm conclusion is limited because chance, bias, and confounding could not be ruled out with confidence." Update 2006, at 11. NAS has explained that, "[f]or example, a well-conducted study with strong findings in accord with less compelling results from populations with similar exposures could constitute such evidence." *Id.* In contrast, the "positive association" standard in 38 U.S.C. 1116(b)(1) and (3) directs VA to determine whether "the credible evidence for the association is equal to or outweighs the credible evidence against the association." In making that determination, VA must consider the NAS reports and any other available evidence and must consider, with respect to scientific studies, "whether the results are statistically significant, are capable of replication, and withstand peer review." 38 U.S.C. 1116(b)(2). As NAS noted in a 2007 report, "the IOM limited/suggestive category covers a broad range of epidemiological evidence from relatively weak to strongly suggestive," and the NAS characterization thus cannot be viewed as determinative of the "positive association" determination VA is required to make. Institute of Medicine, *Improving the Presumptive Disability Decision-Making Process for Veterans,* at 98 (National Academies Press 2007).

VA has carefully reviewed the NAS findings and analyses in Update 2006 and prior reports. For the reasons explained below, VA has determined that a positive association does not currently exist between herbicide exposure and hypertension, but that Update 2006 does identify significant new evidence that warrants careful consideration of hypertension on an ongoing basis.

The finding in Update 2006 of "limited or suggestive evidence" for hypertension is based primarily upon one new Vietnam Veteran study, which NAS found to be significant and consistent with results of other lower quality studies. NAS also noted, however, that findings in other studies suggested that hypertension is not associated with herbicide exposure.

NAS found that a 2006 study by Kang *et al.* supported an association between herbicide exposure and hypertension. That study assessed the incidence of hypertension among 1,499 U.S. Army Chemical Corps (ACC) Veterans who handled or sprayed Agent Orange in Vietnam and a control group of 1,428 Veterans from the same era who did not serve in Vietnam. The study found no significant difference in the rates of hypertension between the two groups. However, when analysis was restricted to ACC Veterans who served in Vietnam, Veterans who reported having sprayed herbicides had a higher incidence of hypertension than those who did not report spraying herbicides. Because there is some evidence that type 2 diabetes, a condition that may cause hypertension, is associated with herbicide exposure, the researchers separately evaluated the risk of hypertension in only non-diabetic ACC Veterans and found that hypertension was associated with herbicide spraying in non-diabetic Veterans.

NAS found that this study had several strengths, including its focus on one of the most highly exposed Vietnam Veteran cohorts. NAS noted that exposure to TCDD was directly measured in one subset of the ACC cohort. It also concluded that the study had the merit of controlling for established risk factors for hypertension. NAS further stated that, although the increased incidence of hypertension among ACC sprayers was not large, it was consistent with the existence of several other well-established contributors to the development of hypertension.

NAS noted that one limitation of this study is the potential for information bias, inasmuch as the data on hypertension and on herbicide spraying were self-reported. The study relied upon information provided in telephone interviews in which the Veterans were asked whether a physician had ever diagnosed them with hypertension and also requested information as to whether they had sprayed or handled herbicides in service. NAS felt that the potential information bias was diminished, in part, because a patient is more likely to report accurately a chronic disorder that requires continuing management, including hypertension and diabetes. NAS noted that the researchers did not attempt to verify self-reported hypertension by medical-record review, but that they did seek to verify self-reports of diabetes and found the self-reports verified in 79 percent of cases. NAS also noted the potential for misclassification among exposure groups and the possible recall bias that could lead to over-reporting of herbicide spraying among men who have serious health conditions. NAS noted that, although there is evidence that ex-sprayers were more likely to report several health conditions besides hypertension, comparison within the ex-sprayer subgroup according to serum TCDD concentration suggests that recall bias does not fully explain the associations.

NAS noted that selection bias could arise from the cross-sectional nature of the study, which accounts for disease prevalence only among people in the original deployed and non-deployed ACC cohorts who were still alive and participated. NAS concluded, however, that concern for that type of selection bias is tempered by the high and nearly equal rates of participation by deployed Veterans (72 percent) and non-deployed Veterans (69 percent), and by the fact that the prevalence of hypertension among the non-deployed Veterans (30 percent) was similar to that among U.S. men of comparable age (32 percent). NAS stated that, despite those data, it remains unknown whether the observed relationship of spraying to the prevalence of hypertension is equivalent to what one would have observed if the cohort had been followed longitudinally. Nonetheless, because the primary population of concern to VA is the current living cohort of Vietnam Veterans, the findings from the study are particularly relevant.

NAS stated that the results of the Kang study are consistent with those of other studies of Vietnam Veterans, including the other most highly exposed cohort composed of Vietnam Veterans who served in Operation Ranch Hand. NAS stated that multiple examination cycles of the Air Force Health Study (AFHS) of those Veterans have consistently reported an increase in the prevalence of hypertension with a doubling of serum dioxin concentration. NAS stated that the analyses controlled for the major risk factors for hypertension, and diagnosis was confirmed with medical-record review. NAS noted that limitations of the AFHS studies include the potential for selection bias and the variation in the comparison group over examination cycles, but that selection bias is reduced, in part, by the relatively high participation rates across certain cycles. NAS stated that the Kang study is also consistent with three other Veteran studies—a 1996 study of Australian Veterans by O'Toole *et al.,* a 1988 study of American Legion Vietnam Veterans by Stellman *et al.,* and a 1988 Vietnam experience study (VES) by the Centers for Disease Control (CDC)—which NAS characterized as reporting "significant increases" in the incidence of hypertension. NAS noted, however, that only the Kang study controlled for potential confounding variables and used an index of herbicide-related exposure.

NAS noted that there was also evidence weighing against an association between herbicide exposure and hypertension. Specifically, NAS noted that the key Vietnam Veteran ACC study was not consistent with a previous study of herbicide factory workers exposed to TCDD that failed to identify a significant association between measured TCDD and hypertension after controlling for hypertension risk factors. NAS stated that "[t]he negative findings argue against an association between TCDD exposure and hypertension," although it noted some limitations in the study. Similarly, NAS noted that the ACC study was not consistent with another recent environmental study examining the prevalence of hypertension in relation to serum concentrations of PCDDs and PCDFs in persons residing near a municipal waste dump. NAS stated that this study "showed that serum concentrations of dioxin-like PCDDs and PCDFs are not associated with an increased incidence of hypertension when major risk factors are adjusted for," although NAS again noted certain limitations in the study. Accordingly, the report identifies significant evidence both for and against an association between herbicide exposure and hypertension.

We agree with NAS that the recent Kang study is a significant addition to the scientific literature concerning herbicide exposure and hypertension. However, we also note that a number of factors relating to that and other positive studies cited by NAS limit the strength of the evidence. The Kang study is limited in part because it is based on unconfirmed self-reports of hypertension diagnoses. In other reports provided to VA, NAS has noted the inherent limitations of studies based on self-reports. For example, in a 2007 study of health effects of deployment-related stress, NAS noted that some studies had found an increase in hypertension related to deployment but that "because most are based on self-reports, not much reliance can be placed on them." Institute of Medicine, *Gulf War and Health, Volume 6, Deployment-Related Stress and Health Outcomes,* at 193 (National Academies Press 2007).

In Update 2006, NAS noted that the potential bias of self-reports was tempered because people are more likely to accurately recall and report a chronic disease requiring continuous management, such as hypertension and diabetes, and because the researchers had verified the accuracy of 79 percent of the self-reported diagnoses of diabetes. The seemingly conflicting views concerning the reliability of self-reported hypertension present some difficulty in interpreting the evidence. We note that there is some reason to believe that the potential error rate in self-reported hypertension may be significant enough to impact the study's findings. In its 1994 report on Veterans and Agent Orange, NAS explained that in the CDC's 1988 VES study comparing hypertension incidence in Vietnam Veterans and non-deployed Vietnam-era Veterans "[a] significant difference in self-reported hypertension between the groups was reported," but that "there was no significant difference in hypertension measured as part of a physical examination in the study." Institute of Medicine, *Veterans and Agent Orange; Health Effects of*

Herbicides Used in Vietnam, at 702 (National Academies Press 1994).

As noted above, the Kang study did find that 79 percent of self-reported diabetes diagnoses were confirmed by medical record research, and it is reasonable to believe that a similar verification rate would exist for self-reported hypertension. That finding suggests that most self-reports are accurate, but also acknowledges a potentially significant margin of misreported diagnoses. The NAS report does not address the potential impact that such misreported diagnoses could have on the study.

We note also that the Kang study found no significant difference in hypertension between Veterans who served in Vietnam and non-deployed Vietnam era Veterans. This factor does not undermine the study's finding of an increased risk of hypertension in the most highly exposed group, although it might suggest that any association between herbicide exposure and hypertension would be limited to certain high levels of exposure.

The other Vietnam Veteran studies cited as consistent with the Kang study also have a number of limitations. As noted above, NAS noted that several cycles of the AFHS study have consistently reported an increase in the prevalence of hypertension with a doubling of serum dioxin concentration. However, the AFHS findings as reported in Update 2006 report increased risks that are relatively small and in most instances are not statistically significant. Although the consistent findings of increased risk may weigh in favor of an association, the low magnitude of the findings and the general lack of statistical significance may argue against an association or at least may be viewed as indeterminate.

NAS indicated that the CDC's 1988 VES study found a significant increase in the incidence of hypertension in Vietnam Veterans. As noted above, however, that finding existed only with respect to self-reported hypertension diagnoses, and was not supported by physical examinations. Accordingly, in another recent report, NAS characterized the CDC study as finding that the prevalence of hypertension was "not significantly higher" in Vietnam Veterans as compared to non-deployed Vietnam-era Veterans. Institute of Medicine, *Gulf War and Health, Volume 6, Deployment-Related Stress and Health Outcomes* at 185 (National Academies Press 2007).

NAS discussed the 1996 O'Toole study in *Veterans and Agent Orange: Update 1998.* The study involved a simple random sample of Australian Vietnam Veterans' self-reported health status information in relation to the Australian public. The study found a significant increase in self-reported hypertension among the Vietnam Veterans. Because the study was based on self-reports, it is subject to some of the same concerns discussed above in relation to the Kang study. More significantly, the results apparently do not control for confounding factors. In fact, the study found that the Veterans were significantly more likely than the control population to be current or former smokers and to report high alcohol consumption. The lack of controls for potentially significant risk factors known to exist in the study population significantly limits the weight of this study for present purposes.

NAS discussed the 1988 Stellman study in its 1994 *Veterans and Agent Orange* report. That study was also based on self-reports of hypertension diagnoses. The report found no significant differences in the prevalence of hypertension in Vietnam Veterans and non-deployed Vietnam-era Veterans. It did, however, find a significant increase in self-reported hypertension in Vietnam Veterans who handled herbicides as compared to Vietnam Veterans who did not. NAS noted that the conclusions to be drawn from the study are limited by the potential for misclassification of exposure and the lack of validation of self-reported diagnoses. As noted above, the potential for misreporting of hypertension diagnoses limits the strength of the reported data on association.

Further, in update 2006, NAS acknowledged that the CDC, O'Toole, and Stellman studies did not control for potentially confounding variables. These variables may include alcohol or tobacco use, body mass index or obesity, and type 2 diabetes. The failure to control for confounding factors renders it difficult to draw significant conclusions from the reported data. In Update 2006, for example, NAS noted that a 2006 environmental study by Chen *et al.* based on self-reported data initially found a more than five-fold increase in the risk of hypertension associated with elevated serum PCDD and PCDF concentrations in persons who lived near municipal-waste incinerators; however, when the results were controlled for age, sex, smoking status, and body mass index, the results showed that the study population actually had a decreased risk of hypertension.

NAS identified a number of studies finding no association between herbicide exposure and hypertension. Among Vietnam Veteran studies, a 2005 study by Ketchum and Michalek of mortality of Ranch Hand Veterans found no significant increase in mortality from hypertension. As noted above, although the CDC's 1988 Vietnam Experience Study found a significant increase in self-reports of hypertension, physical examinations did not show any differences in increased blood pressures, which argues against an association.

The two environmental studies cited by NAS showed no increased risk of hypertension. As noted above, the 2006 study by Chen *et al.* found that persons residing for at least 5 years near a municipal-waste incinerator and who had elevated serum PCDD and PCDF concentrations did not have any increased risk of hypertension. This study has the strength of controlling for confounding factors, although NAS noted a potential limitation in the lack of information on the criteria for diagnosing hypertension. A 2001 study by Bertazzi *et al.* of mortality among persons exposed to TCDD as the result of an accident in Seveso, Italy, found no increased mortality due to hypertension.

Occupational studies identified by NAS generally found no increased risk of hypertension in exposed populations. A 2005 study by 't Mannetje *et al.* of mortality rates among New Zealand workers exposed to phenoxy herbicides and dioxins found no increased mortality due to hypertension. A 1998 study by Calvert *et al.* of workers exposed at two U.S. herbicide factories did not find any significant increase in the risk of hypertension. This study controlled for risk factors and included exposure information based on serum TCDD levels, although NAS noted potential limitations in that some of the information on hypertension was based on self-reports and the overall response rate was low, which could contribute to selection bias. A 1984 study by Suskind and Hertzberg of circulatory disorders among workers at an herbicide production plant found no significant differences in rates of self-reported hypertension associated with exposure. A 2000 study by Kitamura *et al.* of workers at a municipal-waste incinerator found no significant increase in self-reported hypertension associated with elevated serum PCDD levels. Several other studies found no significant increase in circulatory disorders, including hypertension, in persons occupationally exposed to herbicides, but these studies are less helpful because they do not specifically isolate findings concerning hypertension.

The consistently negative findings in the occupational studies identified to date is of interest because, as NAS has noted (Update 2006 at 38), at least in studies of chemical-production workers, the magnitude and duration of exposures in occupational studies generally would be greater than in Vietnam Veteran studies. Accordingly, if the increase in self-reported hypertension observed in the recent Kang study is attributable to herbicide exposure, one would expect similar findings in occupational studies of herbicide-production workers.

In summary, the available occupational and environmental studies to date have consistently failed to detect a significant association between herbicide exposure and hypertension. The available Vietnam Veteran studies have produced a mixture of positive and negative findings, as well as findings that are essentially indeterminate in that they report low-magnitude increases that are not statistically significant. The primary evidence in favor of an association is the recent study by Kang *et al.* Other Vietnam Veteran studies reporting a significant increased risk of hypertension are limited primarily by concern of control for confounding factors. Viewing the evidence as a whole and taking into account the considerations discussed above, the Secretary has determined that the credible evidence for an association between hypertension and herbicide exposure is not equal to nor does it outweigh the credible evidence against an association. Therefore, he has determined that a positive association does not exist. In view of the suggestive findings in the recent Kang study, VA will continue to closely monitor further developments regarding the possible association between herbicide exposure and hypertension.

Circulatory Disorders

NAS found that circulatory diseases constitute a group of diverse conditions, of which hypertension (addressed above), coronary heart disease, and stroke are the most prevalent, that account for 75 percent of mortality from circulatory diseases in the United States. The major quantifiable risk factors for circulatory diseases are similar to those for hypertension and include age, race, smoking, serum cholesterol, BMI or percentage of body fat, and diabetes.

NAS found that reported results of new morbidity and mortality studies of the most highly exposed Vietnam-Veteran cohorts (ACC and Operation Ranch Hand) were not entirely consistent. NAS noted that ACC Veterans who sprayed Agent Orange reported a significant increase in the prevalence of heart disease, primarily ischemic heart disease, but that the AFHS did not find the prevalence of heart disease, myocardial infarction, or stroke to be significantly associated with either current or back-extrapolated serum TCDD concentrations in Ranch Hand Veterans. NAS stated that one study found a significant increase in mortality due to atherosclerotic heart disease in Ranch Hand ground crew personnel, but the increase in mortality from circulatory disease among all Ranch Hand Veterans based on back-extrapolated serum TCDD was not significant.

NAS also noted that several new occupational studies reported no significant increase in risk of circulatory disorders, including ischemic heart disease, associated with herbicide exposure; in fact, two new studies found that the risk of certain circulatory disorders was significantly lower in the exposed populations.

NAS noted that some previously reviewed studies of herbicide factory workers occupationally exposed to TCDD reported findings supporting an association between herbicide exposure and heart disease. Those findings came primarily from mortality studies in which the researchers did not have access to information concerning the impact of potentially confounding risk factors. NAS noted that, in the studies that did have information on potential confounders, the cardiovascular health endpoints were described imprecisely and did not clearly distinguish ischemic heart disease from other conditions. Viewing those prior studies in relation to the new findings from the studies of ACC and Ranch Hand Veterans, some members of the NAS committee felt that there was limited/suggestive evidence of an association between herbicide exposure and ischemic heart disease. Other members of the committee, however, felt that the lack of information on potential confounders limited the strength of many of the studies and that the evidence remained inadequate or insufficient to determine whether an association exists between herbicide exposure and ischemic heart disease. For all other types of circulatory disease, the committee agreed that the evidence is inadequate or insufficient to determine whether there is an association with exposure to the compounds of interest.

Upon consideration of Update 2006 and prior NAS reports, the Secretary in May 2008 determined that the then-existing credible evidence for an association between circulatory disorders and herbicide exposure was not equal to nor did it outweigh the credible evidence against an association. Therefore, he determined that a positive association was not established at that time. Although Update 2006 found some evidence supporting an association between herbicide exposure and ischemic heart disease, there was also significant evidence against an association, including several studies that found no significant increased risk of the disease and at least one that found a significantly decreased risk. Further, a number of the studies reporting a significant increase in mortality due to ischemic heart disease were unable to consider potential confounding factors, a concern that limits the strength of the reported data.

As stated previously, based upon the NAS report "Veterans and Agent Orange: Update 2008," the Secretary, on October 13, 2009, announced his decision to establish a presumption of service connection between exposure to herbicides and the subsequent development of hairy cell leukemia (HCL) and other chronic B cell leukemias, Parkinson's disease, and ischemic heart disease. See 75 FR 14391 (Mar. 25, 2010).

Endometriosis

In prior reports, NAS evaluated five studies relevant to endometriosis. It found that three environmental studies reported no increased incidence of endometriosis associated with herbicide exposure and that two case-control studies reported elevated odds ratios but had very wide confidence intervals that precluded statistical significance. In Update 2006, NAS identified two new environmental studies, both of which reported significant increases in the incidence of endometriosis in the populations exposed to dioxin-like PCBs. NAS noted, however, that one of the studies was limited because it was unable to differentiate the effects of the dioxin-like PCBs and non-dioxin-like PCBs to which the subjects were exposed.

On the basis of its evaluation of the evidence reviewed in Update 2006 and previous reports, NAS concluded that there is inadequate or insufficient evidence to determine whether there is an association between herbicide exposure and endometriosis.

Effects on Thyroid Homeostasis

NAS noted that numerous animal experiments and several epidemiologic studies have shown that TCDD and dioxin-like compounds appear to exert an influence on thyroid homeostasis. Specifically, those compounds may

affect the secretion of thyroid-stimulating hormone (TSH), which governs the function of the thyroid gland in secreting the hormones T3 and T4. In prior reports, NAS noted that several human studies observed an increase in TSH levels associated with TCDD exposure, but without a corresponding increase in T4 levels, suggesting that the human body was able to adapt to any effect on TSH production. In Update 2006, NAS noted that, in the newly identified studies of adults, there was lack of correlation between dioxin-like compounds and TSH concentrations. Likewise, NAS noted that, in the newly identified studies of changes in thyroid homeostasis in relation to fetal and infant development, there were not significant associations between magnitude of exposure to dioxin or dioxin-like compounds and measures of thyroid function. NAS concluded that the studies continue to suggest that people were able to adapt to changes in thyroid status that might have been induced by exposure to TCDD and other dioxin-like compounds.

NAS concluded that there is inadequate or insufficient evidence of an association between exposure to the compounds of interest and clinical or overt adverse effects on thyroid homeostasis. Although some effects have been observed in humans, the functional importance of the changes reported in the studies reviewed remains unclear, because adaptive capacity could be adequate to accommodate them.

AL Amyloidosis

In Update 2006, the NAS found there was limited or suggestive evidence of an association between herbicide exposure and AL amyloidosis. We are not addressing AL amyloidosis in this Notice because a presumption of service connection has been established for this disease. VA published a final rule providing a presumption of service connection for AL amyloidosis for any Veteran exposed in service to an herbicide agent who develops the disease at any time after separation from service in the **Federal Register** on May 7, 2009, at 74 FR 21258.

Conclusion

NAS reviewed scientific and medical articles published since the publication of its first report as an integral part of the process that resulted in "Veterans and Agent Orange: Update 2006." The comprehensive review and evaluation of the available literature that NAS conducted in conjunction with its report has permitted VA to identify all conditions for which the current body of knowledge supports a finding of a positive association with herbicide exposure. The Secretary's determinations regarding the diseases discussed in Update 2006 are based upon the NAS's identification and analysis of the relevant scientific and medical literature in Update 2006, as summarized above, and the additional analyses set forth in this notice, viewed in relation to prior relevant NAS reports and VA's prior notices addressing these matters.

Taking account of the available evidence and NAS's analysis, the Secretary in May 2008 found that the evidence and analysis available to VA at that time did not warrant a presumption of service connection for cancers of the oral cavity (including lips and tongue), pharynx (including tonsils), or nasal cavity (including ears and sinuses); cancers of the pleura, mediastinum, and other unspecified sites within the respiratory system and intrathoracic organs; esophageal cancer; stomach cancer; colorectal cancer (including small intestine and anus); hepatobiliary cancers (liver, gallbladder, and bile ducts); pancreatic cancer; bone and joint cancer; melanoma; non-melanoma skin cancer (basal cell and squamous cell); breast cancer; cancers of reproductive organs (cervix, uterus, ovary, testes, and penis; excluding prostate); urinary bladder cancer; renal cancer; cancers of brain and nervous system (including eye); endocrine cancers (thyroid, thymus, and other endocrine); leukemia (other than CLL); cancers at other and unspecified sites; neurobehavioral disorders (cognitive and neuropsychiatric); movement disorders (including Parkinson's disease and ALS); chronic peripheral nervous system disorders; respiratory disorders; gastrointestinal, metabolic, and digestive disorders (changes in liver enzymes, lipid abnormalities and ulcers); immune system disorders (immune suppression, allergy and autoimmunity); ischemic heart disease; circulatory disorders (including hypertension); endometriosis; effects on thyroid homeostasis; certain reproductive effects, *i.e.,* infertility, spontaneous abortion, neonatal or infant death and stillbirth in offspring of exposed people, low birth weight in offspring of exposed people, birth defects (other than spina bifida) in offspring of exposed people, childhood cancer (including acute myelogenous leukemia) in offspring of exposed people; and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted. That determination was based on a finding that the then-existing credible evidence against an association between herbicide exposure and the cited conditions outweighed the credible evidence for such an association and that a positive association therefore did not exist.

Approved: May 28, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2010–13653 Filed 6–7–10; 8:45 am]

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Federal Register

Tuesday,
June 8, 2010

Part II

Securities and Exchange Commission

17 CFR Part 242
Consolidated Audit Trail; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–62174; File No. S7–11–10]

RIN 3235–AK51

Consolidated Audit Trail

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing new Rule 613 under Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 ("Exchange Act") that would require national securities exchanges and national securities associations ("self-regulatory organizations" or "SROs") to act jointly in developing a national market system ("NMS") plan to develop, implement, and maintain a consolidated order tracking system, or consolidated audit trail, with respect to the trading of NMS securities.

The Commission preliminarily believes that with today's electronic, interconnected markets, there is a heightened need for regulators to have efficient access to a more robust and effective cross-market order and execution tracking system. Currently, many of the national securities exchanges and the Financial Industry Regulatory Authority, Inc. ("FINRA") have audit trail rules and systems to track information relating to orders received and executed, or otherwise handled, in their respective markets. While the information gathered from these audit trail systems aids the SRO and Commission staff in their regulatory responsibility to surveil for compliance with SRO rules and the federal securities laws and regulations, the Commission preliminarily believes that existing audit trails are limited in their scope and effectiveness in varying ways. In addition, while the SRO and Commission staff also currently receive information about orders or trades through the electronic bluesheet ("EBS") system, Rule 17a–25 under the Exchange Act,[1] or from equity cleared reports, the information is limited, to varying degrees, in detail and scope.

A consolidated audit trail would significantly aid in SRO efforts to detect and deter fraudulent and manipulative acts and practices in the marketplace, and generally to regulate their markets and members. In addition, such an audit trail would benefit the Commission in its market analysis efforts, such as investigating and preparing market reconstructions and understanding causes of unusual market activity. Further, timely pursuit of potential violations can be important in seeking to freeze and recover any profits received from illegal activity.

DATES: Comments should be received on or before August 9, 2010.

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. S7–11–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

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

All submissions should refer to File No. S7–11–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Rebekah Liu, Special Counsel, at (202) 551–5665; Jennifer Colihan, Special Counsel, at (202) 551–5642, or Leigh W. Duffy, Attorney-Adviser, at (202) 551–5928, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

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I. Background

The U.S. securities markets have undergone a significant transformation over the last few decades, and particularly in the last few years. Regulatory changes and technological advances have contributed to a tremendous growth in trading volume and the further distribution of order flow across multiple trading centers. Today's markets are widely dispersed, with securities often trading on multiple markets, including over-the-counter ("OTC"). Additionally, products that are closely related in nature and objective are also traded on different markets. For example, various markets trade either options on the S&P 500 index,[2] futures on the S&P 500 index,[3] exchange traded funds ("ETFs") based on the S&P 500 index,[4] and options and futures on those ETFs.[5] This dispersion of significant trading volume has led the Commission in the past to ask for comment on how best to enhance the capability of SROs and the Commission to effectively and efficiently conduct cross-market supervision of trading activity.[6]

The individual SROs are responsible for regulating their markets and their members.[7] Further, the Commission has responsibilities to oversee the SROs, the securities markets, and registered broker-dealers, and routinely conducts examinations of or investigations into trading activity as part of its oversight and enforcement programs.[8] The SROs and the Commission need tools to

[1] 17 CFR 240.17a–25.

[2] The Chicago Board Options Exchange, Incorporated ("CBOE") lists options on the S&P 500 Index (SPX) and on the Mini-S&P 500 Index (XSP) (1/10th the value of the S&P 500 Index).

[3] For example, the Chicago Mercantile Exchange Inc. ("CME") offers S&P 500 futures and "E-Mini" futures on the S&P 500 Index ($50 × S&P 500 Index price).

[4] For example, NYSE Arca, Inc. ("NYSE Arca") lists an ETF based on the S&P 500 SPDR (SPY) and the iShares S&P 500 Index Fund (IVV).

[5] For example, OneChicago, LLC lists futures on the SPY, and CBOE lists options on the iShares S&P 500 Value Index Fund.

[6] *See infra* Section I.G. (discussing past Commission requests for comment on regulation of intermarket trading).

[7] *See, e.g.,* Sections 6(b)(1), 15A(b)(2), and 19(g) of the Exchange Act, 15 U.S.C. 78f(b)(1), 15 U.S.C. 78o–3(b)(2), and 15 U.S.C. 78s(g).

[8] *See, e.g.,* Sections 2, 6(b)(1), 10, 15(b)(4)(D) and (E), and 19(h) of the Exchange Act, 15 U.S.C. 78b, 15 U.S.C. 78f(b)(1), 15 U.S.C. 78j, 15 U.S.C. 78o(b)(4)(D) and (E), and 15 U.S.C. 78s(h).

effectively carry out these responsibilities even when trading occurs on multiple markets. For example, it is important that the SRO and Commission staff have order and trade data sufficient to monitor cross-market trading activity, assist with investigations of potential violations of federal securities laws and exchange rules, and perform market reconstructions or other analysis necessary to understand trading activity.[9] Such information also is important to the Commission in carrying out its oversight responsibilities.

The SROs' staff currently uses both EBS [10] and SRO audit trail data to help fulfill their regulatory obligations.[11] Commission staff also uses this data to perform its regulatory oversight obligations. The Commission and SROs have depended on the bluesheet system for decades to request trading records from broker-dealers needed for regulatory inquiries. Most SROs also maintain their own specific audit trail requirements applicable to their members. As discussed more fully below, for example, the National Association of Securities Dealers ("NASD") [12] established the Order Audit Trail System ("OATS") [13] in 1996, and the New York Stock Exchange ("NYSE") implemented its Order Tracking System ("OTS") [14] in 1999. Beginning in 2000, several of the current options exchanges implemented the Consolidated Options Audit Trail System ("COATS").[15]

Currently, there is significant disparity in the audit trail requirements among the exchanges and FINRA, especially with respect to the information captured by each.[16] Further, the information for each must be provided in different formats. The differences result in inconsistent requirements imposed on exchange and FINRA members, and also make it difficult to view trading activity across multiple markets. The lack of uniformity in, and cross-market compatibility of, SRO audit trails can make detection of illegal trading activity carried out across multiple markets and multiple products more difficult. The Commission has voiced concern about the lack of uniformity in, and cross-market compatibility of, the audit trails in the past.[17] The Commission preliminarily believes that these differences may hinder the ability of the SROs and the Commission to effectively view and regulate trading activity across markets.

Further, risks imposed on the markets by violative conduct can be substantially increased by automated trading, as market participants have the ability to trade numerous products and enormous volume in mere seconds. As trading venues have become more automated, and trading systems have become computerized, trading volumes have increased significantly,[18] and trading has become more dispersed across more trading centers and therefore more difficult to monitor and trace.[19] The Commission is concerned that current audit trail requirements are insufficient to capture in a timely manner all of the information necessary to efficiently and effectively monitor trading activity in today's highly automated and dispersed markets. The Commission also is concerned that the current lack of cohesive, readily available order and execution information impacts the ability of the SROs and the Commission staff to effectively perform their respective regulatory and oversight responsibilities with respect to trading activity by market participants across markets and products.

A. Electronic Bluesheets and Rule 17a–25

The Commission and the SROs frequently request bluesheets from broker-dealers to aid in investigations of possible Federal securities law violations and to create market reconstructions.[20] Until the late 1980s, bluesheets consisted of questionnaire forms that Commission and SRO regulatory staff mailed to firms to be manually completed and returned.[21] Obtaining bluesheets in this manner was particularly onerous as there were substantial delays in the production and receipt of the requested information. Additionally, the data was submitted in a variety of formats, making analysis time-consuming, and requests could result in vast amounts of information requiring lengthy manual examination.[22]

In the late 1980s, as the volume of trading and securities transactions

[9] As discussed below in Sections II and III, the Commission preliminarily believes that the proposal would improve the ability of regulators to conduct timely and accurate trading analyses for market reconstructions and complex investigations, as well as inspections and examinations. Indeed, the Commission believes that the proposed consolidated audit trail, if implemented, would have significantly enhanced the Commission's ability to quickly reconstruct and analyze the severe market disruption that occurred on May 6, 2010. If approved and implemented, the proposal also would enhance the Commission's ability to similarly respond to future severe market events.

[10] Bluesheets are trading records requested by the Commission and SROs from broker-dealers that are used in regulatory investigations to identify buyers and sellers of specific securities.

[11] The Commission recently published for comment a proposal to establish a large trader reporting system. *See* Securities Exchange Act Release No. 61908 (April 14, 2010), 75 FR 21456 (April 23, 2010) ("Large Trader Proposal"). Under that proposal, large traders would be issued unique identifiers that they would be required to provide to the broker-dealers that execute transactions on their behalf, and the broker-dealers would be required to maintain, and provide to the Commission upon request, transaction records for each large trader customer. The large trader proposal is designed to address in the near term the Commission's current need for access to more information about large traders and their activities. As discussed below, the Commission anticipates that the proposed consolidated audit trail discussed in this release, which is much broader in scope, would take a significant amount of time to fully implement. This proposal would require that, if the Large Trader proposal is adopted, the large trader identification number be reported to the central repository as part of the identifying customer information. *See* proposed Rule 613(j)(2).

[12] In 2007, the NASD and the member-related functions of NYSE Regulation, Inc., the regulatory subsidiary of the New York Stock Exchange LLC ("NYSE"), were consolidated. As part of this regulatory consolidation, the NASD changed its name to FINRA. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007). FINRA and the National Futures Association ("NFA") are currently the only national securities associations registered with the Commission; however, the NFA has a limited purpose registration with the Commission under Section 15A(k) of the Exchange Act, 15 U.S.C. 78o–3(k). *See also* Securities Exchange Act Release No. 44823 (September 20, 2001), 66 FR 49439 (September 27, 2001).

[13] *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998) (order approving proposed rules comprising OATS) ("OATS Approval Order").

[14] *See* Securities Exchange Act Release No. 47689 (April 17, 2003), 68 FR 20200 (April 24, 2003) (order approving proposed rule change by NYSE relating to order tracking) ("OTS Approval Order").

[15] *See* In the Matter of Certain Activities of Options Exchanges, Administrative Proceeding File No. 3–10282, Securities Exchange Act Release No. 43268 (September 11, 2000) (Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions) ("Options Settlement Order"). *See also, e.g.,* Securities Exchange Act Release No. 50996 (January 7, 2005), 70 FR 2436 (order approving proposed rule change by CBOE relating to Phase V of COATS).

[16] *See infra* Sections I.C, I.D, I.E, and I.F.

[17] *See infra* Section I.G.

[18] For example, consolidated average daily share volume and trades in NYSE-listed stocks increased from just 2.1 billion shares and 2.9 million trades in January 2005, to 5.9 billion shares (an increase of 181%) and 22.1 million trades (an increase of 662%) in September 2009. *See* Large Trader Proposal, *supra* note 11, at 21456.

[19] *See, e.g.,* Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) ("Concept Release on Equity Market Structure") at 3594–3596.

[20] *See* Securities Exchange Act Release No. 44494 (June 29, 2001), 66 FR 35836 (July 9, 2001) (File No. S7–12–00) ("Rule 17a–25 Adopting Release"), at 35836.

[21] *Id.*

[22] *See* Securities Exchange Act Release No. 25859 (June 27, 1988), 53 FR 25029 (July 1, 1988) (approving both the NYSE and the American Stock Exchange's ("Amex") rules for the electronic submission of transaction information).

dramatically increased, the manual bluesheet system was replaced by the EBS system.[23] The EBS system allows broker-dealers to electronically submit the requested information in a specific format and transmit it to the Securities Industry Automation Corporation ("SIAC").[24] SIAC then routes the information to the Commission or to an SRO as applicable.

The EBS system, supplemented by the requirements of Rule 17a–25 under the Exchange Act,[25] currently is used by Commission and SRO regulatory staff primarily to assist the staff in the investigation of possible federal securities law violations primarily involving insider trading and other market manipulations, and to conduct market reconstructions, especially following periods of significant market volatility.[26] In its electronic format, the EBS system provides detailed execution information upon request by the Commission and the SROs' staff for specific securities during specified time frames.[27] However, because the EBS system is designed for use in narrowly-focused enforcement investigations that generally involve trading in particular securities, it is less useful for large-scale market reconstructions and analyses involving numerous stocks during peak trading volume periods.[28]

In 2000, the Commission proposed Rule 17a–25 under the Exchange Act to supplement the existing EBS system with data elements incorporating institutional and professional trading strategies, to assist regulatory staff in reviewing and analyzing EBS data.[29] Adopted in June 2001,[30] the rule codified the requirement that broker-dealers submit to the Commission, upon request, information on their customer and proprietary securities transactions in an electronic format.[31] Rule 17a–25 requires submission of the same standard customer and proprietary transaction information that SROs request through the EBS system in connection with their market surveillance and enforcement inquiries.[32]

Specifically, for a proprietary transaction, Rule 17a–25 requires a broker-dealer to provide the following information electronically upon request: (1) Clearing house number or alpha symbol used by the broker-dealer submitting the information; (2) clearing house number(s) or alpha symbol(s) of the broker-dealer(s) on the opposite side to the trade; (3) security identifier; (4) execution date; (5) quantity executed; (6) transaction price; (7) account number; (8) identity of the exchange or market where the transaction was executed; (9) prime broker identifier; (10) average price account identifier; and (11) the identifier assigned to the account by a depository institution.[33] For customer transactions, the broker-dealer also is required to include the customer's name, customer's address, the customer's tax identification number, and other related account information.[34] The new data elements added by Rule 17a–25—prime broker identifiers, average price account identifiers, and depository institution account identifiers—assist the Commission in aggregating, without double-counting, securities transactions by entities trading through multiple accounts at more than one broker-dealer.[35]

B. Equity Cleared Reports

In addition to the EBS system and Rule 17a–25, the Commission also relies upon the National Securities Clearing Corporation's ("NSCC") [36] equity cleared report for initial regulatory inquiries.[37] This report is generated on a daily basis by the SROs and is provided to the NSCC, in a database accessible by the Commission, and shows the number of trades and daily volume of all equity securities in which transactions took place, sorted by clearing member. The information provided is end of day data and is searchable by security name and CUSIP number.[38] Since the information made available on the report is limited to the date, the clearing firm, and the number of transactions cleared by each clearing firm on each SRO, it basically serves as a starting point for an investigation, providing a tool the Commission can use to narrow down which clearing firms to contact concerning a transaction in a certain security.

C. FINRA's Order Audit Trail System

In 1996, the Commission instituted public administrative proceedings against the NASD, alleging that it failed to enforce and investigate potential misconduct by its members.[39] In settling the Commission's enforcement action, the NASD was ordered to design and implement an audit trail to enable it to reconstruct its markets promptly and effectively surveil them.[40] The Commission mandated that the audit trail at a minimum: (1) Provide an accurate time-sequenced record of orders and transactions, beginning with

[23] *See* Rule 17a–25 Adopting Release, *supra* note 20, at 3–4. *See also, e.g., id.* and Securities Exchange Act Release Nos. 26235 (November 1, 1988), 53 FR 44688 (November 4, 1988) (approving the CBOE rule for the electronic submission of transaction information); 26539 (February 13, 1989), 54 FR 7318 (February 17, 1989) (approving the NASD's rule for the electronic submission of transaction information); and 27170 (August 23, 1989), 54 FR 37066 (September 6, 1989) (approving the Philadelphia Stock Exchange's rule for the electronic submission of transaction information).

[24] *See* Rule 17a–25 Adopting Release, *supra* note 20, at 35836. SIAC is a subsidiary of NYSE Euronext and serves as the securities information processor of the Consolidated Tape Plan ("CTA Plan"), which governs the dissemination of trade information; the Consolidated Quotation Plan ("CQ Plan"), which governs the dissemination of quotation information; and the Options Price Reporting Authority Plan ("OPRA Plan"), which governs the dissemination of trade and quotation information for listed options. In this capacity, it provides real time quotation and transaction information to market participants.

[25] 17 CFR 240.17a–25.

[26] *See* Rule 17a–25 Adopting Release, *supra* note 20, at 35836.

[27] EBS data does not, however, include the time of execution, and often does not include the identity of the beneficial owner. *See infra* note 147.

[28] A 1990 Senate Report acknowledged the immense value of the EBS system, but noted that "it is designed for use in more narrowly focused enforcement investigations that generally relate to trading in individual securities. It is not designed for use for multiple inquiries that are essential for trading reconstruction purposes." *See* S. Rep. No. 300, 101st Cong., 2d Sess. 2–5 (1990), at 48.

[29] *See* Securities Exchange Act Release No. 42741 (May 2, 2000), 65 FR 26534 (May 8, 2000) ("Rule 17a–25 Proposing Release").

[30] *See* Rule 17a–25 Adopting Release, *supra* note 20.

[31] *Id.* at 35836, and 17 CFR 240.17a–25.

[32] *See e.g.* NYSE Rule 410A and FINRA Rule 8211.

[33] *See* Rule 17a–25(a)(1) and Rule 17a–25(b)(1)–(3), 17 CFR 240.17a–25(a)(1) and 17 CFR 240.17a–25(b)(1)–(3).

[34] *See* Rule 17a–25(a)(2), 17 CFR 240.17a–25(a)(2). Rule 17a–25 also requires broker-dealers to submit, and keep current, contact person information for requests under the rule. This provision was designed to ensure that the Commission could effectively direct its data requests to broker-dealers. *See* Rule 17a–25 Proposing Release, *supra* note 29, at 26537.

[35] This information was deemed especially necessary for the creation of massive market reconstructions performed by Commission staff. *See* Rule 17a–25 Adopting Release, *supra* note 20, at 35836.

[36] NSCC is a subsidiary of the Deposit Trust and Clearing Corporation and provides centralized clearing information and settlement services to broker-dealers for trades involving equities, corporate and municipal debt, American depository receipts, exchange traded funds, and unit investment trusts.

[37] The Commission also uses the Options Cleared Report, with data supplied by the Options Clearing Corporation ("OCC"), for analysis of trading in listed options. OCC is an equity derivatives clearing organization that is registered as a clearing agency under Section 17A of the Exchange Act and operates under the jurisdiction of both the Commission and the Commodities Futures Trading Commission ("CFTC").

[38] A CUSIP number is a unique alphanumeric identifier assigned to a security and is used to facilitate the clearance and settlement of trades in the security.

[39] *See* In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3–9056, Securities Exchange Act Release No. 37538 (August 8, 1996) (Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions).

[40] *Id.* at 11–12.

the receipt of an order at the first point of contact between the broker-dealer and the customer or counterparty, and further documenting the life of the order through the process including execution, modification and cancellation; and (2) provide for market-wide synchronization of clocks used in connection with the new audit trail system.[41] In response to the order, the NASD created OATS.[42]

Currently, OATS is used to capture order information reported by FINRA members in equity securities listed on the Nasdaq Stock Market, Inc. ("Nasdaq") and OTC equity securities.[43] OATS requires reporting members [44] to record and report to FINRA [45] detailed information covering the receipt and origination of an order,[46] order terms, transmission, and modification, cancellation and execution.[47] Specifically, for each of these stages in the life of an order, FINRA Rule 7440 requires the recording and reporting of the following information, as applicable, including but not limited to:

- For the receipt or origination of the order,[48] the date and time the order was first originated or received by the reporting member; a unique order identifier; the market participant symbol of the receiving reporting member; and the material terms of the order;[49]
- For the internal or external routing of an order, the unique order identifier; the market participant symbol of the member to which the order was transmitted; the identification and nature of the department to which the order was transmitted if transmitted internally; the date and time the order was received by the market participant or department to which the order was transmitted; the material terms of the order as transmitted; [50] the date and time the order is transmitted; and the market participant symbol of the member who transmitted the order;
- For the modification or cancellation of an order, a new unique order identifier; original unique order identifier; the date and time a modification or cancellation was originated or received; and the date and time the order was first received or originated; [51] and
- For the execution of an order, in whole or in part, the unique order identifier; the designation of the order as fully or partially executed; the number of shares to which a partial execution applies and the number of unexecuted shares remaining; the date and time of execution; the execution price; the capacity in which the member executed the transaction; the identification of the market where the trade was reported; and the date and time the order was originally received.[52] FINRA uses this information to recreate daily market activity for FINRA's market surveillance activities.[53]

D. NYSE's Order Tracking System

The Commission instituted public administrative proceedings against the NYSE in 1999, alleging that the exchange had failed to detect violations of federal securities laws and its own rules by its independent floor broker members, failed to police for performance-based compensation arrangements involving these members, and failed to adequately surveil them.[54] In settling the Commission's enforcement action, the NYSE was ordered to continue its development of an electronic floor system for the entry of order details prior to representation on the exchange floor, as well as to design and implement an audit trail to enable it to effectively surveil and reconstruct its market promptly, and facilitate the NYSE's effective enforcement of the federal securities laws and exchange rules.[55] Like OATS, this audit trail was required to provide an accurate, time-sequenced record of orders, quotations and transactions, documenting the life of an order from receipt through execution or cancellation. The NYSE also was required to provide for synchronization of all clocks used in connection with the audit trail.[56]

In response to the Commission's order, the NYSE created OTS.[57] OTS currently is used for the provision of audit trail data for orders [58] in NYSE

[41] *Id.*

[42] *See* FINRA Rules 7400 to 7470. *See also* OATS Approval Order, *supra* note 13.

[43] FINRA defines an OTC equity security as any equity security that (1) is not listed on a national securities exchange, or (2) is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape. *See* FINRA Rule 7410(l).

[44] A reporting member is a member that receives or originates an order and has an obligation to record and report information under FINRA Rules 7440 and 7450. A member shall not be considered a reporting member in connection with an order if the following conditions are met: (1) The member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single reporting member; (2) the member does not direct and does not maintain control over subsequent routing or execution by the receiving reporting member; (3) the receiving reporting member records and reports all information required under FINRA Rules 7440 and 7450 with respect to the order; and (4) the member has a written agreement with the receiving reporting member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rule 7440 and 7450. *See* FINRA Rule 7410(o).

[45] Each reporting member must record each item of information required by OATS in electronic form by the end of each business day. *See* FINRA Rule 7440(a)(3). Reporting members must transmit to OATS a report of order information whenever an order is originated, received, transmitted to another department within the member or to another member, modified, canceled, or executed. Each report shall be transmitted on the day such event occurred if the information is available that day. Order information reports may be aggregated into one or more transmissions. *See* FINRA Rule 7450(b)(2).

[46] OATS recording and reporting requirements apply to any oral, written, or electronic instruction to effect a transaction in an equity security listed on the Nasdaq Stock Market or an OTC equity security that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities. *See* FINRA Rule 7410(j).

[47] *See* FINRA Rules 7440 and 7450.

[48] FINRA Rule 7440 also requires reporting of the account type; the identification of the department or terminal where an order is received from a customer; the identification of the department or terminal where an order is originated by a reporting member; and the identification of a reporting agent if the agent has agreed to take on the responsibilities of a reporting member under Rule 7450. *See* FINRA Rule 7440(b).

[49] The specific information required to be reported includes: The number of shares; designation as a buy or sell or short sale; designation of the order as market, limit, stop, or stop limit; limit or stop price; date on which the order expires and if the time in force is less than one day, the time when the order expires; the time limit during which the order is in force; any request by a customer that an order not be displayed, or that a block size be displayed, pursuant to Rule 604(b) of Regulation NMS; any special handling requests; and identification of the order as related to a program trade or index arbitrage trade. *See* FINRA Rule 7440(b).

[50] The specific information required includes the number of shares to which the transmission applies, and whether the order is an intermarket sweep order. *See* FINRA Rule 7440(c).

[51] For cancellations or modification, the following information also is required: If the open balance of an order is canceled after a partial execution, the number of shares canceled; and whether the order was canceled on the instruction of a customer or the reporting member. *See* FINRA Rule 7440(d).

[52] For executions, the reporting member also must report its market participant symbol; its number assigned for purposes of identifying transaction data; and the identification number of the terminal where the order was executed. *See* FINRA Rule 7440(d).

[53] *See* OATS Reporting Technical Specifications, January 5, 2010, *available at http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p120686.pdf.*

[54] *See* In the Matter of New York Stock Exchange, Inc., Administrative Proceeding File No. 3–9925, Securities Exchange Act Release No. 41574 (June 29, 1999) (Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Ordering Compliance with Undertakings), at 4–5.

[55] *Id.* at 28–29.

[56] *Id.*

[57] *See* NYSE Rule 132B, and OTS Approval Order, *supra* note 14.

[58] OTS is applicable to all orders in NYSE-listed securities, regardless of account type (firm or customer). *See* NYSE Rule 132B(a)(1).

and NYSE Amex-listed cash equity securities by NYSE and NYSE Amex members, including for orders in NYSE or NYSE Amex-listed cash equity securities initiated by a NYSE or NYSE Amex member or routed by a NYSE or NYSE Amex member to another market center for execution.[59] OTS is similar in scope to OATS, as detailed information is required to be recorded for the stages of an order's life, from origination and receipt and transmittal, through order modification, cancellation, and/or execution.[60] Specifically, for each of these stages in the life of an order, OTS requires the recording of the following information, as applicable, including but not limited to:

- For order receipt or origination,[61] the date and time the order is originated or received by a member or member organization; a unique order identifier; market participant symbol; and the material terms of the order;[62]
- For the internal or external routing of an order, the unique order identifier; the identification of the department to which an order was transmitted if transmitted internally; the date and time the order was received by the department receiving a transmitted order; the market participant symbol assigned to the member or member organization receiving the transmitted order or notation that the order was transmitted to a non-member;[63] the material terms of the order as transmitted;[64] and the date and time the order is transmitted; and
- For the modification or cancellation of an order, a new unique order identifier; the original unique order identifier; and the date and time a modification or cancellation was originated or received.[65]

Additionally, the NYSE and NYSE Amex require the recording of detailed information concerning the receipt, cancellation or execution of orders in NYSE and NYSE Amex-listed cash equity securities originated on or transmitted to the exchange floor.[66] Immediately following receipt of an order on the floor, the member receiving the order must record the following information: (1) The material terms of the order;[67] (2) a unique order identifier; (3) the clearing member organization and the identification of the member or member organization recording order details;[68] and (4) modification of terms of the order or cancellation of the order.[69]

Further, once an order is executed, the following information must be recorded: (1) The material terms of the execution;[70] (2) the unique order identifier; (3) the identity of the firms involved in the execution;[71] and (4) certain other information related to the execution.[72]

E. Consolidated Options Audit Trail System

In September 2000, the Commission instituted public administrative proceedings against Amex,[73] CBOE, the Pacific Exchange,[74] and the Philadelphia Stock Exchange[75] for failing to uphold their obligations to enforce compliance with exchange rules and the federal securities laws, including those relating to reporting. Specifically, the Commission alleged that they had either conducted no

[59] *See* Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008). NYSE Alternext adopted NYSE Rules 1–1004 as the NYSE Alternext Equities Rules to govern all cash equities trading on the NYSE Alternext Trading Systems and NYSE Alternext Bonds. In March 2009, NYSE Alternext changed its name to NYSE Amex LLC ("NYSE Amex") (the successor to Amex, *see infra* note 73). *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009).

[60] *See* NYSE Rule 132B and NYSE Amex Equities Rule 132B. Each member or member organization shall, by the end of each business day, record each item of information required to be recorded under the rule in such electronic form as is prescribed by the NYSE (or NYSE Amex) from time to time. *See* NYSE Rule 132B(a)(3) and NYSE Amex Equities Rule 132B(a)(3). Members and member organizations shall be required to transmit to the NYSE or NYSE Amex, in such format as the applicable exchange may from time to time prescribe, such order tracking information as the exchange may request. *See* NYSE Rule 132C and NYSE Amex Equities Rule 132C.

[61] Members are also required to report: The identification of the department or terminal where an order is received directly from a customer; and where the order is originated by a member or member organization, the identification of the department (if appropriate) of the member that originated the order. *See* NYSE Rule 132B(b) and NYSE Amex Equities Rule 132B(b).

[62] The specific information required to be reported includes: Number of shares; designation of the order as a buy or sell; designation of the order as a short sale; designation of the order as a market order, limit order, auction market order, stop order, auction stop order, or ISO; security symbol; limit or stop price; type of account; the date on which the order expires, and, if the time in force is less than one day, the time when the order expires; the time limit during which the order is in force; any request by a customer that an order not be displayed pursuant to Rule 604(c) under the Exchange Act; and special handling requests. *See* NYSE Rule 132B(b) and NYSE Amex Equities Rule 132B(b).

[63] The information required to be reported also includes whether the order was transmitted and received manually or electronically; the date the order was first originated or received by the transmitting member or member organization; and, for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order. *See* NYSE Rule 132B(c) and NYSE Amex Equities Rule 132B(c).

[64] The information required to be reported includes the number of shares to which the transmission applies. *See* NYSE Rule 132B(c) and NYSE Amex Equities Rule 132B(c).

[65] For cancellations or modifications, the following information also is required: The order identifier assigned to the order prior to modification; if the open balance of an order is canceled after a partial execution, the number of shares canceled; and whether the order was canceled on the instruction of a customer or the member or member organization. *See* NYSE Rule 132B(d) and NYSE Amex Equities Rule 132B(d).

[66] *See* NYSE Rule 123 and NYSE Amex Equities Rule 123, each of which require, among other things, a record of the cancellation of an order, which must include the time the cancellation was entered, and a record of the receipt of an execution report, which must include the time of receipt of the report.

[67] The specific information required includes the security symbol; quantity; side of the market; whether the order is a market, auction market, limit, stop, or auction limit order; any limit or stop price, discretionary price range, discretionary volume range, discretionary quote price, pegging ceiling price, pegging floor price and/or whether discretionary instructions are active in connection with interest displayed by other market centers; time in force; designation as held or not held; and any special conditions. *See* NYSE Rule 123(e) and NYSE Amex Equities Rule 123(e).

[68] The required information also includes the system-generated time of recording order details. *See* NYSE Rule 123(e) and NYSE Amex Equities Rule 123(e).

[69] *See* NYSE Rule 123(e) and NYSE Amex Equities Rule 123(e).

[70] The specific information required includes security symbol; quantity; transaction price; and execution time. *See* NYSE Rule 123(f) and NYSE Amex Equities Rule 123(f).

[71] The specific information required includes the executing broker badge number or alpha symbol; the contra side executing broker badge number or alpha symbol; the clearing firm number or alpha; and the contra side clearing firm number or alpha. *See* NYSE Rule 123(f) and NYSE Amex Equities Rule 123(f).

[72] The required information includes whether the account for which the order was executed was that of a member or member organization or non-member or non-member organization; the identification of member or member organization which recorded order details; the date the order was entered into an exchange system; an indication as to whether this is a modification to a previously submitted report; settlement instructions; special trade indication (if applicable); and the Online Comparison System control number. *See* NYSE Rule 123(f) and NYSE Amex Equities Rule 123(f).

[73] Amex was acquired by NYSE Euronext on October 1, 2008. Initially, the successor entity to Amex was established as NYSE Alternext U.S. LLC, but the name was changed in 2009 to NYSE Amex. *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009).

[74] In 2001, the Archipelago Exchange LLC ("ArcaEx") was established as an electronic trading facility for Pacific Exchange's subsidiary PCX Equities, Inc. ("PCX Equities"). *See* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001). In 2005, Archipelago Holdings, Inc., the parent company of ArcaEx, acquired PCX Holdings, Inc., which included subsidiaries Pacific Exchange (PCX) and PCX Equities. *See* Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949 (September 29, 2005). The NYSE merged with Archipelago Holdings in 2006. *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006). NYSE Arca is the successor to PCX.

[75] The Philadelphia Stock Exchange was acquired by The NASDAQ OMX Group, Inc. in 2008, and is now called NASDAQ OMX Phlx ("Phlx"). *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008).

automated surveillance, or inadequate automated surveillance, of trade reporting and consequently failed to adequately detect noncompliance with their rules.[76] In settling the Commission's enforcement action, the exchanges were required to jointly design and implement COATS to enable them to reconstruct markets promptly, surveil them, and enforce compliance with trade reporting, firm quote, order handling, and other rules.[77] The exchanges were required to complete this undertaking in five phases.[78]

In particular, each exchange was required to achieve the following through its audit trail: (1) Synchronize trading and support system clocks with all other options exchanges; (2) design and implement a method to merge all options exchanges' reported and matched transaction data on a daily basis in a common computer format; (3) incorporate its quotations and the national best bid and offer as displayed in its market with the merged transaction data so that it could be promptly retrieved and merged in the common computer format with other options exchanges' merged transactions and quotation data; (4) design and implement an audit trail readily retrievable (in the common computer format) providing an accurate, time-sequenced record of electronic orders, quotations and transactions on such exchange, beginning with the receipt of an electronic order, and further documenting the life of the order through the process of execution, partial execution, or cancellation; (5) incorporate into the audit trail all non-electronic orders so that such orders were also subject to the audit trail requirements for electronic orders; and (6) design effective surveillance systems to use this newly available data to enforce the Federal securities laws and the exchange's rules.[79]

The exchanges subject to the Options Settlement Order fully implemented the requirements in 2005. In addition, the International Securities Exchange, LLC ("ISE"), Boston Options Exchange Group, LLC ("BOX"), the Nasdaq Options Market ("NOM"), and BATS Options Exchange Market ("BATS Options") also comply with the COATS requirements.[80]

A majority of options exchanges require their members to provide the following information with respect to orders entered onto their exchange: (1) The material terms of the order;[81] (2) order receipt time;[82] (3) account type; (4) the time a modification is received; (5) the time a cancellation is received; (6) execution time; and (7) the clearing member identifier of the parties to the transaction.[83]

F. Other Audit Trail Requirements

SRO audit trail rules regarding information on orders for NMS stocks to be recorded by their members, and in some cases provided to the SRO, tend to be less uniform than SRO audit trail rules relating to listed options.[84] Some exchanges and FINRA have detailed audit trail data submission requirements for their members covering order entry, transmittal, and execution.[85] For example, the rules of one exchange require the recording of the following information for each order originating with an exchange participant that is given to or received from another participant for execution, transmitted by an exchange participant to another market, or originating off the exchange and transmitted to an exchange participant, and subsequent execution of any such orders:[86]

- Information relating to receipt or transmission of the order, including the material terms of the order;[87] a unique order identifier; the identification of the clearing participant and the participant recording the order details; the date and time of order receipt or transmission (if applicable); the market or participant to which the order was transmitted or from which the order was received (if applicable);
- Information relating to modifications to or cancellation of the order, including any modifications to the order, any cancellation of all or part of the order; the date and time of receipt and transmission of any modifications to the order or cancellations; and the identification of the party canceling or modifying the order;[88]
- For executions of the order,[89] in whole or in part, the transaction price; the number of shares or quantity executed; the date and time of execution; the contra party to the execution; and any settlement instructions.[90]

The audit trail rules of the other exchanges incorporate only standard books and records requirements in accordance with Section 17 of the Exchange Act.[91]

G. Prior Commission Request for Comment

The Commission has previously requested comment regarding cross-

[76] *See* Options Settlement Order, *supra* note 15, at 12.

[77] *Id.* at 22.

[78] *Id.* at 22–25.

[79] *See* Options Settlement Order, *supra* note 15, at 22–25.

[80] *See* Securities Exchange Act Release Nos. 61154 (December 11, 2009), 74 FR 67278 (December 18, 2009), at 67280 (stating "ISE and the other options exchanges are required to populate a consolidated options audit trail ("COATS") system in order to surveil member activities across markets"); 61388 (January 20, 2010), 75 FR 4431 (January 27, 2010), at 4433 (Nasdaq OMX BX filing amending BOX's fee schedule, with similar language as Release No. 61154); and 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (BATS Exchange, Inc. ("BATS") represented that BATS Options would comply with the specifications of COATS in submitting data to create a consolidated audit trail, as well as receiving COATS data for its own surveillance purposes).

[81] The specific information required includes option symbol; underlying security; expiration month; exercise price; contract volume; call/put; buy/sell; opening/closing transaction; price or price limit; and special instructions.

[82] The required information also includes identification of the terminal or individual completing the order ticket.

[83] *See e.g.* BATS Rule 20.7; BOX Chapter V, Section 15; CBOE Chapter VI, Rules 6.24 and 6.51; NOM Rule Chapter V, Section 7; NYSE Amex Rules 153, Commentary .01, and 962; NYSE Arca Rules 6.67, 6.68, and 6.69; and Phlx Rules 1063 and 1080.

[84] For purposes of this release, the Commission does not consider SRO EBS rules to be audit trail rules.

[85] *See* Chicago Stock Exchange ("CHX") Article 11, Rule 3(b); FINRA Rules 7400 to 7470 (the OATS rules); Nasdaq Rules 6950 to 6958 (substantially similar to the OATS rules); BX Rules 6950 to 6958 (substantially similar to OATS rules); NYSE Rule 123 and 132B; and NYSE Amex Equities Rule 123 and 132B (OTS rules). *See supra* Sections I.C. and I.D. for a discussion of FINRA's OATS rules and the NYSE and NYSE Amex's OTS rules, respectively.

[86] *See* CHX Article 11, Rule 3(b).

[87] *Id.* The specific information required includes the symbol; number or shares or quantity of security; side of the market; order type; limit and/or stop price; whether the order is agency or proprietary; whether an order is a bona fide arbitrage order; whether the order is short; time in force; designation as held or not held; any special conditions or instructions (including any customer display instructions and any all-or-none conditions); and the date and time of any order expiration.

[88] *Id.*

[89] *Id.*

[90] *Id.* The participant also must record the system-generated times of recording this required information. This information must be recorded immediately after the information is received or becomes available. CHX Article 11, Rule 3(c). Additionally, before any such orders are executed, exchange participants must record the name or designation of the account for which the order is being executed. CHX Article 11, Rule 3(d). This rule does not apply to orders sent or received through the exchange's matching system or any other electronic systems the exchange recognizes as providing the required information in a format acceptable to the exchange. *See* CHX Article 11, Rule 3, Interpretations and Policies .03.

[91] *See e.g.* National Stock Exchange ("NSX") Chapter VI, Rule 4.1.; BATS Chapter IV, Rule 4.1; CBOE Rule 15.1 (applicable to CBSX); ISE Stock Exchange Rule 1400; NYSE Arca Equities Rule 2.24; 15 U.S.C. 78q *et seq.* For example, one exchange only requires its members to make and keep books and records and other correspondence in conformity with Section 17 of the Exchange Act and the rules thereunder, with all other applicable laws and the rules, regulations and statements of policy promulgated thereunder, and with the exchange's rules. *See* NSX Chapter VI, Rule 4.1.

market regulation, including whether changes should be made to existing audit trail rules, in two concept releases in 2003 and 2004.[92]

In 2003, the Commission sought public comment on a petition submitted by Nasdaq that raised concerns about the impact of market fragmentation on the trading in, and regulation of trading in, Nasdaq-listed securities.[93] Nasdaq, through OATS, collected data from its members trading Nasdaq-listed securities, which the NASD then used to surveil for potential rule violations.[94] Nasdaq requested that the Commission require all SROs trading Nasdaq-listed securities to implement an electronic audit trail identical to OATS.[95] Nasdaq also noted that the available cross-market audit trail information provided by the Intermarket Surveillance Group ("ISG") [96] was comprised of audit trail information from each of the exchanges and provided two day delayed data at the clearing firm level, with time data from non-synchronized clocks.[97] Nasdaq believed that the information provided by ISG was insufficient to identify potentially violative activity.[98]

In response to the Intermarket Trading Concept Release, the Commission received a variety of comments on intermarket surveillance and order audit trail issues.[99] Of those commenters that addressed the general concept of creating a uniform electronic audit trail, some supported the concept while others did not.[100]

One commenter expressed the view that once broker-dealers have implemented systems necessary to comply with audit trail requirements, it would not be incrementally significant from a cost perspective to supply the same data in a common format to additional SROs, but that there would be a significant cost if the data to be captured and the methods of encoding and delivering the data differed from market to market.[101] This commenter urged the Commission, if it were to require all market centers to adopt audit trail requirements, to ensure that the requirements are uniform and standardized. This commenter recommended a single standard for real time electronic trade and audit trail reporting, which would be applicable to all equity securities traded in the national market regardless of where listed or traded, and where data would be captured in a central depository, aggregated and made immediately available to each relevant market center, possibly through direct electronic data feeds.[102] Likewise, another commenter stated that it would be preferable for there to be one uniform audit trail system, rather than each SRO adopting its own audit trail requirements and systems, to reduce the potential for conflicting rules and regulations and duplicative systems and technology requirements.[103] Another commenter recommended that if the Commission determined that the need for a particular SRO to have enhanced audit trail information outweighs costs to member firms, SROs be required to coordinate efforts so as to reduce duplication of systems and regulatory efforts.[104]

Several commenters urged the Commission to consider the costs to broker-dealer firms of supplying the audit trail data when considering the appropriateness of extending OATS-like audit trail requirements to other market centers.[105] One commenter stated the

[92] *See* Securities Exchange Act Release Nos. 47849 (May 14, 2003), 68 FR 27722 (May 20, 2003) (File No. S7–11–03) ("Intermarket Trading Concept Release") and 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) (File No. S7–40–04) ("Concept Release Concerning Self-Regulation").

[93] *See* letter to Jonathan G. Katz, Secretary, Commission, from Edward Knight, Executive Vice President and General Counsel, Nasdaq, dated April 11, 2003 (File No. 4–479) ("Nasdaq Petition"). In particular, Nasdaq was concerned over what it deemed "unequal and inadequate regulation" by other markets trading Nasdaq-listed securities. *Id.* at 2. *See also* Intermarket Trading Concept Release, *supra* note 92, at 27223.

[94] *See* Nasdaq Petition, *supra* note 93, at 10, and Intermarket Trading Concept Release, *supra* note 92, at 27224.

[95] *See* Nasdaq Petition, *supra* note 93, at 11, and Intermarket Trading Concept Release, *supra* note 92, at 27224.

[96] The ISG was created in 1983 and its members include all of the registered national securities exchanges and FINRA. ISG states that its goals are to enhance intermarket surveillance, assure the integrity of trading, and provide investor protection. To achieve these goals, ISG members share data such as audit trail information and short interest data among themselves. ISG provides surveillance tools to supplement its participant members' existing surveillance systems, such as the ISG Unusual Activity Report and the Consolidated Equity Audit Trail. These reports are made available from SIAC to members of ISG and are intended to provide a consolidated view across all markets of trade, quote, and clearing activity. *See* comment letter from Brian F. Colby, Chairman, Intermarket Surveillance Group, to Jonathan G. Katz, Secretary, Commission, dated June 18, 2003 ("ISG 2003 Comment Letter") (commenting in response to the Intermarket Trading Concept Release).

[97] *See* Nasdaq Petition, *supra* note 93, at 10, and Intermarket Trading Concept Release, *supra* note 92, at 27224.

[98] *See* Nasdaq Petition, *supra* note 93, at 10–11, and Intermarket Trading Concept Release, *supra* note 92, at 27224.

[99] *See* comment letters from Darla C. Stuckey, Corporate Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated June 19, 2003 ("NYSE Comment Letter"); Jeffrey T. Brown, General Counsel, Cincinnati Stock Exchange, to Jonathan G. Katz, Secretary, Commission, dated June 19, 2003 ("CSE Comment Letter"); Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc., to Jonathan G. Katz, Secretary, Commission, dated June 19, 2003 ("ISE Comment Letter"); William O'Brien, Chief Operating Officer, Brut, LLC, to Jonathan G. Katz, Secretary, Commission, dated June 19, 2003 ("Brut Comment Letter"); Kim Bang, President, Bloomberg Tradebook LLC, to Jonathan G. Katz, Secretary, Commission, dated June 20, 2003 ("Bloomberg Tradebook Comment Letter"); Donald D. Kittell, Executive Vice President, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated June 27, 2003 ("SIA Comment Letter"); Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated June 30, 2003 ("CBOE Comment Letter"); W. Hardy Callcott, Senior Vice President and General Counsel, Charles Schwab & Co., Inc., to Jonathan G. Katz, Secretary, Commission, dated July 7, 2003 ("Schwab Comment Letter"); Richard Ketchum, General Counsel, Citigroup, to Jonathan G. Katz, Secretary, Commission, dated July 8, 2003 ("Citigroup Comment Letter"); John S. Markle, Associate General Counsel, Ameritrade Holding Corp., to Jonathan G. Katz, Secretary, Commission, dated July 10, 2003 ("Ameritrade Comment Letter"); and Eric Schwartz, Managing Director, Goldman Sachs, and Duncan Niederauer, Co-Chief Executive Officer, Spear, Leeds & Kellogg, to Jonathan G. Katz, Secretary, Commission, dated July 25, 2003 ("Goldman Sachs and Spear, Leeds & Kellogg Comment Letter").

[100] Of the commenters that clearly commented on the creation of a uniform intermarket audit trail, Citigroup and Goldman Sachs and Spear, Leeds & Kellogg were in favor of the idea, and Bloomberg supported a consolidated audit trail for those SROs trading Nasdaq-listed securities. *See* Citigroup Comment Letter, *supra* note 99, at 6; Goldman Sachs and Spear, Leeds & Kellogg Comment Letter, *supra* note 99, at 3–4; and Bloomberg Tradebook Comment Letter, *supra* note 99, at 3. Brut, CBOE, and the NYSE did not appear to be in favor of a standardized intermarket audit trail. *See* Brut Comment Letter, *supra* note 99, at 5 (arguing for addressing improvements to surveillances falling short of Exchange Act requirements individually instead of "costly and comprehensive technology overhauls"); CBOE Comment Letter, *supra* note 99, at 2 (explaining that it "supports expanding the use of existing tools and enhancing [SRO] and Commission coordination to strengthen surveillance and to achieve more uniform regulation * * *" and noting that the Commission could "play a significant role in achieving uniform SRO regulation [by] establishing guiding principles on a variety of areas that affect all SROs." CBOE also noted that there should be enhanced coordination of SRO regulatory efforts through ISG and through 17d–2 agreements); and NYSE Comment Letter, *supra* note 99, at 5 (suggesting linking SRO audit trails in the manner of the ISG Consolidated Audit Trail).

[101] *See* Goldman Sachs and Spear, Leeds & Kellogg Comment Letter, *supra* note 99, at 3.

[102] *Id* at 4.

[103] *See* Citigroup Comment Letter, *supra* note 99, at 6.

[104] *See* SIA Comment Letter, *supra* note 99, at 4. One commenter agreed that the Commission would be justified in requiring all SROs trading Nasdaq-listed securities to coordinate electronic audit trail systems with the NASD. *See* Bloomberg Tradebook Comment Letter, *supra* note 99. On the other hand, one commenter stated its belief that if there is a legitimate need to improve on the ISG audit trail, the markets should act jointly to do so, without being forced to adopt Nasdaq's proprietary audit trail. *See* ISE Comment Letter, *supra* note 99.

[105] *See* SIA Comment Letter, *supra* note 99, at 4; Goldman Sachs and Spear, Leeds & Kellogg Comment Letter, *supra* note 99, at 3 (stating that any decision about extending OATS to other markets should take into account the costs imposed on SROs, market intermediaries and the markets); and Ameritrade Comment Letter, *supra* note 99, at 3.

belief that firms already are required to maintain all of the customer and transaction information that regulators would want under their current books and records requirements and that most firms do not believe there is a justification for requiring firms to spend the money necessary to send this information to every market center where an order may be routed.[106] Another commenter was concerned about the impact on each individual market's structure of mandating uniformity.[107]

Some commenters supported the ISG as a facilitator of a coordinated regulation.[108] One commenter noted that the ISG Consolidated Equity Audit Trail was a valuable supplement to existing SRO market data.[109] One commenter also endorsed the ISG audit trail as well as CSE's Firm Order Submission system,[110] stating that it was preferable to enhance these systems rather than conduct a "mass migration" to OATS.[111] The ISG itself stated that no other market had reported any problems with ISG's timing of the incorporation of the clearing data into the Consolidated Equity Audit Trail, nor with the delivery of its audit trail information.[112]

In 2004, in a release seeking comment on a variety of issues relating to self-regulation, the Commission again sought public comment on intermarket surveillance.[113] The Commission discussed the individual audit trails developed by several equity markets, COATS, and ISG's clearing level audit trail.[114] The Commission suggested that a more robust intermarket order audit trail for options and equity markets could enhance the surveillance of order flow and requested comment on the issue.[115]

One commenter on the Concept Release Concerning Self-Regulation stated that, because trading in most liquid securities now occurs on multiple markets, no single SRO could capture a complete picture of all the trading in each product, all trading by one broker-dealer, and even all the trading related to a single order.[116] This commenter stated its belief that the lack of uniform order and transaction data creates regulatory gaps and may provide incentives for market participants to conduct activities on markets where less regulatory data is collected on an automated basis.[117] This commenter believed that minimum data-collection standards should be required to ensure adequate regulation across all markets, and that consolidating that data would permit effective intermarket regulation while ensuring that no single market has a competitive advantage.[118]

Another commenter gave an example of how it believed the lack of real time reporting across markets was detrimental to surveillances relating to certain illegal activities. This commenter stated its belief that "effective surveillances relating to insider trading, market manipulation and stock or options frontrunning in multiple markets can be hindered because away-market data such as order information, position limit reports and large position reports (for options) are not available electronically on a real time or near real time basis to the SRO that has generated an alert or flag in the course of its routine surveillance.[119] This commenter suggested that consolidating this type of data in real time or near real time would permit SROs to immediately detect and review all aberrational activity in the multiple market centers, which could significantly deter or prevent violative conduct.[120]

Another commenter stated its belief that the lack of a coordinated surveillance system is potentially one of the more significant problems facing the markets, and that as trading strategies become more sophisticated across multiple markets and national borders, the potential for sophisticated fraud also increases.[121] One commenter recommended a consolidated information base that all regulators could access, stating that "having separate and uncoordinated regulatory data is inefficient and detracts from the quality of regulation."[122] Further, another commenter suggested a voluntary regulatory cooperative, jointly owned by participant exchanges, that would be the central regulator for surveillance, investigations and examinations and would include an electronic interface with the SEC; this commenter believed that the costs of developing an intermarket consolidated order audit trail system should be justified by the regulatory value of the data to be captured.[123]

II. Basis for Proposed Rule

As noted above, the U.S. securities markets have experienced a dynamic transformation in recent years. Rapid technological advances and regulatory developments have produced fundamental changes in the structure of the securities markets, the types of market participants, the trading strategies employed, and the array of products traded. Trading of securities has become more dispersed among exchanges and various other trading venues, including the OTC market. The markets have become even more competitive, with exchanges and other trading centers aggressively competing for order flow by offering innovative order types, new data products and other services, and through fees charged or rebates provided by the markets. The Commission preliminarily believes that with today's fast, electronic and interconnected markets, there is a heightened need for a single uniform electronic cross-market order and execution tracking system that includes more information than is captured by the existing SRO audit trails, and in a uniform format. Such a system would enable SROs to better fulfill their regulatory responsibilities to monitor for and investigate illegal activity in their markets and by their members. Further, the Commission preliminarily believes that such a system would enable the Commission staff to better carry out its

[106] *See* SIA Comment Letter, *supra* note 99, at 4.

[107] *See* CSE Comment Letter, *supra* note 99, at 6–7 (noting that the data formats among exchanges may vary due to structural needs and system designs; thus, while this commenter advocated that exchanges should be required to have internal audit trails tracking orders from inception to execution, it argued that design flexibility be maintained so that exchanges could create the audit trail systems best suited to monitor their markets).

[108] *See* Ameritrade Comment Letter, *supra* note 99, at 2; CSE Comment Letter, *supra* note 99, at 13; ISE Comment Letter, *supra* note 99, at 4; and NYSE Comment Letter, *supra* note 99, at 3.

[109] *See* NYSE Comment Letter, *supra* note 99.

[110] In its comment letter, CSE stated that its Firm Order Submission system ("FOS") was more comprehensive than OATS and that the exchange had pioneered order audit trail development. *See* CSE Comment Letter, *supra* note 99. In its petition, Nasdaq argued that FOS was used voluntarily for settling commercial disputes between traders and was not meant for surveillance. *See* Nasdaq Petition, *supra* note 93, at 4.

[111] *See* Brut Comment Letter, *supra* note 99, at 6.

[112] *See* ISG 2003 Comment Letter, *supra* note 99.

[113] *See* Concept Release Concerning Self-Regulation, *supra* note 92, at Sections IV.C and V.A.2.

[114] *Id.*

[115] *Id.* at 71277.

[116] *See* comment letter from Robert R. Glauber, Chairman and Chief Executive Officer, NASD, to Jonathan G. Katz, Secretary, Commission, dated March 15, 2005 ("NASD Comment Letter"), at 10.

[117] *Id.* at 11.

[118] *Id.*

[119] *See* comment letter from Mary Yeager, Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated March 8, 2005, at 8.

[120] *Id.*

[121] *See* comment letter from Rebecca T. McEnally, Director, and Linda L. Rittenhouse, Senior Policy Analyst, Centre for Financial Market Integrity, to Nancy M. Morris, Secretary, Commission, dated July 14, 2006, at 6.

[122] *See* comment letter from Kim Bang, Chief Executive Officer, Bloomberg L.P., to Jonathan G. Katz, Secretary, Commission, dated March 8, 2005, at 4.

[123] *See* comment letter from Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, to Jonathan G. Katz, Secretary, Commission, dated March 9, 2005, at 3.

oversight of the NMS for securities and to perform market analysis in a more timely fashion, whether on one market or across markets.

Each national securities exchange and national securities association must be organized and have the capacity to comply, and enforce compliance by its members, with its rules, and with the federal securities laws, rules, and regulations.[124] The Commission preliminarily believes that the exchanges and FINRA could more effectively and efficiently fulfill these statutory obligations if the SROs had direct, electronic real time access to consolidated and more detailed order and execution information across all markets.[125] Likewise, the Commission has the statutory obligation to oversee the exchanges and associations,[126] and to enforce compliance by the members of exchanges and associations with the respective exchange's or association's rules, and the federal securities laws and regulations.[127] The Commission also preliminarily believes that electronic real time access to consolidated information and more detailed cross-market order and execution information also would aid the Commission in carrying out its statutory obligations.

Section 11A(a)(3)(B) of the Exchange Act provides in part that the Commission may, by rule, require SROs to act jointly with respect to matters as to which they share authority under the Exchange Act in regulating an NMS for securities.[128] Pursuant to this authority, the Commission today is proposing a rule that would require all national securities exchanges and national securities associations to jointly submit to the Commission an NMS plan to create, implement, and maintain a consolidated audit trail that would be more comprehensive than any audit trail currently in existence.[129] The proposed Rule would require the consolidated audit trail to capture certain information about each order for an NMS security, including the identity of the customer placing the order and the routing, modification, cancellation or execution of the order, in real time. In effect, the proposal would create a time-stamped "electronic audit trail record or report" for every order, and each market participant that touches the order would be required to report information about certain reportable events, such as routing or execution of the order.

The Commission preliminarily believes that a consolidated order audit trail, such as the one proposed today, could enhance the ability of the SROs to carry out their obligations to regulate their markets and their members. The Commission also preliminarily believes that the proposed consolidated order audit trail could aid the Commission in fulfilling its statutory obligations to oversee SROs,[130] monitor for the manipulation of security prices,[131] and detect the use of manipulative or deceptive devices in the purchase or sale of a security,[132] as well as to perform market reconstructions.

The Commission preliminarily believes that proposed Rule 613 would benefit the industry, through potential cost reductions, by eliminating the need for certain SRO and Commission rules that currently mandate the collection and provision of information, at least with respect to NMS securities.[133] The Commission also preliminarily believes that the proposal would benefit SROs, as well as the NMS for NMS securities, by ultimately reducing some regulatory costs, which may result in a more effective re-allocation of overall costs.[134]

The Commission recognizes that SRO rules requiring members to capture and disclose audit trail information already exist, and considered whether more modest improvements to existing rules, and corresponding SRO and member systems, would achieve the proposed Rule's objective at lower cost. For example, the Commission considered whether to standardize and expand the order information collected by existing audit trails, the EBS system, Rule 17a–25 and equity cleared reports. Without centralization of the trading data in a uniform electronic format, however, the Commission's goals of cross-market comparability and ready access could not be achieved. Additionally, this approach would not resolve concerns over how long it takes to obtain order and execution information because the data is often not available in real time and is provided only upon request.[135] Similarly, the Commission considered whether assuring access to existing audit trails to other SROs and the Commission would sufficiently advance its goals. Even if SROs could view order activity on a real time basis on other exchanges, this would not eliminate the need for SROs to check multiple repositories to view and obtain order information. Moreover, the information may be captured, stored and displayed in a variety of formats, making comparisons more difficult. The Commission, therefore, preliminarily does not believe that "retrofitting" existing rules and systems would be a more effective way to achieve the goals of the proposed consolidated audit trail than having the requirements contained in a single Commission rule, and a single NMS plan.

As discussed below, the Commission preliminarily believes that existing audit trails are limited in their scope and effectiveness in varying ways. SRO and Commission staff also currently obtain information about orders or trades through the EBS system, Rule 17a–25,[136] and from equity cleared reports.[137] However, as discussed below, the information provided pursuant to the EBS system, Rule 17a–25, and the equity cleared reports also is limited, to varying degrees, in detail and scope.

A. Lack of Uniformity of, and Gaps in, Current Required Audit Trail Information

As noted above, the type of information relating to orders and executions currently collected by the exchanges and FINRA differs widely. For example, FINRA's OATS rules and NYSE/NYSE Amex's OTS rules (as supplemented by the requirements of NYSE and NYSE Amex Rule 123) both set forth in relative detail the information required to be recorded by a FINRA, NYSE or NYSE Amex member upon receipt or origination of an order; following transmission of an order to another FINRA, NYSE or NYSE Amex member; and following modification, cancellation or execution of such order.[138] In contrast, some other

[124] *See, e.g.,* Sections 6(b)(1), 19(g)(1) and 15A(b)(2) of the Exchange Act, 15 U.S.C. 78f(b)(1), 78s(g)(1), and 78o–3(b)(2).

[125] The Commission notes that, if adopted as proposed, its Large Trader Proposal would not amend or impact the scope of any of the existing SRO audit trail rules. *See* Large Trader Proposal, *supra* note 11.

[126] *See, e.g.,* Sections 2, 6(b), 15A(b), and 19(h)(1) of the Exchange Act, 15 U.S.C. 78b, 15 U.S.C. 78f(b), 15 U.S.C. 78o–3(b), and 15 U.S.C. 78s(h)(1).

[127] *See, e.g.,* Section 19(h)(1) of the Exchange Act, 15 U.S.C. 78s(h)(1).

[128] *See* Section 11A(a)(3)(B) of the Exchange Act, 15 U.S.C. 78k–1(a)(3)(B).

[129] *See infra* Section III for a description of proposed Rule 613.

[130] *See, e.g.,* Sections 6(b)(1) and 19(h) of the Exchange Act, 15 U.S.C. 78f(b)(1) and 78s(h).

[131] *See* Section 9 of the Exchange Act, 15 U.S.C. 78i.

[132] *See* Section 10 of the Exchange Act, 15 U.S.C. 78j.

[133] *See infra* Section VI.A (discussion of benefits of the proposed Rule).

[134] *Id.*

[135] *See infra* note 149.

[136] 17 CFR 240.17a–25.

[137] *See supra* Sections I.A. and I.B. for a description of the EBS system, Rule 17a–25, and equity cleared reports.

[138] *See* FINRA Rules 7400 through 7470, NYSE Rules 123 and 132B, NYSE Amex Equities Rule 123 and 132B, and *supra* Sections I.C. and I.D. *See also*

exchanges' rules only require their members to keep records in compliance with the member's recordkeeping obligations under Section 17(a) of the Exchange Act and rules thereunder,[139] rather than requiring that specific information be captured for orders sent to and executed on the exchange.[140] Although Rule 17a–3 under the Exchange Act[141] requires that a member make and keep detailed information with respect to each brokerage order, it does not, for instance, require information with respect to the routing of the order, or that each order be assigned a unique order identifier.[142] Similarly, the scope of securities covered by existing audit trail rules also differs among the exchanges and FINRA. FINRA's OATS rules, for instance, apply to orders for equity securities listed on Nasdaq and OTC securities, while OTS captures information for orders in NYSE and NYSE Amex-listed cash equity securities.[143]

While there is no current requirement that all SROs record the same information for orders and executions in the same or different securities, each SRO has a statutory obligation to regulate its market and its members. The Commission is concerned that the lack of uniformity as to the type of audit trail information gathered by the different exchanges and FINRA, and the lack of compatibility in the format of each SRO's audit trail data, may hinder the ability of SRO and Commission staff to effectively and efficiently monitor for, detect, and deter illegal trading that occurs across markets. If a market participant is engaging in manipulative behavior across various markets, but the rules of one market do not require its members to provide detailed information regarding the orders sent to its market, it may be difficult for regulators to determine that trading activity on one market was related to trading activity on another market. For example, Section 9 of the Exchange Act expressly prohibits "wash sales."[144] A trader could attempt to disguise such trading by executing various legs of wash transactions on different markets. Individual market surveillance based on individual SRO audit trail data would not always be able to detect this kind of cross-market abuse.

Further, while current order audit trail rules provide a framework for capturing order information, the Commission is concerned that certain information about orders and executions that would be useful to efficient and effective regulation of inter-market trading activity and prevention of manipulative practices is not captured by existing audit trails. Most importantly, the existing audit trails do not require members to provide information identifying the customer submitting an order, the person with investment discretion for the order, or the beneficial owner. The identity of this "ultimate customer," however, often is necessary to tie together potential manipulative activity that occurs across markets and through multiple accounts at various broker-dealers. While the Commission notes that exchange and FINRA regulatory staff, as well as Commission staff, eventually can obtain identifying customer or beneficial account information by submitting requests for information through ISG or to various broker-dealers involved in potentially wrongful activities, this process can result in significant delays in investigating market anomalies or potentially manipulative behavior. The Commission preliminarily believes that gaps such as this in required audit trail information may hinder the ability of regulatory authorities to enforce compliance with SRO rules and the federal securities laws, rules, and regulations in a timely manner.

In addition, an exchange's audit trail information effectively ends when an order is routed to another exchange. For example, although the NYSE's OTS rule requires a NYSE member or member organization to record the fact that an order was transmitted to a non-member, the rules do not require the recording of what subsequently happens to the order.[145] Likewise, FINRA's OATS data collection effectively ends if an order is routed from a member of FINRA to an exchange.[146] As a result, key pieces of information about the life of an order may not be captured, or easily tracked, if an order is routed from one exchange to another, or from one broker-dealer to an exchange. For example, the name, or identifier, of a broker-dealer that initially received an order may be captured by the audit trail of the exchange of which that broker-dealer is a member when the broker-dealer sends the order to the exchange. However, if the order is routed to and executed on a second exchange, the identifying information for that initial broker-dealer may not be captured by the second exchange's audit trail requirements.

Similarly, under current audit trail rules, an incoming order may be assigned an order identifier by the initial receiving exchange; however, if the order is routed to a second exchange, there is no requirement that this order identifier be passed along to or maintained by the second exchange. Thus, one order that is routed across markets can have multiple order identifiers, each unique to one exchange. The Commission preliminarily believes that, from a regulatory standpoint, the lack of standardized cross-market order identifiers can pose significant obstacles and delays in effectively detecting and deterring manipulative behavior because SRO and Commission staff cannot readily collect the necessary data (that is, they cannot readily piece together activity related to the same order or the same customer occurring across several markets) to determine whether violative behavior has occurred.

Additionally, the Commission is concerned that the data generated by the EBS system or that is available through the equity cleared reports also lacks items of information needed to match up order and trade information across markets to fully understand a particular trading pattern or to reconstruct a certain type of trading activity. EBS data does not include the time of execution, and often does not include the identity of the beneficial owner.[147] The equity cleared data also lacks the time of

CHX Article II, Rule 3; Nasdaq Rules 6950 to 6958; and BX Rules 6950 to 6958.

[139] 15 U.S.C. 78q(a).

[140] *See, e.g.,* NSX Rules 4.1 and 4.2, NYSE Arca Equities Rule 9.17, and BATS Rule 4.1.

[141] 17 CFR 240.17a–3.

[142] Rule 17a–3(a)(6)(i) under the Exchange Act requires that a member keep a memorandum of each brokerage order given or received for the purchase or sale of securities, whether executed or not, showing the terms and conditions of the order and any modification or cancellation thereof; the account for which it was entered; the time the order was received; the time of entry; the execution price; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer, or, if a customer entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of execution or cancellation. *See* 17 CFR 240.17a–3(a)(6)(i).

[143] *See supra* Sections I.C. and I.D. *See also supra* the discussion in the introduction to Section II relating to the Commission's consideration of whether "retrofitting" existing SRO audit trail rules and systems would achieve the goals of the proposed consolidated audit trail.

[144] *See* Section 9(a)(1) of the Exchange Act, 15 U.S.C. 78i(a)(1). Wash sales are transactions involving no change in beneficial ownership. *See Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 205 n. 25 (1976).

[145] *See* NYSE Rule 132B(c)(3).

[146] *See* FINRA Rule 7440(c)(6). The Commission understands that FINRA is able to link OATS order information to Nasdaq order and execution data.

[147] If a customer has an account directly with a clearing firm, or if an introducing firm clears its customers' transactions on a fully disclosed basis with the clearing firm, the clearing firm should be able to identify the beneficial owner of the account on its EBS response.

execution, as well as time of order receipt, often the identity of the beneficial owner, the identity of the broker-dealer(s) that received and/or executed the order (if different from the clearing broker-dealer), and short sale borrow and fails information. In order to obtain the time an order was received or the identity of the beneficial owner, therefore, SRO or Commission staff may take the additional step of submitting an electronically generated blue sheet request to the clearing broker-dealer identified in the equity cleared report to ask that broker-dealer to identify the beneficial ownership of the account(s) effecting the relevant transactions and/or the introducing broker,[148] and this may take a few steps if the clearing broker-dealer does not know the introducing broker, but only the executing broker (if different). If the beneficial ownership of the account(s) was not specified in the clearing broker-dealer's response, the staff could then ask the introducing broker-dealer for the time an order was received and the beneficial account holder information. Often, additional steps are required to identify the beneficial account holder, such as when the "customer" is an omnibus account. Furthermore, the equity cleared data could be duplicative. For example, one side of a trade can appear multiple times in the equity cleared reports because it may be reported by a specialist, a clearing broker-dealer, and the broker-dealer holding the customer's allocation account and the customer's trading account.

The lack of cohesive, readily available order and execution information creates significant hurdles for investigators at both the SROs and at the Commission. In order for SROs to investigate potential violations of their rules and the federal securities laws and rules by their members, the SROs should have the ability to analyze the activities of their members taking place across different market centers. This requires the accumulation and interpretation of data from numerous, disparate sources sometimes presenting inconsistent information. Similarly, the experience of the Commission staff shows that the lack of a consolidated audit trail results in the investment of significant resources to investigate potential market abuses. For example, when investigating potential insider trading and other market manipulations, Commission staff first obtains an equity cleared report to identify the clearing broker-dealers for trades involving the stock under investigation and the trading volume for a particular period of time. Then staff sends document requests to those clearing broker-dealers to identify the broker-dealers that executed trades in the stock over that period of time. This process can be complicated further by potential market manipulators that trade through small introducing brokers or use offshore corporate accounts and prime brokerage or other arrangements to conduct transactions. Commission staff also may request trade data for additional time periods identified during the course of the investigation, resulting in further delays. Commission staff thus often must make multiple requests to broker-dealers to obtain sufficient order information about the purchase or sale of a specific security to be able to adequately analyze trading. These multiple requests and responses can take a significant amount of time and delay the Commission's efforts to analyze the data on an expedited basis.[149] While the investigative protocols of each SRO may differ from those used by the Commission, in each case, collecting, interpreting and analyzing diverse data sources is labor intensive and time consuming.

The Commission is concerned that inadequacies in the current audit trail rules, EBS system, and equity cleared reports also impede the ability of SRO or Commission staff to promptly analyze trading patterns, particularly to prepare market reconstructions. For example, if Commission staff wants to undertake an analysis of an extreme market movement over a limited period of time, Commission staff would need to analyze audit trail information and EBS submissions of trading data to determine if specific trading strategies, techniques or participants appeared to be associated with the movement. Because of difficulties in linking trades in the audit trails with aggregate day-end trading data in EBS submissions, conducting this analysis is difficult and time-consuming. While the audit trail data could identify the precise execution times of trades by particular clearing broker-dealers, it would not identify the specific customers or beneficial owners involved in the trades. On the other hand, while EBS submissions provide summary trading information for particular accounts at the clearing broker-dealers, they lack execution times for these trades. Further complications can arise due to the common practice for large traders to route their orders through multiple accounts at multiple clearing firms, as well as practices at some firms that use "average price accounts" to effect trades that are eventually settled in multiple proprietary and/or customer accounts. While these practices are not, in themselves, improper, their use makes it more challenging to establish with certainty when trading on behalf of a particular trader was effected during the trading session.

The Commission preliminarily believes that the proposed consolidated audit trail would help alleviate the difficulties faced by Commission staff in performing market reconstructions, such as those described in the above example, by requiring that national securities exchanges, national securities associations, and their members provide order and execution data to one central location, largely on a real time basis, in a uniform electronic format. Having this information readily available in a central location would reduce the need for staff to request and collect such information from multiple broker-dealers and then examine, analyze and reconcile the disparate information provided to accurately "reconstruct" the market.[150]

B. Books and Records Requirements

Because brokers-dealers often are members of several exchanges and FINRA, they are subject to and must comply with the differing audit trail rules. Brokers and dealers also have a statutory obligation to maintain records in compliance with Commission and SRO rules.[151] As a result of the differing audit trail rules, brokers and dealers may be required to keep records to comply with each audit trail rule relating to trading in a certain security. Thus, some broker-dealers may now

[148] For purposes of this discussion, introducing broker means the broker-dealer that received or originated the order, and that is not also the clearing broker.

[149] Rule 17a–25 (as well as the SRO EBS rules) does not specify a definitive deadline by which such information must be furnished to the Commission and, in the Commission's experience, data collected through the EBS system often is subject to lengthy delays, particularly with respect to files involving a large number of transactions over an extended period of time.

[150] As discussed, the Commission preliminarily believes that the proposal would improve the ability of regulators to conduct timely and accurate trading analyses for market reconstructions and complex investigations, as well as inspections and examinations. Indeed, the Commission believes that the proposed consolidated audit trail, if implemented, would have significantly enhanced the Commission's ability to quickly reconstruct and analyze the severe market disruption that occurred on May 6, 2010. If approved and implemented, the proposal also would enhance the Commission's ability to similarly respond to future severe market events.

[151] *See* Section 17(a)(1) of the Exchange Act, 15 U.S.C. 78q(a)(1), and Rules 17a–3 and 17a–4 under the Exchange Act, 17 CFR 240.17a–3 and 17a–4.

face significant costs to comply with varying audit trail rules.[152]

C. Time Lags

Current audit trail rules require that an SRO's members submit order and execution information by the end of each business day (in the case of OATS), or in certain cases, upon request by the regulating entity (for instance, like OTS).[153] End-of-day or upon request reporting, by definition, limits regulators' ability to carry out real time cross-market surveillance and investigations of market anomalies. The Commission preliminarily believes that end-of-day reporting, coupled with the current laborious process of identifying the ultimate customer responsible for a particular securities transaction that may take several days, weeks or even months, can impact effective oversight by hindering the ability of SRO regulatory staff to identify manipulative activity close in time to when it is occurring, and respond to instances of potential manipulation quickly. This process also hinders the Commission's ability to detect and investigate potentially manipulative behavior. Manipulative activity by some market participants can result in other market participants, such as retail investors, losing money. The longer that manipulative behavior goes undetected over time, the greater the potential harm to investors. Further, timely pursuit of potential violations can be important in seeking to freeze and recover any profits received from illegal activity.

D. Access to Audit Trail Information

While each SRO has direct access to audit trail information received from its members, as well as its own data relating to orders received and executed on its market, one SRO cannot directly or easily access the audit trail information collected by other SROs, despite the interconnectedness of today's securities markets and the fact that orders are often routed from one marketplace to another marketplace for execution. In addition, Commission staff itself does not have immediate access to the exchanges' and FINRA's audit trail information, and instead must specifically request that an exchange or FINRA produce its audit trail information.[154]

The Commission notes that ISG provides a framework for the voluntary sharing of information and coordination of regulatory efforts among the exchanges and FINRA to address potential intermarket manipulations and trading abuses. The Commission believes that ISG plays an important role in information sharing among markets that trade the same securities, as well as related securities or futures on the same products.[155] However, the information provided to ISG, which is drawn from each individual exchange's audit trail and books and records, is not in any uniform or comparable format. In addition, information is only submitted to ISG upon a request by one of its members, and the information is not provided by ISG members in real time. Further, the operation of ISG is not subject to the Commission's oversight, including approval of what, and how, information is collected from and shared across SROs. The Commission preliminarily believes that it is now appropriate to mandate a structure whereby the regulatory staff of all exchanges and FINRA, as well as the Commission, can directly access comprehensive uniform cross-market order and execution information in real time pursuant to Commission rule, rather than through an information-sharing cooperative governed only by contract.

E. Scalability of the EBS System and Rule 17a–25

Although the EBS system and Rule 17a–25 can be used to obtain information in conjunction with the SRO audit trail information, the Commission is concerned with the ability of the EBS system, as enhanced by Rule 17a–25, to keep pace with changes in the securities markets over recent years. Various changes in market dynamics have affected the utility of the EBS system and Rule 17a–25. For example, decimal trading has increased the number of price points for securities, and the volume of quotations and orders has correspondingly dramatically increased. Thus, the volume of transaction data subject to reporting under the EBS system can be significantly greater than the EBS system was intended to accommodate in a typical request for data. As a request-based system that is most useful when targeting trading in a specific security for a specific time, the EBS system is not well-suited as a broad-based tool to detect illegal or manipulative activity. The increased use of sponsored access (or other indirect access to an exchange) also has made it more difficult to use the EBS system and Rule 17a–25 to identify the ultimate customer that originates an order because the member broker-dealer through whom an order is sent to an exchange may not know the identity of the underlying customer.[156]

In addition, the increasing number of alternative trading venues creates more opportunities for orders to be routed to other markets and thus can result in delays in producing EBS data as requests must be made to several broker-dealers in the "chain" of an order. Finally, the increased trading of derivative instruments and products also has affected the ongoing effectiveness of the EBS system and Rule 17a–25. A market participant can use derivative instruments and products as a substitute for trading in a particular equity, and likewise engage in illegal trading activity in derivative instruments and products. However, because information related to some derivative instruments over which the Commission has anti-fraud authority (such as security-based swaps) is not included within the EBS data or provided pursuant to Rule 17a–25, the EBS system and Rule 17a–25 are not effective tools for ascertaining activity in those markets or how that activity may be affecting the underlying equity market.[157]

In the Commission staff's experience, the EBS is most effective when investigating or analyzing trading in a small sample of securities over a limited period of time. But even under those circumstances, Commission staff often must make multiple requests to broker-dealers to obtain sufficient order information about the purchase or sale of a specific security to be able to adequately analyze the suspect trading. These multiple requests and responses can take a significant amount of time. The Commission preliminarily believes that the EBS system may no longer be able to fully support the regulatory

[152] *See* Goldman Sachs and Spear, Leeds & Kellogg Comment Letter, *supra* note 99, at 3, and SIA Comment Letter, *supra* note 99, at 3 (each commenting on the Nasdaq Petition and Intermarket Trading Concept Release).

[153] *See supra* Sections I.C. and I.D.

[154] The different data fields and unique formats of each SRO audit trail present difficulties for Commission examinations and investigations, where time constraints can make it impractical to manually consolidate diverse data sets.

[155] *See supra* note 96.

[156] Indirect access is when a non-member of an exchange accesses an exchange through a member. For example, to comply with regulatory obligations such as Rule 611 of Regulation NMS (17 CFR 242.611), exchanges increasingly rely on indirect access to other exchanges through member broker-dealers of the other exchanges, so called "private linkage" access. Sponsored access is one type of indirect access and is governed by exchange rules. *See, e.g.,* Nasdaq Rule 4611(d). The Commission recently proposed rules that would address sponsored access to exchanges. *See* Securities Exchange Act Release No. 61379 (January 26, 2010), 75 FR 4713 (January 29, 2010).

[157] *See infra* Section III.A for a discussion of the scope of products to be covered by the proposed Rule and the intent to expand the scope to cover other products and transactions.

challenges currently facing SRO and Commission regulatory staff.

The consolidated audit trail that the Commission is proposing today would provide significant improvements in the order and execution information available to SRO and Commission staff in several discrete ways. Among other things, the proposed audit trail would require that national securities exchanges and national securities associations and their members submit uniform order and execution information to a central repository on a real time basis, where possible. National securities exchanges and associations, and their member firms, would be required to identify the person with investment discretion for the order, and beneficial account holder, if different, along with other key information about the customer or proprietary desk that placed or originated the order. The proposed consolidated audit trail also would cover any action taken with respect to the order through execution, or cancellation, as applicable, and thus would allow regulators to more easily trace the order from inception to cancellation or execution.[158]

The Commission preliminarily believes that the proposed audit trail information would greatly enhance the ability of SRO staff to effectively monitor and surveil the securities markets on a real time basis, and thus to detect and investigate illegal activity in a more timely fashion, whether on one market or across markets. The Commission also preliminarily believes that the proposal would improve the ability of Commission and SRO staff to conduct more timely and accurate trading analysis, as well as to conduct more timely and accurate market reconstructions, complex enforcement inquiries or investigations, and inspections and examinations of regulated entities and SROs.

III. Description of Proposed Rule

To help address the deficiencies described above, the Commission is proposing to adopt a rule that would require national securities exchanges [159] and national securities associations [160] to create and implement a consolidated audit trail that captures customer and order event information, in real time, for all orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution.

If adopted, the proposed Rule would require each national securities exchange and national securities association to file jointly with the Commission on or before 90 days from approval of this proposed Rule an NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and a central repository.[161] The NMS plan would be required to be filed with the Commission pursuant to, and subject to the requirements of, Rule 608 of Regulation NMS.[162] As such, the proposed NMS plan would be published in the **Federal Register** and subject to public notice and comment in accordance with Rule 608(b). Further, the NMS plan filed pursuant to the proposed Rule, or any amendment to such a plan, would not become effective unless approved by the Commission or otherwise permitted in accordance with Rule 608.[163]

The Commission would expect the exchanges and FINRA to cooperate with each other and to take joint action as necessary to develop, file, and ultimately implement a single NMS plan to fulfill this requirement. The Commission requests comment on this approach. Specifically, the Commission requests comment on whether requiring the exchanges and associations to act jointly by filing an NMS plan that would contain the requirements for a consolidated audit trail is the most effective and efficient way to achieve the objectives of a consolidated audit trail. Or, should the Commission require the exchanges and associations to standardize or otherwise enhance their existing rules? What approach would be most efficient in improving the ability to monitor cross-market trading, or undertake market analysis or reconstructions, and why?

As discussed in further detail below, the proposed Rule would require that the NMS plan include provisions regarding: (1) The operation and administration of the NMS plan; (2) the creation and oversight of a central repository; (3) the data required to be provided by SROs and their members to the central repository; (4) clock synchronization; (5) compliance by national securities exchanges, FINRA, and their members with the proposed Rule and the NMS plan; and (6) the possible expansion of the NMS plan to products other than NMS securities.

The proposed Rule is designed to allow the national securities exchanges and national securities associations to develop the details of the NMS plan that they believe should govern the creation, implementation and maintenance of the central repository and consolidated audit trail, within the parameters set forth in the proposed Rule. The Commission believes that the national securities exchanges and national securities associations working jointly are in the best position to propose for themselves and their members the specifics of how the consolidated audit trail should be structured and administered. To this end, the proposed Rule contains a broad framework within which the exchanges and associations would provide the details that they believe would result in a functional, cooperative mechanism to create and maintain a consolidated audit trail, as well as certain explicit requirements the NMS plan must meet. As noted above, the proposed NMS plan developed by the exchanges and FINRA would be subject to public comment and approval by the Commission.

A. Products and Transactions Covered

Proposed Rule 613 would apply to secondary market transactions in all NMS securities, which means NMS stocks and listed options.[164] The Commission ultimately intends for the consolidated audit trail to cover

[158] The proposed Rule also would require the reporting of certain post-trade information. *See infra* Section III.D.2.

[159] National securities exchange is defined in Rule 600(a)(45) of Regulation NMS as any exchange registered pursuant to Section 6 of the Exchange Act (15 U.S.C. 78f). 17 CFR 242.600(a)(45).

[160] National securities association is defined in Rule 600(a)(44) of Regulation NMS as any association of brokers and dealers registered pursuant to Section 15A of the Exchange Act (15 U.S.C. 78o–3). 17 CFR 242.600(a)(44). As noted above, *see supra* note 12, FINRA currently is the only national securities association to which the proposal would apply, as the NFA is restricted to regulating its members who are registered as broker-dealers in security futures products due to its limited purpose registration with the Commission under Section 15A(k) of the Exchange Act, 15 U.S.C. 78o–3(k). The NFA could, of course, seek to expand its current registration. Thus, for ease of reference, this proposal refers to FINRA but the proposed requirements would apply to any national securities association registered with the Commission.

[161] *See infra* Section III.F. for a discussion of the central repository. The proposed Rule would explicitly require each national securities exchange and national securities association to be a sponsor of the NMS plan submitted pursuant to the Rule and approved by the Commission. *See* proposed Rule 613(a)(4).

[162] 17 CFR 242.608. *See* proposed Rule 613(a)(2).

[163] *See* proposed Rule 613(a)(5) and 17 CFR 242.608.

[164] NMS security is defined in Rule 600(a)(46) of Regulation NMS to mean any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. 17 CFR 242.600(a)(46). NMS stock is defined in Rule 600(47) to mean any NMS security other than an option. 17 CFR 242.600(a)(46). A listed option is defined in Rule 600(a)(35) of Regulation NMS to mean any option traded on a registered national securities exchange or automated facility of a national securities association. 17 CFR 242.600(a)(35).

secondary market transactions in other securities, including equity securities [165] that are not NMS securities, corporate bonds, municipal bonds, and asset-backed securities and other debt instruments; [166] credit default swaps, equity swaps, and other security-based swaps; and any other products that may come under the Commission's jurisdiction in the future. Further, the Commission preliminarily believes that it would be beneficial to provide for the possible expansion of the consolidated audit trail to include information on primary market transactions in NMS stocks and other equity securities that are not NMS stocks, as well as primary market transactions in debt securities.[167] Such information could be used to monitor for violations of certain rules under the Exchange Act, such as Regulation M and Rule 10b–5 under the Exchange Act.[168] Further, FINRA's transaction reporting requirements for debt securities already cover primary market transactions in debt securities,[169] and thus FINRA members should already be recording information relating to such transactions that could be included in an audit trail. The Commission proposes that the scope of the Rule initially be limited to secondary market transactions in NMS securities, however, to allow for a manageable implementation of the proposed consolidated audit trail, and because market participants already have experience with audit trails for these types of transactions in these securities.

As discussed above, the Commission believes that implementing a consolidated audit trail for NMS securities would aid the SROs in more effectively and efficiently carrying out their regulatory responsibilities. It would also assist the Commission in carrying out its statutory responsibilities. The Commission further preliminarily believes that a timely expansion of the scope of the consolidated audit trail beyond NMS securities would be beneficial, as illegal trading strategies that the consolidated audit trail would be designed to help detect and deter, such as insider trading, may involve trading in multiple related products other than NMS securities across multiple markets.

For example, the Commission routinely receives information relating to possible upward manipulation of security prices in violation of Sections 9(a) and 10(b) of the Exchange Act,[170] and alleged abusive short selling in the over-the-counter market, which includes FINRA's Bulletin Board and Pink Sheets. If the consolidated audit trail were expanded to cover these securities, it would be possible for SROs and the Commission to make comparisons between current and historical data in a more timely manner than is currently possible, to more quickly determine whether or not a complaint merits additional attention and the corresponding commitment of enforcement resources. Similarly, to the extent that instruments currently not considered NMS securities can be substitutes for long or short positions in NMS securities, having access to an audit trail that documents trading activity in such securities would improve the Commission's ability to make a risk assessment as to information it has received about possibly manipulative activity.[171] Having ready access to this information in an audit trail also would improve the Commission's inspection process because it would enhance risk assessment and allow for better selection as to which broker-dealers to examine. For example, the information would allow for better trend analysis and outlier identification. It also would improve pre-examination work and the asset verification process,[172] and focus document requests, making the examination process more efficient for the Commission staff and the registrants subject to the process.

To help ensure that such an expansion would occur in a reasonable time and that the systems and technology that would be used to implement the Rule as proposed are designed to be easily scalable, proposed Rule 613(i) would require that the NMS plan contain a provision requiring each national securities exchange and national securities association that is a sponsor of the plan [173] to jointly provide the Commission a document outlining how the sponsors could incorporate into the consolidated audit trail information with respect to: (1) Equity securities that

[165] Equity security is defined in Section 3(a)(11) of the Exchange Act to include any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security. *See* 15 U.S.C. 78c(a)(11).

Rule 3a11–1 under the Exchange Act defines equity security to include any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; any security future on any such security; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so. *See* 17 CFR 240.3a11–1.

[166] Asset-backed security means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases. *See* 17 CFR 229.1101(c)(1).

[167] A primary market transaction is any transaction other than a secondary market transaction and refers to any transaction where a person purchases securities in an offering. *See, e.g.,* FINRA Rule 6710 (defining two types of primary market transactions for TRACE-eligible securities, a List or Fixed Offering Price Transaction or a Takedown Transaction).

[168] *See* 17 CFR 242.100 *et. seq.* and 17 CFR 240.10b–5. Rule 105 prohibits the short selling of equity securities that are the subject of a public offering for cash and the subsequent purchase of the offered securities from an underwriter or broker or dealer participating in the offering if the short sale was effected during a period that is the shorter of the following: (i) Beginning five business days before the pricing of the offered securities and ending with such pricing; or (ii) beginning with the initial filing of such registration statement or notification on Form 1–A or Form 1–E and ending with the pricing. Thus, Rule 105 prohibits any person from selling short an equity security immediately prior to an offering and purchasing the security by participating in the offering. The primary market transaction data would allow for the ability to more quickly identify whether any participant in the offering sold short prior to the offering.

Rule 10b–5 prohibits any act or omission resulting in fraud or deceit in connection with the purchase or sale of any security. The primary market transaction data for bonds would allow for identification of the cost basis for bond purchases by intermediaries and make it easier to assess whether subsequent mark-ups to retail investors in primary offerings are fair and reasonable and, if not, whether there has been a violation of the antifraud provisions of the federal securities laws.

[169] *See* FINRA Rule 6730(a)(5).

[170] 15 U.S.C. 78i(a) and 78j(b).

[171] The Commission's Division of Enforcement has recently established an Office of Market Intelligence. This Office, among other things, conducts intake and triage of investor and industry referrals that are received by the Commission each year. Currently, a thorough review of referrals requires extensive resource allocation as the primary source for evaluating trading data in the EBS system. Expansion of the consolidated audit trail to non-NMS securities would allow that Office to evaluate the merits of each referral faster and more effectively, and more efficiently allocate enforcement resources to appropriate cases.

[172] Asset verification is an exam process that attempts to locate independent information to verify certain customer positions, transactions, and balances at broker-dealers.

[173] Sponsor, when used with respect to an NMS plan, is defined in Rule 600(a)(70) of Regulation NMS to mean any self-regulatory organization which is a signatory to such plan and has agreed to act in accordance with the terms of the plan. *See* 17 CFR 242.600(a)(70).

are not NMS securities; (2) debt securities, including asset-backed securities; and (3) primary market transactions in NMS stocks, equity securities that are not NMS securities, and debt securities. The sponsors specifically would be required to address, among other things, details for each order and reportable event that they would recommend requiring to be provided; which market participants would be required to provide the data; an implementation timeline; and a cost estimate.

The Commission requests comment on the proposed scope of products to be covered by the consolidated audit trail. Should the consolidated audit trail initially cover securities other than NMS securities? Why or why not? The Commission also requests comment on whether the approach to expand the consolidated audit trail to include the products and transactions specified above represents an appropriate expansion of the consolidated audit trail, and what additional capital commitment would be required by the various market participants to implement such an expansion. Please be specific in your response with respect to different products or transactions (*e.g.* security-based swaps, or primary market transactions in NMS stocks). Are there other securities or products that should be identified and included in a future expansion? What would be the challenges to any expansion to the products and transactions listed above? Are there any other actions that the Commission or SROs would need to take to be able to expand the audit trail to certain products or transactions? Should the Commission consider expansion to certain products or transactions before others? The Commission also requests comment on an appropriate and realistic time frame for including these other products and transactions in the consolidated audit trail and whether an expansion should be done in phases.

The Commission also requests comment on whether implementation of the proposed Rule, which would apply to NMS securities, would have an impact on trading activity by market participants in products not initially covered by the proposed Rule. The proposed consolidated audit trail is designed to provide the SROs and the Commission a tool to more effectively, and in a more timely manner, identify potential manipulative or other illegal activity. More timely detection and investigation of such activity may lead to greater deterrence of future illegal activity if potential wrongdoers perceive a greater chance of regulators identifying their activity in a more timely fashion. Do commenters believe that the existence of the proposed audit trail would alter market participants' trading behavior, such as by shifting their trading to products or markets not covered by the proposed Rule to avoid detection of illegal activity using consolidated audit trail data? Would the proposal impact a market participant's analysis of the potential risks and benefits of manipulative activity involving NMS securities? If so, how so? In addition, to the extent commenters believe that market participants may alter their trading behavior, such as by shifting trading to products that are not initially covered by the proposed Rule to avoid detection of manipulative activity, the Commission requests comment on the importance of expanding the consolidated audit trail to cover additional products.

B. Orders and Quotations

The proposed Rule would require that information be provided to the central repository for every order in an NMS security originated or received by a member of an exchange or FINRA. The proposed Rule would define "order" to mean: (1) Any order received by a member of a national securities exchange or national securities association from any person; (2) any order originated by a member of a national securities exchange or national securities association; or (3) any bid or offer.[174] Thus, the proposed consolidated audit trail would cover all orders (whether for a customer or for a member's own account) as well as quotations in NMS stocks and listed options.[175] Each member would be required to report to the central repository the origination of its own orders or quotations, and the SRO to which the member sends its orders and quotations would be required to report receipt and execution, if applicable, of those orders and quotations. Because the origination of the quotations would already be reported to the central repository by the member, an SRO would not be required to separately submit to the central repository its best bids and offers that it is required to submit to the central processors.[176]

The Commission preliminarily believes that the inclusion of orders for a member's own account ("proprietary orders") and their bids and offers in the scope of the consolidated audit trail is necessary and appropriate to effectively and efficiently carry out the stated objectives of the consolidated audit trail. The SROs would not be able to use the consolidated audit trail data to surveil trading by broker-dealers through their proprietary accounts if that information is not included in the audit trail. Further, including proprietary orders and quotations in the consolidated audit trail would permit SROs to harness the intended benefits of the consolidated audit trail to more efficiently monitor for violations of SRO rules where the exact sequence of the receipt and execution of customers orders in relation to the creation and execution of proprietary orders or quotations is important to determine whether or not a violation occurred. For example, SROs would be able to use the consolidated audit trail data to more efficiently monitor for instances where a broker-dealer receives a customer order, then sends a proprietary order to one exchange or updates its quotations on an exchange prior to sending the customer order to another exchange, in possible violation of the trading ahead prohibitions in their rules.[177]

Another example where information on proprietary orders or quotations would be useful to have included in the consolidated audit trail is in the investigation of a possible "spoofing" allegation. In those cases, a market participant enters and may immediately cancel limit orders or quotations in a specific security with the intent of having those non-bona fide orders or quotations change the national best bid and national best offer ("NBBO"). Because a market participant could conduct this activity across multiple markets, using different accounts, the lack of consolidated data makes it much more difficult to identify the source of the orders or quotations and thus to determine whether the quoted price was manipulated or simply responding to market forces. The Commission therefore preliminarily believes that having information on proprietary orders and quotations in the consolidated audit trail along with customer order information would

[174] *See* proposed Rule 613(j)(4). Bid or offer is defined in Rule 600(a)(8) of Regulation NMS to mean the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest. 17 CFR 242.600(a)(8).

[175] Quotation is defined in Rule 600(a)(62) of Regulation NMS to mean a bid or an offer. 17 CFR 242.600(a)(62).

[176] *See* Rule 601 of Regulation NMS, 17 CFR 242.601.

[177] *See, e.g.,* FINRA Rule 5320 and NYSE Arca Equities Rule 6.16.

greatly enhance the ability of the SROs to detect potentially violative activity.

The Commission requests comment on its proposed definition of "order" and the scope of the proposed consolidated audit trail. Specifically, the definition would include orders received and originated by SRO members, as well as quotations originated by SRO members. Should it include quotations? Why or why not? Are there any differences between orders and quotations that should be taken into account with respect to the information that would be required to be provided to the central repository with respect to each bid or offer, or with respect to how, or which entity, should be required to report quotation information to the central repository? For example, the Commission understands that out-of-the-money options generate a high volume of automated quotation updates to reflect changes in the price of the underlying security, yet these series often have very little trading activity. Should this type of quotation be required to be submitted to the central repository? If not, is there any way to distinguish these quotations from other quotations that commenters believe should be reported, such as quotations generated by a profit-seeking algorithm? What is the magnitude of quotation data compared to order data and trade data, for both NMS stocks and listed options? Please provide any empirical data. Would there be a significant cost savings to the submission and collection of certain quotation information (for example, quotations in listed options) by end-of-day instead of in real time? If so, please quantify.

The Commission also requests comment with respect to including proprietary orders as well as customer orders in the scope of the consolidated audit trail. Specifically, are there any differences between customer orders and proprietary orders that should be taken into account with respect to the information that would be required to be provided to the central repository with respect to proprietary orders? The Commission also requests comment on how, if at all, the consolidated audit trail should take into account instances where an SRO's quotations (which can include orders received from members as well as quotations) are not actionable, such as when an exchange has a systems failure. Should non-firm quotations be marked in the consolidated audit trail to show they are not firm? If so, how would that be accomplished where it is the exchange making the determination its quotations are not firm, not the member that submitted the order or quotation?

C. Persons Required To Provide Information to the Central Repository

Proposed Rule 613 would require, through the mechanism of an NMS plan and exchange and association rules adopted pursuant to an NMS plan, national securities exchanges, national securities associations, and their respective members [178] to provide certain information regarding each order and each reportable event [179] to the central repository.[180] The Commission notes that requiring all members to provide certain information would capture alternative trading systems ("ATSs").[181]

The Commission's intent is to require any entity acting in a broker or dealer capacity that would receive an order from a customer or originate an order for its own account to provide information to the central repository. The Commission requests comment on whether requiring all members of each exchange and association to provide the required information would encompass all broker or dealers or other persons that would receive or originate orders, as defined in the proposed Rule. If not, why not? The Commission requests comment on whether it should, in the alternative, require all brokers and dealers registered with the Commission to provide such information, rather than all members of an exchange or association. Would applying the requirements to registered brokers and dealers encompass all persons that would be able to receive or originate orders as defined in the proposed rule? Are there persons that are not registered as a broker or dealer, and that are not a member of an exchange or association, that would still receive or originate orders in NMS securities? How should the Commission address that situation to promote inclusion of all relevant orders and executions in a consolidated audit trail?

D. Provision of Information to the Central Repository

Proposed Rule 613(c)(1) generally would require the NMS plan to provide for an accurate, time-sequenced record of orders beginning with the receipt or origination of an order by a member of a national securities exchange or national securities association, and further documenting the life of the order through the process of routing, modification, cancellation, and execution (in whole or in part). To effectuate this goal, proposed Rule 613(c)(2) would require the NMS plan to require each national securities exchange, national securities association, and member of such exchange or association to collect and provide to the central repository certain information with respect to orders in NMS securities.[182]

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[178] A member of a national securities exchange is defined in Section 3(a)(3)(A) of the Exchange Act to mean: (1) Any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker; (2) any registered broker or dealer with which such a natural person is associated; (3) any registered broker or dealer permitted to designate as a representative such a natural person; and (4) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of the Exchange Act, the rules and regulations thereunder, and its own rules. Further, for purposes of Sections 6(b)(1), 6(b)(4), 6(b)(6), 6(b)(7), 6(d), 17(d), 19(d), 19(e), 19(g), 19(h), and 21 of the Exchange Act, the term "member" when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to Section 6(f) of this title. *See* 15 U.S.C. 78c(a)(3)(A).

A member of a registered securities association is defined in Section 3(a)(3)(B) of the Exchange Act to mean any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of the Exchange Act, the rules and regulations thereunder, and its own rules. *See* Section 3(a)(3)(B) of the Exchange Act, 15 U.S.C. 78c(a)(3)(B). Section 15(b)(8) of the Exchange Act, 15 U.S.C. 78o(b)(8), states that it shall be unlawful for any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills), unless such broker or dealer is a member of a securities association registered pursuant to Section 15A of the Exchange Act or effects transactions in securities solely on a national securities exchange of which it is a member.

Rule 15b9–1(a) under the Exchange Act, 17 CFR 240.15b9–1(a), generally states that any broker or dealer required by Section 15(b)(8) of the Exchange Act to become a member of a registered national securities association shall be exempt from such requirement if it is a member of a national securities exchange; carries no customer accounts; and has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than $1,000.

[179] Reportable event would be defined in proposed Rule 613(j)(5) to include, but not be limited to, the receipt, origination, modification, cancellation, routing, and execution (in whole or in part) of an order.

[180] *See infra* Section III.D. for a detailed discussion of the information that would be required to be provided to the central repository, and *infra* Section III.H.2. for a discussion of the requirement that the exchanges and FINRA adopt rules to implement the requirements of the NMS plan for their members.

[181] An ATS is defined in Rule 300(a) of Regulation ATS. *See* 17 CFR 242.300(a). Regulation ATS requires ATSs to be registered as broker-dealers with the Commission, which entails becoming a member of FINRA and fully complying with the broker-dealer regulatory regime. *See* Concept Release on Equity Market Structure, *supra* note 19, at 3599.

[182] *See* Sections III.D.1. and III.D.2. below for a detailed discussion of the information that would be required to be provided to the central repository.

Specifically, the proposed Rule would require the NMS plan to require each national securities exchange and its members to collect and provide to the central repository certain order information for each NMS security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange.[183] The proposed Rule also would require the NMS plan to require each national securities association and its members to collect and provide to the central repository certain order information for each NMS security for which transaction reports are required to be submitted to the association.[184] The Commission requests comment on whether requiring exchanges and their members, and associations and their members, to report information for orders for these securities to a central repository is appropriate, and whether the requirements, as proposed, would cover all NMS securities.[185]

As discussed below in Section III.D.1., certain of the information would be required to be captured and transmitted to the central repository on a real time basis, meaning immediately and with no built in delay from when the reportable event occurs.[186] Other information would be permitted to be captured and transmitted to the central repository promptly after the exchange, association, or member receives the information, but in no instance later than midnight of the day that the reportable event occurs or the exchange, association, or member receives such information.[187] The data collected by the national securities exchanges, national securities associations, and their members would be required to be electronically transmitted to the central repository in a uniform electronic format.[188]

1. Information To Be Provided to the Central Repository in Real Time

As discussed above in Section II.A.4., the Commission preliminarily believes that requiring the submission of consolidated audit trail information on a real time basis would help enable more timely cross-market monitoring or surveillance and investigations of, or other responses to, market anomalies. Regulators therefore could more easily and quickly identify manipulative or other undesirable activity. Having the information available in real time would allow the staff of the SROs to run certain cross-market surveillances in real time to ascertain whether anomalous trading activity is occurring, and the SROs could then more quickly begin an investigation into the suspected anomalous trading. Timely pursuit of potential violations can be important in seeking to freeze any profits received from illegal activity before they are spent or otherwise become unreachable (for instance, by being transferred out of the country). The Commission also preliminarily believes that requiring the submission of audit trail information in real time would enable the Commission to access the information on a more timely basis than currently is the case, to support its examination and enforcement activities, as well as its analysis of market activity.[189]

The Commission requests comment as to whether it is feasible to require the submission of the proposed audit trail information, as detailed below, to the central repository on a real time basis. If the information is not submitted on a real time basis, when should the information be submitted to the central repository? Would real time order and execution information be useful for cross-market surveillance and investigations of market anomalies? If so, how? If not, why not? Please discuss the costs and benefits of recording and transmitting the data in real time, or not in real time. For example, how would costs differ between submitting end-of-day data compared to real time data? Are there categories of information that would be easier to produce on a real time basis than others? What types of systems modifications by the exchanges, FINRA, and their respective members would be necessary to collect and submit the required audit trail information to the central repository on a real time basis? Please respond with specificity. The Commission further requests comment on whether the requirement to report information in real time should be limited to a specific time period during the day, such as when the markets for trading NMS stocks and listed options are open for trading? Or some other time period? How much lower would the cost be to submit data in real time during trading hours than during the whole day? Or some other time period? Are there practical issues with requiring real time reporting throughout the day? Would requiring data to be submitted in real time all day, as proposed, allow the ability to perform systems maintenance if necessary? If commenters support the requirement to report information in real time, do they believe that there are times during the day when real time reporting may be unnecessary? Why or why not?

Proposed Rule 613(c)(3) would require the NMS plan to require each exchange, association, and member to collect and provide to the central repository on a real time basis details for each order and each reportable event,[190] as outlined below. Each exchange, association, or member would be required to report the information for each order, for each reportable event, only with respect to an action taken by the exchange, association, or member. For example, if a member receives an order from a customer, the member would be required to report the receipt of that order (with the required information) to the central repository. If the member then routed that order to an exchange for execution, the member would be required to report the routing of that order (with the required information) to the central repository. Likewise, the exchange would be required to report the receipt of that order from the member (with the required information) to the central repository. If the exchange executed the order on its trading system(s), the exchange would be required to report that execution of the order (with the required information) to the central repository, but the member would not also be required to report the execution of the order to the central repository. If the member executed the order in the over-the-counter market, however, rather than routing the order to an exchange (or other market center) for execution, the member would be required to report the execution of the order to the central repository.

i. Customer Information

The proposed Rule specifically would require, for the receipt or origination of each order, information to be reported to the central repository with respect to the customer that generates the order—specifically, the beneficial owner(s) of the account originating the order and the person exercising investment discretion for the account originating the order, if different from the beneficial owner.[191] As discussed above in Section

[183] *See* proposed Rule 613(c)(5).

[184] *See* proposed Rule 613(c)(6).

[185] *See infra* Section III.F. for a discussion of the central repository.

[186] *See* proposed Rule 613(c)(3). *See supra* note 179 for a definition of reportable event.

[187] *See* proposed Rule 613(c)(4). This requirement to report no later than midnight on the day that the reportable event occurs or the exchange, association or member receives the information would be determined using the local time of the entity reporting the information to the central repository.

[188] *See* proposed Rule 613(c)(2).

[189] *See supra* notes 28, 154, and 171 and accompanying text.

[190] *See supra* note 179 for a definition of reportable event.

[191] The proposed Rule would define "customer" to mean the beneficial owner(s) of the account

II.A.1, such information generally is neither required nor captured on existing audit trails. While Rule 17a–25 requires broker-dealers to electronically submit information about customer and proprietary securities trading, such information is required to be submitted to the Commission only upon request. The Commission preliminarily believes that the usefulness of audit trail information for purposes of effective enforcement and cross-market surveillance of trading activity would be greatly improved by having the identity of the customer electronically attached to the report of the receipt or origination of each order that is sent to the central repository.[192]

The proposed Rule would require that the NMS plan require, for the receipt or origination of an order, the provision to the central repository of information of sufficient detail to identify the customer.[193] The Commission preliminarily believes that the customer name and address would be sufficient detail to identify the customer. In addition, the proposed Rule would require the provision of customer account information, which would be defined in proposed Rule 613(j)(2) to include but not be limited to: (1) The account number; (2) account type (*e.g.* options); (3) customer type (*e.g.,* retail, mutual fund, broker-dealer proprietary); (4) the date the account was opened; and (5) the large trader identifier (if applicable).[194] The Commission preliminarily believes that information on the type of account and when it was opened would be important to investigations of potential insider trading. For example, knowing when in time the customer opened the account in relation to the suspicious trading activity, or whether the customer changed account authorization to permit options trading just before suspicious options trading, could be evidence of intent. The Commission notes that currently any member receiving orders from a customer would be required, as part of its compliance with its books and records requirements,[195] to take reasonable and appropriate steps to ensure the accuracy of the customer information received. This should not change, if this proposal were adopted, with respect to customer information recorded and provided to the central repository.

The proposed Rule also would require a unique customer identifier for each customer.[196] The unique customer identifier should remain constant for each customer, and have the same format, across all broker-dealers. This unique customer identifier would serve a similar purpose to a customer's social security number or tax identification number, obviating the need to include that information in the consolidated audit trail data. The Commission is not proposing to mandate the method for achieving this requirement, so as to allow those entities subject to the proposed Rule flexibility to determine the most practical way to accomplish the requirement of having unique customer identifiers. However, one alternative could be to have the central repository be responsible for assigning a unique customer identifier in response to an input by a member of a customer's social security number or tax identification number. If the customer already has been assigned a unique identifier because of a prior request by another member, the central repository would provide to the member that same identifier. If no unique identifier has previously been assigned, the central repository could assign a new one. Access to this part of the central repository's functionality could be more tightly controlled than access to the consolidated audit trail data, to help ensure the confidentiality of the social security or tax identification numbers.

The Commission requests comment as to whether each item of information regarding the customer is necessary for an effective consolidated audit trail. Is there any additional data that should be included to help identify the customer submitting the order? The Commission also requests comment on the proposed definition of customer. For example, should the definition only include the person exercising investment discretion? Should the definition include the beneficial owner? Should the customer information requirement also include a unique identifier for the particular computer algorithm used by the firm to generate the order, if applicable? Is there a better way to identify in the audit trail individual algorithmically-generated trading strategies? Should each trading desk at a member be required to have its own unique customer identifier, to the extent the trading desk is originating orders for the account of the member? This information on specific algorithms or trading desks could be useful to focus an inspection or investigation, if regulators could tell from the audit trail data that there was a pattern of suspicious trading activity from a specific algorithm or desk.

The Commission requests comment as to what systems modifications, if any, would be required for members to collect and to provide this customer identification information to the central repository. Do broker-dealers currently keep this information electronically? If not, what changes would need to be made to collect and provide this information for existing accounts to the central repository? What would be the cost of converting this information into an electronic, accessible and linked format? Please be specific in your response. Further, the Commission requests comment on whether there are laws or other regulations in non-U.S. jurisdictions that would limit or prohibit a member from obtaining the proposed customer information for non-U.S. customers. If so, what are they? How do members currently obtain such information for such customers? If there are special difficulties in obtaining customer information from non-US jurisdictions, how should the consolidated audit trail be modified or otherwise reflect that difficulty?

The Commission requests comment on other possible ways to develop and implement unique customer identifiers. For example, who should be responsible for generating the identifier? The Commission also requests comment on whether a unique customer identifier, together with the other information with respect to the customer that would be required to be provided under the proposed Rule, is sufficient to identify individual customers. Are there any concerns about how the customer information will be protected? If so, what steps should be taken to ensure appropriate safeguards with respect to the submission of customer information, as well as the receipt, consolidation, and maintenance of such information in the central repository.

In addition, the Commission requests comment on whether the requirement to provide customer information to the central repository in real time would impact market participants' trading activity? If so, how so? For example, would market participants be hesitant to

originating the order and the person exercising investment discretion for the account originating the order, if different from the beneficial owner(s). *See* proposed Rule 613(j)(1). The Commission notes that this proposed definition of customer is only for purposes of proposed Rule 613, and what information would be required to be collected and disclosed by members to the central repository. The Commission does not intend to alter the responsibilities that broker-dealers are already subject to pursuant to SRO rules, or the federal securities laws, rules or regulations or other laws, with respect to the customers (for example, suitability rules, *see, e.g.* NASD Rule 2310).

[192] *See supra* Section II.A.

[193] *See* proposed Rule 613(c)(7)(i)(A).

[194] *See* proposed Rule 613(c)(7)(i)(C). *See also* Large Trader Proposal, *supra* note 11.

[195] *See, e.g.,* Rules 17a–3, 17a–4, and 17a–25 under the Exchange Act, 17 CFR 240.17a–3, 17a–4, and 17a–25.

[196] *See* proposed Rule 613(c)(7)(i)(B).

engage in certain legal trading activity because of a concern about providing customer information in real time? Would market participants shift their trading activity to products or markets that do not require the capture of customer information to avoid compliance with this requirement of the proposed Rule? If so, how should the Commission address those concerns? On the other hand, would enhanced surveillance of the markets as a result of the consolidated audit trail attract additional trading volume to the U.S. markets?

ii. National Securities Exchange, National Securities Association and Broker-Dealer Identifier Information

Each member originating or receiving an order from a customer, and each national securities exchange, national securities association, and member that subsequently handles the order, would be required to include its own unique identifier in each report it sends to the central repository for a reportable event. Such an identifier would allow the Commission and SRO staff to determine which member facilitated the transaction and assist in assessing compliance with various SRO or Commission rules, such as the limit order display rule (Rule 604 of Regulation NMS).[197] This is especially important for ensuring that individual customer orders are handled and executed in accordance with SRO and Commission rules. In addition, routing decisions are an important aspect in assessing order execution quality and compliance with a member's duty of best execution. Further, if applicable, the member receiving an order from a customer would be required to report an identifier specifying the branch office and the registered representative at the member receiving the order. These identifiers would be unique to the exchange, association, member, branch office, and registered representative.

The proposed Rule would not require that these unique identifiers "travel" with an order throughout its life, but would require that the unique identifier of each member or SRO that is taking an action with respect to the order be attached to the report of each reportable event that the member, exchange or association is reporting to the central repository. Each report in the life of the order would be able to be linked together at the central repository through the unique order identifier. Therefore, the Commission preliminarily does not believe that the unique identifier of each member or market that touches an order needs to travel with the order for the life of the order as long as the unique identifier of the member or exchange taking the action is included. For example, if Member A receives an order from a customer, Member A would be required to report the receipt of that order to the central repository and include Member A's unique identifier. If Member A then routed that order to another member, Member B, Member A would be required to report the routing of that order to the central repository and include Member A's unique identifier as well as the unique identifier of Member B. Likewise, Member B would be required to report the receipt of that order from Member A to the central repository and include the unique identifiers of Member A and Member B. If Member B then routed the order to Exchange A for execution, Member B would be required to report the routing of the order to the central repository and include the unique identifier of Member B and Exchange A, but not Member A.

The Commission requests comment as to who should be responsible for generating unique identifiers for national securities exchanges, national securities associations, and their members. Would it be feasible for each national securities exchange, national securities association, or member to develop its own identifier for this purpose? The Commission also requests comment on the level of specificity for each unique member identifier—should it be designed to identify the firm, trading desk or individual registered representative? What are the advantages or disadvantages of requiring a unique identifier that would allow identification of an individual registered representative as opposed to just the member entity? The Commission also requests comment on procedures or safeguards market participants believe are necessary or appropriate so that these unique identifiers are routed accurately.

iii. Receipt or Origination of an Order

The proposed Rule would require the NMS plan to require members of each of the exchanges and FINRA to collect and provide to the central repository certain key items of information about an order as soon as the member receives or originates an order, including the customer information as described above. The proposed Rule would require the member to report the date and time (to the millisecond) that an order was originated or received.[198] The member also would be required to report the material terms of the order.[199] Material terms of the order would be defined to include, but not be limited to, the following information: (1) The NMS security symbol; (2) the type of security; (3) price(s) (if applicable); (4) size (displayed and non-displayed); (5) side (buy/sell); (6) order type; (7) if a sell order, whether the order is long, short, or short exempt;[200] (8) if a short sale, the locate identifier; (9) open/close indicator; (10) time in force (if applicable); (11) whether the order is solicited or unsolicited; (12) whether the account has a prior position in the security; (13) if the order is for a listed option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close; and (14) any special handling instructions.[201]

The information described would assist the SROs, and the Commission as well, in determining the exact time of order receipt or origination, as well as provide a record of all of the original material terms of an order. The entry time of orders can be critical information in enforcement cases. In insider trading investigations, for example, the entry time of the order may be a critical piece of evidence in determining whether or not an individual acted with the requisite scienter to violate the federal securities laws. Similarly, in investigating possible market abuse violations, such as trading ahead of a customer order, the relationship between order origination, the terms of the order, and order entry of various other orders on multiple venues, may be at issue. As noted above, requiring that the time of a reportable event be reported in milliseconds is consistent with current industry standards. The Commission requests comment on whether this is an appropriate time standard. Do commenters believe that the time standard should be shorter? If so, what should be the standard, and why? Would requiring a shorter time standard for reporting actually provide more

[197] 17 CFR 242.604.

[198] *See* proposed Rule 613(c)(7)(i)(H). Requiring time to the millisecond is consistent with current industry standards. The SIPs currently support millisecond time stamps. *See, e.g.* SIAC's CQS Output Specifications Revision 40 (January 11, 2010); SIAC's CTS Output Specifications Revision 55 (January 11, 2010); and Nasdaq's UTP Plan Quotation Data Feed Interface Specifications Version 12.0a (November 9, 2009).

[199] *See* proposed Rule 613(c)(7)(i)(I).

[200] A broker or dealer must mark all sell orders of any equity security as long, short, or short exempt. *See* Rule 200(g)(1) under the Exchange Act, 17 CFR 242.200(g)(1). A sell order may be marked short exempt only if the conditions of Rule 201(c) or (d) under the Exchange Act are met (17 CFR 242.201(c) and (d)). *See* Rule 200(g)(2), 17 CFR 242.200(g)(2).

[201] *See* proposed Rule 613(j)(3).

precision in the timing of events? How would your answer be impacted by the extent to which market participants' clocks are synchronized? Alternatively, do commenters believe that it would be more appropriate to require in the proposed Rule that the time of reporting be consistent with industry standards, rather than including a specific time standard (recognizing that the SROs could choose to include a specific time standard in the NMS plan)?

An open/close indicator currently is required to be submitted to exchanges for listed option orders [202] and indicates whether the trade is opening a new position or increasing an existing position rather than closing or decreasing an existing position. The open/close indicator provides information to more easily track the size and holding time for individual positions, and thus to more easily track open interest and short interest. In addition, an open/close indicator could be used to indicate when a buy order in a stock is a buy to cover on a short sale. This information is useful in investigating short selling abuses and short squeezes. For example, a build up of a large short position by one investor along with the spreading of rumors may be indicative of using short selling as a tool to potentially manipulate prices. Information on when the position decreases is also useful for indicating potential manipulation, insider trading, or other rule violations. Information on whether the account has a prior position in the security is useful in a number of investigations. For example, the ability to easily determine whether an order adds to a position, along with the timing of the order, is particularly important in detecting and investigating portfolio pumping or marking the close. Also, information on whether the account has a prior position may be important in investigating "layering" or "spoofing." Layering and spoofing are manipulations where orders are placed close to the best buy or sell price with no intention to trade in an effort to falsely overstate the liquidity in a security.

The Commission intends that the items of information required to be reported to the central repository for the receipt or origination of an order, at a minimum, include substantially all of the information currently required to be reported, or provided upon request, under the exchanges' and FINRA's existing order audit trail rules, as well as the EBS system rules and Rule 17a–25 under the Exchange Act. The Commission requests comment as to whether there are any items of information that are required to be recorded and reported by existing audit trail rules, or to be provided to the SROs or Commission upon request, that are not included within the proposed Rule that commenters believe should be included. If there are, please identify each item of information and discuss why you believe that such information should be included in the proposed consolidated audit trail. The Commission also requests comment on whether there are items of information included in the current SRO audit trails, and which are proposed to be included in the consolidated audit trail, that are unnecessary for surveillance, investigative or other regulatory purposes. If so, what are these data elements and why are they not necessary as part of a consolidated audit trail? Are they relevant for other purposes? The Commission further requests comment on whether it should require, as part of the disclosure of special handling instructions, the disclosure of an individual algorithm that may be used by a member or customer to originate or execute an order, and if so, how such an algorithm should be identified.

As noted above, members currently are required to indicate whether an order would open or close a position for listed options.[203] The Commission requests comment as to what extent members currently obtain or have access to this information from their customers, or track this information for their own proprietary orders, for all NMS securities. If members currently do obtain this information, is the information collected and stored electronically? If members currently do not have access to or obtain this information for customer orders, what would be the impact of the proposed requirement to collect and provide this information to the central repository? What would be the costs, if any, of collecting and providing this information? Please explain and quantify any potential impact or costs.

The proposed Rule does not specify exact order types (*e.g.,* market, limit, stop, pegged, stop limit) to be included as material terms of an order because order types may differ across markets, and even an order type with the same title may have a different meaning from one exchange to another. Further, markets are frequently creating new order types and eliminating existing order types. In addition, the Commission notes that it may be difficult to distinguish between an "order type" and a special handling instruction, such as "do not display." The Commission therefore preliminarily believes that it would not be practical to include in the proposed Rule a list of order types in the required information to be reported to the central repository. The Commission notes, however, that the SROs may choose to include more detail in the NMS plan. The Commission requests comment on this approach. The Commission also requests comment as to whether there are other items of information that would be required to be reported to the central repository that have, or may have, different meanings across different exchanges. If so, what are they? How should these differences be addressed in the proposed Rule?

The proposed Rule also would require the NMS plan to require each member of an exchange or FINRA to "tag" each order received or originated by the member with a unique order identifier that would be reported to the central repository and that would stay with that order throughout its life, including routing, modification, execution, and cancellation.[204] The members, exchanges, and FINRA would be required to pass along the unique order identifier with the order when routing the order, and the unique order identifier would be required on each reportable event report. For example, Member ABC that receives an order from a customer would immediately assign it a unique order identifier, and would report that identifier to the central repository along with the rest of the required information. If Member ABC subsequently routed the order to another member, Member DEF, Member ABC would be required to pass along to Member DEF the unique order identifier, as well as to attach the unique order identifier when reporting the routing of the order to the central repository. If Member DEF routed the order to Exchange A for execution, Member DEF would pass along to Exchange A with the order the unique order identifier, and would attach the identifier on the report of the route sent to the central repository. Exchange A would be required to attach the unique order identifier when reporting receipt of the order, and an execution of the order (if applicable) to the central repository.

The Commission recognizes that the reality of how orders are routed and executed often is complex, and that it likely is not feasible to anticipate how the proposed requirement for a unique

[202] *See, e.g.,* CBOE Rule 6.51; BATS Rule 20.7; and ISE Rule 1404.

[203] *Id.*

[204] *See* proposed Rule 613(c)(7)(i)(D).

order identifier would or would not apply to each different factual scenario. For example, members may often execute customer orders on a "riskless principal" basis,[205] rather than on an agency basis. The Commission preliminarily believes that it would not be practical or feasible to "link" through related unique order identifiers the customer order(s) and the member's proprietary order(s) from which the customer order is given an allocation. Rather, the Commission envisions that the member would create a new unique order identifier for each proprietary order, and that the manner in which the execution of the customer order would be "linked" with one (or more) proprietary order(s) (if at all) would be through the inclusion of the unique order identifier for the contra-side order(s) on the report of the execution of the customer order sent to the central repository.[206] However, in a situation where a member merely broke up a larger customer order into smaller orders and sent those orders, on an agency basis, to multiple markets for execution, the Commission preliminarily believes that the unique order identifier of the original customer order should carry through in some manner to the individual smaller orders that result when the original order is broken up. For example, it may be necessary to attach two unique order identifiers to an order—the original order identifier (*i.e.* parent order) and the individual smaller order identifier (*i.e.* child order). Alternatively, the unique order identifier of the parent order could be modified to carry through to the child orders (for example, the parent order could have an identifier ABC and the child orders could have identifiers of ABC1 and ABC2).

The Commission preliminarily believes that a unique order identifier that is essentially transferred along with an order from origination through execution or cancellation is useful for a consolidated audit trail. The use of such an identifier would allow the SROs and the Commission to efficiently link all events in the life of an order and help create a complete audit trail across markets and broker-dealers that handle the order. In this manner, being able to link the parent order with the child orders through the unique order identifiers would allow for ease of tracking of the original parent order throughout its life. While the Commission believes that a unique order identifier is an important data element for the consolidated audit trail, the Commission is not proposing at this time to mandate the format of such an identifier or how the identifier would be generated.

The Commission requests comment on whether, and why, a unique order identifier that would stay with the order for the life of the order is useful or essential for an effective consolidated audit trail. In addition, the Commission requests comment on whether there is an alternative to a unique order identifier that would stay with the order for the life of the order. For example, would permitting each member or SRO that receives an order from another member or SRO to attach its own unique identifier to an order allow the SROs to efficiently link all events in the life an order and ensure the creation of a complete audit trail across each market and broker-dealer that handled the order? The Commission requests comment on the feasibility and merits of the manner in which it proposes unique order identifiers be handled for riskless principal transactions. The Commission also requests comment on the feasibility and merits of requiring that a unique order identifier be attached to an order, as well as the multiple orders that may result if the original order is subsequently broken up into several orders, in a manner that would permit regulators to trace the subsequent orders back to the original single order. The Commission also requests comment on the feasibility and merits of requiring that a unique order identifier be attached to an order that is the result of a combination of two more orders in a manner that would permit regulators to trace the combined order back to its component orders. The Commission further requests comment as to how unique order identifiers could be generated for both electronic and manual orders, and who should be responsible for generating them. Given the significant number of orders (including quotations) for which information would be required to be collected and provided to the central repository pursuant to the proposed Rule, the Commission requests comment on the feasibility of allowing unique order identifiers to be re-used. If unique order identifiers were to be re-used, at what point should that be allowed? Are there any concerns with re-use that should be addressed? Additionally, the Commission requests comment on whether it is feasible to require unique order identifiers if the consolidated audit trail is implemented in the proposed phased approach? For example, is it appropriate to require that national securities exchanges and national securities associations comply with this requirement before their members are required to do so?

The Commission also requests comment on procedures or safeguards market participants may wish to establish to ensure that unique order identifiers are routed and reported accurately. Further, the Commission requests comment on what systems modifications, if any, would be required in order to "tag" every order with a unique order identifier. Please respond to each question with specificity.

iv. Routing

The proposed Rule would require that the NMS plan require the collection and reporting to the central repository of all material information related to the routing of an order. Specifically, the proposed Rule would require the reporting of the following information each time an order is routed by the member or SRO that is doing the routing: (1) The unique order identifier; (2) the date on which an order was routed; (3) the exact time (in milliseconds) the order was routed; (4) the unique identifier of the broker-dealer or national securities exchange that routes the order; (5) the unique identifier of the broker-dealer or national securities exchange that receives the order; (6) the identity and nature of the department or desk to which an order is routed if a broker-dealer routes the order internally; [207] and (7) the material terms of the order.[208]

Further, the proposed Rule would require the collection and reporting by the SRO or member receiving an order of the following information each time a routed order is received: (1) The unique order identifier; (2) the date on which the order is received; (3) the time at which the order is received (in milliseconds); (4) the unique identifier of the broker-dealer or national securities exchange receiving the order; (5) the unique identifier of the broker-

[205] For example, a member receives a customer order, and rather than sending the customer order as an agency order to an exchange or other marketplace to execute, the member creates an order for its proprietary account that it sends to an exchange or other marketplace to be executed. Once an execution occurs in the proprietary account, the member would then execute the customer order against its proprietary account. This process can be complicated by the member receiving and handling more than one customer order at a time, and creating one or more proprietary orders to send to one or more markets, and the manner in which the member allocates executions from its proprietary account among the customer orders.

[206] *See* proposed Rule 613(c)(7)(vi)(C).

[207] Internal routing information can be a critical element in assessing whether a member may be disadvantaging customer orders, either by trading ahead of customer orders, or by executing orders as principal at prices inferior to the NBBO.

[208] *See* proposed Rule 613(c)(7)(ii).

dealer or national securities exchange routing the order; and (6) the material terms of the order.[209]

This information would allow regulatory staff to easily identify each member or exchange that "touches" the order during its life, as well as the dates and times at which each member or exchange receives and reroutes the order, and any changes that may be made to the original terms of the order along the way. The Commission preliminarily believes that this information for orders that are routed would allow the Commission and SROs to efficiently track an order from inception through cancellation or execution.

The Commission requests comment as to whether such information regarding the routing of orders is useful or necessary for an effective consolidated audit trail. Should any additional information be included in the consolidated audit trail relating to routing? The Commission requests comment as to what systems modifications, if any, would be required to provide this information. Do members currently have, or have access to, this information? If not, what changes would need to be made to collect this information for existing accounts for submission to the central repository? Do commenters believe that it would be necessary to achieve the purposes of the proposed Rule to require information from each member or SRO that "touches" an order? Please explain with specificity why or why not. Is it feasible to require information relating to the routing of orders if the consolidated audit trail is implemented in the proposed phased approach? For example, is it appropriate to require that national securities exchanges and national securities associations comply with this requirement before their members are required to do so?

v. Modification, Cancellation, and Execution

The proposed Rule would require the NMS plan to require that information be reported to the central repository concerning any modifications to the material terms of an order or partial or full order cancellations. The national securities exchange, national securities association, or member handling the order at the time would be required to immediately report to the central repository the following information: (1) The unique order identifier, (2) the date and time (in milliseconds) that an order modification or cancellation was originated or received; (3) the identity of the person responsible for the modification or cancellation instruction; (4) the price and remaining size of the order, if modified; and (5) other modifications to the material terms of the order.[210] Information pertaining to order modifications and cancellations would assist the Commission and SROs in identifying all changes made to an order and the persons and broker-dealers responsible for the changes.

The proposed Rule also would require the following information on full or partial executions of orders to be collected and reported to the central repository: (1) The unique order identifier; (2) the execution date; (3) the time of execution (in milliseconds); (4) the capacity of the entity executing the order (whether principal, agency, or riskless principal); (5) the execution price; (6) the size of the execution; (7) the unique identifier of the national securities exchange or broker-dealer executing the order; [211] and (8) whether the execution was reported pursuant to an effective transaction reporting plan or pursuant to the OPRA Plan, and the time of such report.[212]

The Commission preliminarily believes that the required execution information, in combination with the proposed information pertaining to order receipt or origination, modification, or cancellation, would provide regulators with a comprehensive, near real time view of all stages and all participants in the life of an order. The proposed Rule would allow the Commission and SROs to identify, for a particular transaction, every member and national securities exchange involved in the receipt or origination, routing, modification, and execution (or cancellation) of the order. This order information, including the readily accessible customer information, should help regulators investigate suspicious trading activity in a more timely manner than currently possible.

Additionally, the requirement to report whether and when the execution of the order was reported to the consolidated tape [213] should allow regulators to more efficiently evaluate certain trading activity. For example, trading patterns of reported and unreported transactions may cause the staff of an SRO or the Commission to make further inquiry into the nature of the trading to determine whether the public was receiving accurate and timely information regarding executions and that market participants were continuing to comply with the trade reporting obligations under SRO rules. Similarly, patterns of reported and unreported transactions could be indicia of market abuse, including failure to obtain best execution for customer orders or possible market manipulation. Being able to more efficiently compare the consolidated order execution data with the trades reported to the consolidated tape could thus be an important component of overall surveillance activity.

As discussed above, the Commission recognizes that the execution of orders often is complex.[214] For example, a customer order may be executed on a riskless principal basis. When a member receives a customer order, rather then sending the customer order as an agency order to an exchange or other marketplace for execution, the member creates an order for its proprietary account that it sends to an exchange or other marketplace to be executed. Once an execution occurs in the proprietary account, the member would then execute the customer order against its proprietary account. This process can be complicated by the member receiving and handling more than one customer order at a time, and creating one or more proprietary orders to send to one or more markets, and the manner in which the member allocates executions from its proprietary account among the customer orders. Each proprietary order would have a unique order identifier that is different from, and not linked to, the unique order identifier for the original customer order. How should the reporting to the central repository of the execution of the proprietary orders and the customer order be handled? As noted above, the Commission envisions that the manner in which the execution of the customer order would be "linked" with one (or more) of the proprietary order(s) would be through the inclusion of the unique order identifier for the contra-side order(s) on the report of the execution of the customer order sent to

[209] *See* proposed Rule 613(c)(7)(iii).

[210] *See* proposed Rule 613(c)(7)(iv).

[211] Each national securities exchange and national securities association would have its own unique identifier, as well as each broker-dealer (member) (*see supra* Section III.D.1.ii.).

[212] *See* proposed Rule 613(c)(7)(v).

[213] *Id. See also infra* Section III.F.1. for a discussion of the requirement in proposed Rule 613(e)(5) that the NMS plan require the central repository to receive and retain on a current and continuing basis (i) the national best bid and national best offer for each NMS security, (ii) transaction reports reported pursuant to a transaction reporting plan filed with the Commission pursuant to, and meeting the requirements of, Rule 601 of Regulation NMS, and (iii) last sale reports reported pursuant to the OPRA Plan.

[214] *See supra* notes 205–206 and accompanying text.

the central repository.[215] Is this practical? Is there another method by which to link the execution of the customer order to the proprietary orders? Is it necessary to do so to achieve the purposes of the consolidated audit trail?

The Commission requests comment on whether the information proposed to be collected and reported would be sufficient to create a complete and accurate audit trail. Is there additional information that should be collected and reported? If yes, please describe the information and the value its collection and reporting would add to the consolidated audit trail.

2. Information To Be Collected Other Than in Real Time

While the majority of order and execution information would be required to be transmitted to the central repository on a real time basis, the Commission recognizes that this may not be practical or feasible for all information because the information may not be known at the time of the reportable event.[216] Thus, the Commission is proposing that certain information be transmitted to the central repository promptly after the national securities exchange, national securities association, or member receives the information, but in no instance later than midnight of the day that the reportable event occurs or the national securities exchange, national securities association, or member receives such information.[217] The Commission preliminarily believes that this proposed time frame would provide sufficient time for an exchange, association, or a member to obtain the information required to be reported while still allowing regulators to access the information for regulatory purposes on a more timely basis than today.

Each national securities exchange, national securities association and their members would be required to report the account number for any subaccounts to which an execution is allocated.[218] By requiring that this data be included in the consolidated audit trail, regulators would be able to more easily identify the "ultimate" customer for the trade. The Commission preliminarily believes that it would be useful to know the account number as well as the required information on the beneficial owner. For example, a person or groups of persons could trade through a single account or numerous accounts. Because individual traders may use multiple accounts at multiple broker-dealers, being able to identify the beneficial owner of the underlying accounts aids in the identification and investigation of suspicious trading activity. Similarly, traders may seek to hide manipulative activity from regulatory oversight by trading anonymously through omnibus accounts. In those instances, linking the trade to the individual trader requires the market center to be able to identify both the accounts trading and the beneficial owner or owners of those accounts to determine what person or group of persons is directing the specific trades at issue. Requiring the identity of the ultimate customer electronically to be attached to each order would make this information easily accessible and searchable and thus would greatly improve the usefulness of audit trail information for purposes of effective enforcement and cross-market surveillance.

Each national securities exchange, national securities association and their members also would be required to report the unique identifier of the clearing broker or prime broker for the transaction, if applicable, and the unique order identifier of any contra-side order.[219] Finally, if the execution is cancelled, a cancelled trade indicator would be required to be reported. In addition, the proposed Rule also would require the reporting of any special settlement terms for the execution, if applicable; short sale borrower information and identifier; and the amount of a commission, if any, paid by the customer, and the unique identifier of the broker-dealer(s) to whom the commission is paid.[220]

Broker-dealers have a duty of best execution.[221] Since commissions can be charged either explicitly through a separate fee or implicitly in the transaction price, the lack of easily accessible commission fee data alongside transaction price data may make it hard to identify the "all-in" price of execution and, thus, hard to determine whether the obligation to seek best execution was met.[222] In addition, broker-dealers also must comply with just and equitable principles of trade under NASD rules that require them to charge fair commissions and mark-ups (mark-downs), and the lack of easily accessible commission fee data may make it hard to determine whether just and equitable principles of trade have been observed.[223] Also, FINRA rules prohibit certain quid pro quo arrangements in the distribution of IPOs.[224]

The Commission requests comment on the usefulness and necessity of requiring the reporting of each of these items of information to achieve the stated objectives of the consolidated audit trail. Are there practical difficulties associated with providing this information as proposed? Is there additional information that would be useful or necessary in this regard? For example, the proposed Rule would require the reporting of a cancelled trade indicator, for executions that are cancelled. Should the proposed Rule

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[215] *See supra* note 206 and accompanying text.

[216] For example, a member may receive an order during the day from an advisory customer but not know to which sub-accounts to allocate execution of the order until later in the day.

[217] *See* proposed Rule 613(c)(4).

[218] *See* proposed Rule 613(c)(7)(vi)(A).

[219] *See* proposed Rule 613(c)(7)(vi)(B) and (C).

[220] *See* proposed Rule 613(c)(7)(vi)(D), (E), and (F).

[221] A broker-dealer has a legal duty to seek to obtain best execution of customer orders. *See, e.g., Newton* v. *Merrill, Lynch, Pierce, Fenner & Smith, Inc.,* 135 F.3d 266, 269–70, 274 (3d Cir.), cert. denied, 525 U.S. 811 (1998); *Certain Market Making Activities on Nasdaq,* Securities Exchange Act Release No. 40900 (Jan. 11, 1999) (settled case) (citing *Sinclair* v. *SEC,* 444 F.2d 399 (2d Cir. 1971); *Arleen Hughes, 27 SEC 629, 636 (1948), aff'd sub nom. Hughes* v. *SEC,* 174 F.2d 969 (D.C. Cir. 1949)). *See also Order Execution Obligations,* Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996) ("Order Handling Rules Release"). A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated in SRO rules and, through judicial and Commission decisions, the antifraud provisions of the federal securities laws. *See* Order Handling Rules Release, 61 FR at 48322. *See also Newton,* 135 F.3d at 270. The duty of best execution requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances, *i.e.,* at the best reasonably available price. *Newton,* 135 F.3d at 270. *Newton* also noted certain factors relevant to best execution—order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. *Id.* at 270 n.2 (citing Payment for Order Flow, Exchange Act Release No. 33026 (Oct. 6, 1993), 58 FR 52934, 52937–38 (Oct. 13, 1993) (Proposed Rules)). *See In re E.F. Hutton & Co.,* Securities Exchange Act Release No. 25887 (July 6, 1988). *See also* Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006, 55008–55009 (November 2, 1994) ("Approval of Payment for Order Flow Final Rules"). *See also* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("NMS Adopting Release"), at 37537 (discussing the duty of best execution).

[222] The term "all-in" price is intended to capture the total costs for executing a trade.

[223] *See* FINRA Rule 2010 and IM–2440–1.

[224] *See* FINRA Rule 5130. The Rule ensures that: (1) FINRA members make bona fide public offerings of securities at the offering price; (2) members do not withhold securities in a public offering for their own benefit or use such securities to reward persons who are in a position to direct future business to members; and (3) industry insiders, including FINRA members and their associated persons, do not take advantage of their insider position to purchase "new issues" for their own benefit at the expense of public customers. For example, information on commissions could help detect a transaction in the secondary market between an underwriter and an investor at an excessively high commission rate that is a "quid pro quo" for the underwriter allocating shares in a "hot" IPO to the investor.

require separate identification of trades that are broken pursuant to the rules of the applicable SRO at the request of one party to a transaction or upon the SRO's own motion, and trades that are cancelled by mutual agreement of the parties? Why or why not? The Commission also requests comment on whether the proposed requirement to report the identity of the clearing broker would provide sufficient information on "give-up" arrangements,[225] or whether additional information should be required to be reported.

The Commission requests comment on the proposed time frame for reporting of this information. The Commission is proposing that the information not required to be reported in real time be reported promptly after receipt, but in no event later than midnight on the day the reportable event occurs or the exchange, association, or member receives the information. While one of the objectives of the proposed Rule is to collect data on a real time basis, the Commission understands that certain information may not be available at the time of the reportable event (*e.g.,* the execution or cancellation). The Commission, however, believes such information should be provided promptly after receipt, meaning as soon as possible given the capabilities of a market participant's systems. While the Commission is proposing that the information be reported promptly, the proposed Rule also would provide an objective time limit for providing the information—no later than midnight on the day the event occurs or the information is received by the exchange, association, or member. Is the proposed time frame reasonable with respect to the information that would be required to be reported? Should the proposed Rule only require that information be reported promptly after receipt? How should promptly be measured? Alternatively, should the proposed Rule only require that information not available at the time the reportable event occurs be reported no later than midnight on the day the information was received? How would this standard impact the usefulness of the consolidated audit trail?

E. Clock Synchronization

The Commission believes that clock synchronization is necessary to ensure an accurate audit trail, given the number of market participants with internal order handling and trading systems that would be reporting information to the central repository. Therefore, proposed Rule 613(d) would provide that the NMS plan filed with the Commission include a requirement that each national securities exchange and national securities association, and their members, synchronize their business clocks that are used for the purposes of recording the date and time of any event that must be reported under the proposed Rule. The proposed Rule would require each exchange, FINRA, and their members to synchronize their clocks to the time maintained by the National Institute of Standards and Technology ("NIST"), consistent with industry standards.[226] Exchanges, associations, and the members would be required to synchronize their business clocks in accordance with these requirements within four months after effectiveness of the NMS plan.[227]

The Commission is not proposing to set a standard within which the clocks must be synchronized to the NIST (*e.g.,* to within one second of the NIST clock), in recognition of how quickly technology can improve and increase the speed at which orders are handled and executed. Rather, the Commission is proposing that the clocks be synchronized "consistent with industry standards." The exchanges and FINRA would be able, however, to set a limit in the NMS plan to be filed with the Commission. Also, in recognition of the pace at which technology improves, the proposed Rule provides that the NMS plan shall require each national securities exchange, national securities association, and its respective members to annually evaluate the actual synchronization standard adopted to consider whether it should be shortened, consistent with changes in industry standards.[228] When engaging in this annual evaluation, exchanges, associations, and members could take into account the feasibility of shortening the time standard, and whether shortening the standard would allow for the conveyance of additional meaningful information to the consolidated audit trail.

The Commission requests comment on whether this approach is practical and would provide for sufficient flexibility in determining how closely to synchronize clocks. Is the proposed Rule's requirement that each exchange, association, and member synchronize its clocks in accordance with the time maintained by NIST reasonable? To what extent do SROs and their members currently synchronize clocks? Please answer with specificity. Would synchronization as proposed require significant systems modifications on behalf of national securities exchanges, national securities association, or their respective members? Is it reasonable to require clocks to be synchronized with the time maintained by NIST within a time frame that is "consistent with industry standards"? Is there another standard that should be used by the Commission? The Commission also requests comment on the feasibility of requiring the exchanges, FINRA, and their members to comply with these requirements within four months of effectiveness of the NMS plan.

F. Central Repository

The proposed Rule would require that the NMS plan provide for the creation and maintenance of a central repository, which would be a facility of each exchange and FINRA.[229] The central repository would be jointly owned and operated by the exchanges and FINRA, and the NMS plan would be required to provide, without limitation, the Commission and SROs with access to, and use of, the data reported to and consolidated by the central repository for the purpose of performing their respective regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations. Each of the exchanges and FINRA would be a sponsor of the plan,[230] and as such would be responsible for selecting a plan processor to operate the central repository.[231]

The Commission requests comment on the need for a central repository to receive and retain the consolidated audit trail information. Are there alternatives to creating a central repository for the receipt of order audit trail information? The Commission also requests comment on whether it is practical or appropriate to require the exchanges and FINRA to jointly own and operate the central repository.

[225] In a typical give-up arrangement, a broker-dealer that is not a member of an exchange (Broker-dealer A) may route the order to another broker-dealer that is a member of an exchange (Broker-dealer B) for execution on that exchange. If Broker-dealer B is not also a clearing member of the exchange, it may "give-up" the execution of that order to another broker-dealer that is a clearing member of that exchange (Broker-dealer C). Further, there may be a corresponding "flip" of the trade from Broker-dealer C's account to the account of the broker-dealer that is the clearing firm for Broker-dealer A.

[226] *See* proposed Rule 613(d)(1).

[227] *See* proposed Rule 613(a)(3)(ii).

[228] *See* proposed Rule 613(d)(2).

[229] *See* proposed Rule 613(e)(1).

[230] *See supra* note 173 for a definition of a plan sponsor in Rule 600(a)(70) of Regulation NMS, 17 CFR 242.600(a)(70).

[231] *See infra* Section III.I. for a definition and discussion of the plan processor.

1. Responsibilities of Central Repository To Collect, Consolidate, and Retain Information

The central repository would be responsible for the receipt, consolidation, and retention of all data submitted by the national securities exchanges, national securities associations and their members pursuant to the proposed Rule and the NMS plan.[232] Further, the central repository would be required to collect from the central processors and retain on a current and continuous basis the NBBO for each NMS security, transaction reports reported pursuant to an effective transaction reporting plan filed with the Commission pursuant to, and meeting the requirements of, Rule 601 of Regulation NMS, and last sale reports reported pursuant to the OPRA Plan filed with the Commission pursuant to, and meeting the requirements of, Rule 608 of Regulation NMS.[233] The central repository would be required to maintain this NBBO and transaction data in a format compatible with the order and event information reported pursuant to the proposed Rule.

This requirement is intended to allow SRO and Commission staff to easily search across order, NBBO, and transaction databases. The Commission preliminarily believes that having the NBBO information in a format compatible with the order audit trail information would be useful for enforcing compliance with federal securities laws, rules and regulations. The NBBO is used by regulators to evaluate members for compliance with numerous regulatory requirements, such as the duty of best execution or Rule 611 of Regulation NMS.[234] Regulators would be able to compare order execution information to the NBBO information on a more timely basis because the order and execution information would be available on a real time basis and all of the information would be available in a compatible format in the same database. The SROs also may enjoy economies of scale by adopting standard cross-market surveillance parameters for these types of violations. This information also would be available to the Commission to assist in its oversight efforts.

The Commission also preliminarily believes that requiring the central repository to collect and retain in its database the transaction information in a format compatible with the order execution information would aid in monitoring for certain market manipulations. As discussed above, the proposed Rule would require that each report of the execution (in whole or in part) of an order sent to the central repository include a notation as to whether the execution was reported to the consolidated tape pursuant to an effective transaction reporting plan or the OPRA Plan.[235] This requirement should allow regulators to more efficiently evaluate certain trading activity. For example, trading patterns of reported and unreported trades may cause the staff of an SRO to make further inquiry into the nature of the trading to determine whether the public was receiving accurate and timely information regarding executions and that market participants were continuing to comply with the trade reporting obligations under SRO rules. Similarly, patterns of reported and unreported transactions could be indicia of market abuse, including failure to obtain best execution for customer orders or possible market manipulation. Being able to more efficiently compare the consolidated order execution data with the trades reported to the consolidated tape could thus be an important component of overall surveillance activity.

The Commission requests comment on the usefulness or necessity of requiring the central repository to collect and retain in a format compatible with the order audit trail information the NBBO and transaction report information to help achieve the stated objectives of the consolidated audit trail. Do commenters believe that it is important for achieving the purposes of the consolidated audit trail? If so, why? If not, why not? What are the advantages and disadvantages of maintaining transaction information separately from order and execution data included in the consolidated audit trail? Should the transaction information be included in the consolidated audit trail report? The Commission requests comment on whether the requirement that the transaction and NBBO information be maintained in a format compatible with the order information is practical. Would this requirement achieve the goal of helping SRO and Commission staff conducts searches and run surveillances across databases?

The Commission has recently required that issuers report certain data in interactive data format such as XBRL.[236] This proposal does not specify any particular or required data format, but allows the SROs to select a data format. Should the Commission require that the data be transmitted or stored in any particular format? What are the relative merits of flat data files, relational data files, and interactive data files? What other formats should be considered? In what format can the SROs and their members efficiently transmit data? In what format would the data required in the proposal be most easily accessed?

The proposed Rule would require the NMS plan to require the central repository to retain the information collected pursuant to subparagraph (c)(7) and (e)(5) of the proposed Rule in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention for a period of not less than five years. The information would be required to be available immediately, or if immediate availability could not reasonably and practically be achieved, any search query would be required to begin operating on the data not later than one hour after the search query is made.[237]

The Commission preliminarily believes that the information (or the results of a query searching the information) should generally be available immediately. However, the Commission recognizes that the results of an electronic search query may not be immediately available because, for instance, the system must check an extremely large number of records to answer the query or the system may need to retrieve records from electronically archived data. In the case of archived data, the Commission preliminarily proposes requiring that the search query would need to begin operating on the data not later than one hour after the query is made. The Commission requests comment as to whether one hour would be reasonable amount of time to allow for accessing archived data. Under current technological limitations, how long should it take to access, in an electronic query with no manual intervention, archived data of the type to be held by

[232] *See* proposed Rule 613(e)(1).

[233] *See* proposed Rule 613(e)(5). The central repository would be required to retain the information collected pursuant to subparagraph (c)(7) and (e)(5) of the proposed Rule in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention for a period of not less than five years. The information would be required to be available immediately, or if immediate availability could not reasonably and practically be achieved, any search query would be required to begin operating on the data not later than one hour after the search query is made. *See* proposed Rule 613(e)(6).

[234] *See* Rule 611 of Regulation NMS, 17 CFR 242.611. *See also* ISE Rule 1901, NYSE Arca 6.94, and Phlx Rule 1084.

[235] *See supra* Section III.D.1.v.

[236] *See* Securities Act Release No. 9002 (January 30, 2009), 74 FR 6776 (February 10, 2009) (Interactive Data to Improve Financial Reporting adopting release) (File No. S7–11–08).

[237] *See* proposed Rule 613(e)(6).

the central repository? The Commission also requests comment on whether it should mandate a time standard, such as one hour, in the proposed Rule. Further, the Commission requests comment on whether the central repository should be required to retain this information for longer or shorter than five years. The Commission also requests comment on the cost impact of these proposed record retention requirements. For example, could comparable functionality be obtained at lower cost with a different standard (for example, what would be the cost comparison for one hour versus two hours)?

2. Access to Central Repository and Consolidated Audit Trail Information and Confidentiality of Consolidated Audit Trail Information

Each national securities exchange and national securities association, as well as the Commission, would have access to the central repository for purposes of performing its respective regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations. Such access would include access to all systems of the central repository, and access to and use of the data reported to and consolidated by the central repository.[238] The proposed Rule also would require that the NMS plan provide that such access to and use of such data by each exchange, association, and the Commission for the purpose of performing its regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations shall not be limited.[239] In addition, the proposed Rule would require that the NMS plan include a provision requiring the creation and maintenance by the central repository of a method of access to the consolidated data.[240] This method of access would be required to be designed to include search and reporting functions to optimize the use of the consolidated data.

The Commission's access to the central repository, and access to and use of the data maintained by the central repository, for purposes of performing the Commission's responsibilities under the federal securities laws, rules, and regulations could not be limited in any way.[241] The Commission requests comment as to whether the proposed Rule as proposed would accomplish this objective? If not, why not? If not, please provide comment as to an alternative or additional way to accomplish this objective. The Commission also requests comment on the advantages or disadvantages of Commission ownership or co-ownership of the data maintained by the central repository.

As discussed above, the proposed Rule would require the reporting of customer information, as well as information about "live" orders, to the central repository on a real time basis. The Commission recognizes the sensitivity of this information, and believes that maintaining the confidentiality of, and limiting the use of, the data is essential. Without such protections, broker-dealers and the investing public could be at risk for security breaches that would potentially have a detrimental impact on their financial condition, as well as their trading activity and the markets. The consolidated data also would include information about members' trading activities on competitors' markets. The Commission therefore is proposing several requirements designed to limit access to, and help assure confidentiality and proper use of, the information.

As noted above, the proposed Rule would limit the use of the consolidated data by the SROs for purposes of performing their respective regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations.[242] This proposed restriction would not prevent any SRO from using the data that it individually collects and provides to the central repository pursuant to the proposed Rule for other purposes as permitted by applicable law, rule or regulation.

The Commission requests comment as to whether access to the consolidated audit trail information should be limited to the SROs and the Commission, or whether there should be other access allowed. For example, should SROs or the central repository be allowed to make the data available to third parties, such as for academic research? If so, should the data be permitted to be sold to help offset costs? By SROs? By the central repository? If so, should there be set parameters? If the data were made available to third parties, what protections should be put in place to ensure the confidentiality of the data? Are there particular data elements that are more sensitive and should not be sold to help ensure the privacy of any individual and proprietary information? Are there particular data elements that would pose fewer concerns if released on a significant time lag? How long would such a time lag need to be? What other concerns might arise from the use of the data for non-regulatory purposes? Would use of the data provide certain market participants with undue information advantages over other market participants, increasing informational asymmetry in the markets? Would the provision of market data to third parties affect the willingness of market participants to trade in the U.S. markets? On the other hand, would enhanced surveillance of the markets as a result of the consolidated audit trail attract additional trading volume to the U.S. markets? What would be the implications, if any, under the financial privacy provisions of the Gramm-Leach-Bliley Act?[243] The Commission also requests comment as to whether, and to what extent, other regulators, such as the Commodity Futures Trading Commission, should have access to the data? For instance, to what extent do commenters believe it would be beneficial for the Commission to work with other regulators to collectively share information each regulator has with respect to products and trading activity under its jurisdiction, to help the Commission and other regulators carry out their respective oversight of products and trading activity within their own jurisdiction? Would such sharing of information help the Commission better understand the impact of trading in other markets on trading activity and products within the Commission's jurisdiction?

The Commission also requests comment on the feasibility of, and need for, a method of access to the consolidated data that includes search and reporting functions. In addition, the Commission requests comment as to whether, in addition to requiring the central repository to provide a method of access, the central repository should be required to bear the cost of making available the raw order data received by the central repository, for purposes of using that data to perform regulatory functions. Commenters are requested to

[238] *See* proposed Rule 613(e)(2).

[239] *Id.*

[240] *See* proposed Rule 613(e)(3).

[241] As noted above, the central repository would be a facility of each exchange and FINRA (*see supra* note 229 and accompanying text), and as such, subject to the Commission's recordkeeping and inspection authority. *See, e.g.,* Section 17 of the Exchange Act, 17 U.S.C. 78q. Further, any amendment to the NMS plan would be filed with the Commission pursuant to Rule 608 of Regulation NMS, and would not become effective unless approved by the Commission or otherwise as permitted in accordance with the requirements of Rule 608. *See* proposed Rule 613(a)(5), and Rule 608(a) and (b) of Regulation NMS, 17 CFR 242.608(a) and (b).

[242] *See* proposed Rules 613(e)(2). *See also* proposed Rule 613(e)(4)(i) (requiring in part that the NMS plan include a provision requiring all plan sponsors and their employees to agree not to use the consolidated data for any purpose other than surveillance and regulatory purposes).

[243] 15 U.S.C. 6801–6809.

provide cost estimates for the provision of this data by the central repository to the SROs and the Commission.

Proposed Rule 613(e)(4)(i) also would require that the NMS plan include policies and procedures, including standards, to be used by the plan processor to ensure the security and confidentiality of all information submitted to, and maintained by, the central repository. The plan sponsors, and employees of the plan sponsors and central repository, would be required to agree to use appropriate safeguards to ensure the confidentiality of such data, and not to use such data for other than for surveillance regulatory purposes.[244] The Commission is not proposing to mandate the content or format of the policies and procedures and standards that would be required. Rather, the Commission believes that the SROs themselves are in the best position to determine how best to implement this requirement.

The Commission requests comment generally on the issue of appropriate safeguards to be put in place by the SROs and the central repository to help ensure confidentiality. Are there specific safeguards that the SROs and the central repository could use to ensure the confidentiality and appropriate usage of the data collected and submitted pursuant to the proposed Rule? For example, should the proposed Rule require that SROs put in place specific information barriers or other protections to help ensure that data is used only for regulatory purposes? Should there be an audit trail of the SROs' personnel access to, and use of, information in the central repository to help monitor for compliance with appropriate usage of the data? Should the requirement that the NMS plan include policies and procedures to be used by the plan processor to ensure the security and confidentiality of information submitted to, and maintained by, the central repository be expanded to include the content of any searches or queries performed by the SROs or the Commission on the data? What should be required? Please be specific in your answer.

The Commission would establish appropriate protections within the agency to help ensure the confidentiality of the records.

[244] *See* proposed Rule 613(e)(4)(i). However, a plan sponsor would be permitted to use the data that it submits to the central repository for regulatory, surveillance, commercial, or other purposes as otherwise permitted by applicable law, rule or regulation. *Id.*

3. Reliability of Data Collected and Consolidated

An audit trail is only as reliable as the data used to create it. The Commission believes that it is critical to the integrity of the consolidated audit trail that the data submitted by the national securities exchanges, national securities associations and their members be submitted in a timely manner, and be accurate and complete. Proposed Rule 613(e)(4)(ii) therefore would require that the NMS plan include policies and procedures, including standards, for the plan processor to use to help ensure the integrity of the information submitted to the central repository. Specifically, the policies and procedures would be required to be designed to help ensure the timeliness, accuracy, and completeness of the data provided to the central repository by the SROs and their members. The Commission expects that these policies and procedures would include the creation of certain validation parameters that would need to be met before data would be accepted into the central repository.

The proposed Rule also would require that the NMS plan include policies and procedures, including standards, governing how and when the plan processor should reject data provided to the central repository that does not meet these validation parameters. Further, the proposed Rule would require the NMS plan to include policies and procedures that would govern how to re-transmit data that was rejected once it has been corrected, and how to help ensure that information is being resubmitted.[245] The Commission expects that re-transmitted data would also be subject to the validation parameters to assure that the initial problem(s) with the data has been corrected.

In addition, the proposed Rule would require that the NMS plan include policies and procedures to ensure the accuracy of the consolidation of the data by the plan processor provided to the central repository. Again, the Commission notes that it is not proposing to mandate the form and content of such policies and procedures. Rather, it believes the SROs would be in a better position to determine how best to implement this requirement. The Commission requests comment on these proposed requirements. Is this approach practical to ensure the integrity of the data? Are there any alternative methods that would achieve the same purpose that are preferable? How much latency would result from a validation procedure?

[245] *See* proposed Rule 613(e)(4)(iii).

As noted above, the Commission believes it is critical to the integrity of the consolidated audit trail that data submitted to the central repository be submitted in a timely manner and be accurate and complete. To support this objective, as discussed below in Sections III.H.1 and III.H.2, the proposed Rule also would require the NMS plan to include mechanisms to ensure compliance by the plan sponsors and their members with the requirements of the plan.[246] The purpose of the provisions, with respect to SRO compliance, is to require the SROs themselves to implement a method to help ensure compliance with the NMS plan, as is required by Rule 608 of Regulation NMS. Although the Commission is not proposing to mandate the format of the mechanism, the Commission preliminarily believes that it could include the imposition of penalties on an SRO in the event an SRO failed to comply with any provision of the NMS plan. Further, the Commission preliminarily believes that the mechanism to help ensure compliance by members could include the imposition of fines on a member, subject to the rules of the SRO of which it is a member, in the event a member failed to comply with the requirements of the NMS plan or the SRO's rules.

G. Surveillance

Proposed Rule 613(f) would require each national securities exchange and national securities association subject to the proposed Rule to develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the consolidated audit trail. The proposed Rule would require each national securities exchange and national securities association to implement such new or enhanced surveillance system within fourteen months after effectiveness of the NMS plan.[247] Currently, SROs are required to surveil members' trading activity for compliance with federal securities laws, rules, and regulations, such as rules relating to front running, trading ahead, market manipulation, and quote rule

[246] *See* proposed Rule 613(h)(3) and Rule 613(g)(4).

[247] *See* proposed Rule 613(a)(3)(iv). The SROs would be required to begin reporting information to the central repository within twelve months after effectiveness of the NMS plan. The Commission is proposing to allow SROs two additional months (for a total of fourteen months) to update their surveillance systems to allow for testing of new surveillances for some period of time after the SROs begin providing information. The Commission requests comment on this time period. Should it be longer? Shorter? If so, why?

violations, as well as other Commission and SRO rules. The Commission understands that although SROs carry out certain surveillances in real time, such as for looking for pricing anomalies or other indicators of erroneous transactions, most surveillance currently is not done on a real time basis. The Commission preliminarily believes the systems that carry out this surveillance should be updated, or new systems should be created, to make use of the consolidated audit trail information that would be generated and maintained by the central repository, otherwise the purpose of requiring a consolidated audit trail would not be achieved.

The Commission generally requests comment on this proposed requirement, as well as the proposed timing for compliance. To what extent do SROs currently conduct surveillance of trading on their markets on a real time basis? To what extent could SROs make effective use of the proposed consolidated information to enhance or update their existing surveillance and regulation? How would SROs be able to enhance or change their existing surveillance and regulation to make use of the proposed consolidated information? Would the benefits of surveillance that the SROs would be able to undertake be justified by the costs of providing information to the central repository on a real time basis? Under the proposed Rule, national securities exchanges and national securities associations would be required to implement or enhance their surveillance systems prior to their members being required to provide information pursuant to the proposed Rule. Do commenters believe that surveillance systems should be in place in advance of member compliance or should these requirements happen simultaneously, or otherwise?

The Commission is not proposing at this time to require coordinated surveillance across exchanges and FINRA. Rather, the Commission intends that each SRO would be responsible for surveillance of its own market and its own members using the consolidated audit trail information. The Commission would, however, encourage any coordinated surveillance efforts by the SROs, such as through a plan approved pursuant to Rule 17d–2 under the Exchange Act,[248] or a regulatory services agreement among one or more SROs. The Commission requests comment on whether it should undertake to require coordinated surveillance.

H. Compliance With the NMS Plan

1. Exchanges and Associations

Any failure by a national securities exchange or national securities association that is a sponsor of the NMS plan to comply with the requirements of the NMS plan would undermine the effectiveness of the proposed Rule. Therefore, the Commission would consider full compliance by these entities with the NMS plan of the utmost importance. To this end, the proposed Rule would provide that each national securities exchange and national securities association shall comply with the provisions of the NMS plan of which it is a sponsor submitted pursuant to the proposed Rule and approved by the Commission.[249] In addition, the proposed Rule would provide that any failure by a national securities exchange or national securities association to comply with the provisions of the NMS plan of which it is a sponsor could be considered a violation of the proposed Rule.[250] For example, a failure to provide required information to the central repository, a failure to develop and implement a surveillance system or enhance existing surveillance systems reasonably designed to make use of the consolidated data in the central repository, or any limitation on the ability of an SRO or the Commission to access and use the data maintained by the central repository for regulatory purposes would violate the proposed Rule. The Commission recognizes that its staff, and the SRO staff, may have to undertake certain technical actions to access the data, such as arranging for a live feed, querying the system, or upgrading systems to be able to receive the data. The Commission preliminarily would not view having to take such technical actions, by themselves, as a limitation. The Commission notes that the proposed Rule would require the central repository to maintain the data in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention for a period of not less than five years. The information would be required to be available immediately, or if immediate availability could not reasonably and practically be achieved, any search query would be required to begin operating on the data not later than one hour after the search query is made.[251] The Commission requests comment on whether other types of technical actions should not be viewed as an impermissible limitation on access. The Commission further notes that Rule 608(c) under the Exchange Act provides that "[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant."[252] Thus, under this proposed Rule, the Commission may take any action authorized under the Exchange Act to discipline national securities exchanges and national securities associations for failure to comply with a rule under the Exchange Act.

The proposed Rule also would require that the NMS plan include a mechanism to ensure compliance by the sponsors with the requirements of the plan.[253] The purpose of this provision is to require the SROs themselves to implement a method to help ensure compliance with the NMS plan, as is required by Rule 608 of Regulation NMS. Although the Commission is not proposing to mandate the format of the mechanism, the Commission preliminarily believes that it could include the imposition of penalties on an SRO in the event an SRO failed to comply with any provision of the NMS plan. The Commission request comments on the types of sanctions or penalties that would be appropriate for the plan sponsors to levy for failure of an SRO to comply with the terms of the NMS plan.

2. Members

Any failure by a member of a national securities exchange or national securities association that is a sponsor of the NMS plan to collect and provide to the central repository the required audit trail information also would undermine the effectiveness of the proposed Rule. Therefore, the Commission would consider full compliance by these entities with the NMS plan of the utmost importance.

To implement the proposed requirement that the NMS plan require the submission of certain information to the central repository by the members of the exchange and association sponsors of the plan, each exchange and

[248] 17 CFR 240.17d–2. For example, the exchanges have entered into an agreement for the allocation of regulatory responsibilities pursuant to Rule 17d–2 under the Exchange Act concerning the surveillance, investigation, and enforcement of insider trading rules pertaining to members of the NYSE and FINRA who are also members of at least one of the other participating SROs. *See* Securities Exchange Act Release No. 58806 (File No. 4–566) (October 17, 2008), 73 FR 63216 (October 23, 2008).

[249] *See* proposed Rule 613(h)(1)

[250] *See* proposed Rule 613(h)(2).

[251] *See* proposed Rule 613(e)(6) and *supra* note 237 and accompanying text.

[252] 17 CFR 242.608(c).

[253] *See* proposed Rule 613(h)(3).

association would be required to file with the Commission pursuant to Section 19(b)(2) of the Exchange Act [254] and Rule 19b–4 thereunder,[255] a proposed rule change to require its members to comply with the requirements of the proposed Rule and the NMS plan.[256] The SROs would be required to file these proposed rule changes by 120 days after approval of the proposed Rule. The Commission preliminarily believes that this proposed time frame would provide the SROs sufficient time to file their proposed rule changes after the NMS plan has been approved,[257] as the SRO rule filings would be substantially based on the content of the NMS plan.

Further, the proposed Rule would directly require each member to (1) collect and submit to the central repository the information required by the Rule, and (2) comply with the clock synchronization requirements of the proposed Rule.[258] In addition, the proposed Rule would require that the NMS plan include a provision that by subscribing to and submitting the plan to the Commission, each exchange and association that is a sponsor to the plan agrees to enforce compliance by its members with the provisions of the plan.[259]

Finally, the proposed Rule would require the NMS plan to include a mechanism to ensure compliance with the requirements of the plan by the members of a national securities exchange or national securities association that is a sponsor of the NMS plan submitted pursuant to this Rule and approved by the Commission.[260] The purpose of this provision is to require the SROs to implement a method to help ensure compliance with the NMS plan and the corresponding SRO rules by their members. Although the Commission is not proposing to mandate the format of the mechanism, the Commission preliminarily believes that it could include the imposition of fines on a member by an SRO of which it is a member in the event the member failed to comply with any provision of the NMS plan or the SRO's rules implementing the NMS plan. Any action taken against the member, including the imposition of the fine by the SRO, would be subject to the requirements of the SRO's other rules.[261]

The Commission requests comment on these provisions regarding members' compliance with the proposed Rule and the NMS plan. Do commenters believe that these provisions would encourage members' compliance with the proposed Rule and the NMS Plan? If so, why? If not, what other provisions would be necessary or appropriate to promote compliance? What mechanisms should be part of a plan to promote compliance by members? Would it be appropriate to include violations of the proposed Rule, the NMS plan, or the SRO's rules implementing the NMS plan within existing SRO rules that impose minimum fines for violations of certain SRO rules? [262] Would the exchanges or associations have to amend their rules to implement such a requirement? If so, how would they have to amend their rules? Are there other alternatives that would more effectively help ensure the accuracy and reliability of the information reported to the central repository by members? Would requiring the SROs to file their proposed rule changes to implement the requirements of the NMS plan with respect to the members within 120 days after approval of the proposed Rule provide sufficient time for SROs to draft the proposed rule changes? If not, why not?

I. Operation and Administration of the NMS Plan

The proposed Rule would require that the NMS plan include a governance structure to ensure fair representation of the plan sponsors.[263] The rule as proposed gives flexibility to the SROs to devise a governance structure as they see fit. The proposed rule would require the NMS plan to include a provision addressing the percentage of votes required by the plan sponsors to effectuate amendments to the plan.[264] For example, the plan sponsors could determine to provide each plan sponsor one vote on matters subject to a vote.[265] Or, if there was a concern that this method would result in "blocs" of plan sponsors under common control exerting control in a one-sponsor, one-vote system, the SROs could choose another alternative to ensure fair representation.

Further, most existing NMS plans require unanimous consent from the plan sponsors to effect an amendment.[266] The Commission recognizes the unanimous consent requirement could be desirable because it helps to ensure that no plan sponsor is forced to comply with requirements with which it is unable to comply, or forced by the other sponsors to pay fees. However, a unanimous consent requirement also could allow one plan sponsor to effectively "veto" a provision desired by all other plan sponsors for competitive reasons, or permit one sponsor to lag behind in making updates to its systems or rules that would benefit the industry as a whole. The Commission proposes to allow the plan sponsors to determine whether to include in the NMS plan to be filed with the Commission a unanimity requirement for effectuating amendments to the plan, or some other convention.

The Commission also recognizes that the scope or purpose of the proposed NMS plan may differ from existing plans. The Commission requests comment on whether there are lessons from previous experience that suggest that the governance structure of the NMS plan to be filed with the Commission should differ from existing plans. The Commission requests comment on these provisions relating to the governance structure of the plan. Should the Commission require certain governance standards to ensure efficient

[254] 15 U.S.C. 78s(b)(2).

[255] 17 CFR 240.19b–4.

[256] *See* proposed Rule 613(g)(1). This provision in the proposed Rule echoes the requirement contained in Rule 608 that provides "each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members," 17 CFR 242.608(c).

[257] The proposed Rule would require that the NMS plan be filed within 90 days of approval of the proposed Rule. *See* proposed Rule 613(a)(1).

[258] *See* proposed Rule 613(g)(2).

[259] *See* proposed Rule 613(g)(3).

[260] *See* proposed Rule 613(g)(4).

[261] *See* Sections 6(b)(6), 6(b)(7), and 6(d)(1) of the Exchange Act, 15 U.S.C. 78f(b)(6), 78f(b)(7), and 78f(d)(1). *See also, e.g.* FINRA Rule 9217, CHX Article 12, Nasdaq OMX BX Rule 9216 and IM–9216 and NYSE Rule 476A.

[262] *See, e.g.,* FINRA Rule 9217 (providing for the imposition of fines in lieu of commencing a formal disciplinary proceeding for violations of certain rules, including the recording and reporting requirements of the OATS rules) and NYSE Rule 476A (providing for the imposition of fines in lieu of commencing a formal disciplinary proceeding for violations of certain rules, including the OTS rules).

[263] *See* proposed Rule 613(b)(1).

[264] *See* proposed Rule 613(b)(3).

[265] For example, Section 4.3 of the OPRA Plan provides that, except as otherwise provided, each of the members of the Management Committee shall be authorized to cast one vote for each Member that he or she represents on all matters voted upon by the Management Committee, and action of the Management Committee shall be authorized by the affirmative vote of a majority of the total number of votes the members of the Management Committee are authorized to cast, subject to the approval of the Commission whenever such approval is required under applicable provisions of the Exchange Act, and the rules of the Commission adopted thereunder. Action of the Management Committee authorized in accordance with the OPRA Plan shall be without prejudice to the rights of any Member to present contrary views to any regulatory body or in any other appropriate forum.

[266] *See, e.g.,* Securities Exchange Act Release Nos. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (order approving the Options Order Protection and Locked/Crossed Market Plan) and 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981) (order approving the OPRA Plan).

cooperation, or should the exchanges and association be allowed to create a governance structure of their own choosing? What are the relative merits of unanimity or super majority requirements? What are the relative merits of alternative voting mechanisms and other governance structures available to the plan sponsors? Should the voting mechanism vary by the type of decision or should different decision making bodies have authority over different types of decisions to avoid situations where no decision is made because the sponsors cannot agree? How should the governance and voting mechanisms be set up to avoid inefficient operations or paralysis? Should there be limits on the time frames given to make decisions? Should there be mechanisms to resolve impasses once a decision has taken a certain amount of time? The Commission also requests comment on whether the scope of the plan, including the requirements on broker-dealers members, and the expectation of improved surveillances for investor protection dictate that the governance structure should differ from existing plans. In particular, should the SRO sponsors be required to include in the governance structure and decision-making authority representatives of members to address member interests and independent representatives chosen specifically to address investor and other public interests?

The proposed Rule also would require that the NMS plan include provisions to govern the administration of the central repository, including the selection of a plan processor. A "plan processor" is defined in Rule 600 of Regulation NMS to mean any SRO or securities information processor acting as an exclusive processor in connection with the development, implementation and/or operation of any facility contemplated by an effective national market system plan.[267] The Commission expects that the plan sponsors would engage in a thorough analysis and formal competitive bidding process to choose the plan processor. As proposed, the plan sponsors would be required to select a person to act as the plan processor for the central repository no later than two months after the effectiveness of the national market system plan.[268] The Commission preliminarily believes that this time frame would provide the plan sponsors with sufficient time to choose the plan processor, while providing that such entity would be in place with enough time to create and build the central repository to receive data from the SROs within one year after effectiveness of the NMS plan and from the members within two years after such effectiveness.

The Commission requests comment as to whether the proposed Rule should include specific requirements detailing the process for selection of a plan processor. Should the Commission require specific minimum requirements or standards that a plan processor should meet? If so, what requirement or standards would be necessary or appropriate? Should the plan processor be a non-SRO? Would this promote impartiality on the part of the plan processor? The Commission also requests comment on the proposed time frame to choose the plan processor. Is it too short? Too long? If so, why? Please be specific in your response.

The proposed Rule also would require that the NMS plan contain a requirement that a Chief Compliance Officer ("CCO") be appointed to regularly review the operation of the central repository.[269] The CCO would be expected to establish reasonable procedures designed to make sure the operations of the central repository keep pace with technical developments. To the extent upgrades or other changes are necessary to assure the central repository's effectiveness, the CCO would be responsible for making recommendations for enhancements to the nature of the information collected and the manner in which it is processed.

The Commission requests comment on the necessity for a CCO to oversee the operation of the central repository. If commenters support the proposal to require a CCO, should the proposed Rule include a requirement that the CCO be independent from the plan sponsors and their members? That is, should the CCO be required to not have any actual or potential conflicts of interest with respect to the plan sponsors and their members (*e.g.* such as prior or future employment with a plan sponsor or member, or a material business relationship with a plan sponsor or member)? What are the risks of allowing a CCO who is affiliated or associated with a plan sponsor or its members? What types of conflicts of interest should be avoided? Are there any specific qualifications that a CCO should possess? Should there be a specific process in place for appointing a CCO or for removing a CCO for failure to perform his or her assigned duties? Should there be a limit to the number of years a CCO may serve as such?

The plan sponsors also would be required to include in the NMS plan a provision addressing the requirements for the admission of new sponsors to the plan and the withdrawal of sponsors from the plan.[270] Proposed Rule 613(b)(4) also would require that the sponsors develop a process for allocating among the plan sponsors the costs associated with implementing and operating the central repository, including a provision addressing the manner in which such costs would be allocated to sponsors who join the plan after it was approved. Various NMS plans have developed different ways to ensure that a fair cost or "new participant fee" is assessed upon new plan sponsors.[271] For example, when determining a new participation fee, the OPRA Plan requires that the following factors be considered: (1) The portion of costs previously paid by OPRA for the development, expansion and maintenance of OPRA's facilities which, under generally accepted accounting principles, would have been treated as capital expenditures and would have been amortized over the five years preceding the admission of the new member; (2) an assessment of costs incurred and to be incurred by OPRA for modifying the OPRA System or any part thereof to accommodate the new member, which are not otherwise required to be paid or reimbursed by the new Member; and (3) previous fees paid by other new members. The plan sponsors could choose to include in the NMS plan to be filed a similar provision or develop a new method for determining the cost to join the plan that would better suit the NMS plan proposed to be required by this Rule.

The Commission requests comment on whether the rule or plan should specify a method for allocating costs among the plan sponsors. The Commission also requests comment as to what provisions the exchanges and FINRA should include in the NMS plan relating to the admission of new plan sponsors and the withdrawal of existing plan sponsors. Should the Commission specify the process for the admission of new plan sponsors? What are the concerns, if any, that should be taken into account when providing for the admission of new plan sponsors? The Commission requests comment on all aspects of the proposed Rule relating to governance and administration of the NMS plan.

[267] *See* 17 CFR 242.600(55).

[268] *See* proposed Rule 613(a)(3)(i).

[269] *See* proposed Rule 613(b)(5).

[270] *See* proposed Rule 613(b)(2).

[271] *See e.g.* Section 7.1 of OPRA Plan.

J. Proposed Implementation Schedule

While the Commission preliminarily believes a comprehensive consolidated audit trail would be useful as soon as possible, the Commission also believes that it would be prudent to implement the Rule at a measured pace to ensure that all market participants are fully able to meet the requirements of the proposed Rule. Therefore, the proposed Rule would provide that the proposed data collection and submission requirements would first apply to national securities exchanges and national securities associations, but not to their individual members. As part of operating their businesses, the national securities exchanges and national securities associations are accustomed to handling large volumes of data and many already have in place electronic trading, routing and reporting systems.[272] Further, under the proposal the exchanges would not be responsible for providing to the central repository, for each order, information relating to the customer. The Commission therefore preliminarily believes these systems could more readily and quickly be modified than the members' systems to comply with the requirements of the proposed Rule.

Specifically, proposed Rule 613(a)(3)(iii) would require the exchanges and associations to provide to the central repository the data to be required by the Rule within one year after effectiveness of the NMS plan. Members of the exchanges and associations would be required to begin providing to the central repository the data required by the proposed Rule two years after effectiveness of the NMS plan, which would be one year following the implementation deadline for the national securities exchanges and national securities associations.[273] This phased approach is designed to allow members additional time to implement systems changes necessary to begin providing the information to the central repository and to develop procedures designed to capture customer and order information that they may not have previously been required to collect to comply with other Commission and SRO rules.

The Commission requests comment on the proposed implementation time periods. Are these time periods practical or feasible? Should they be shorter? Longer? Please provide detailed reasons in your response. As proposed, the national securities exchanges and national securities associations would be required to submit data to the central repository for one year before their members are required to submit data. Is requiring the exchanges and FINRA to provide data before requiring their members to do so a feasible way to phase in compliance with the proposed rule? How would this phased-in approach affect the quality of the data and the number of available data items in the audit trail? Are there alternative ways to phase in implementation that would be more practical? For instance, should the Commission consider requiring all exchanges and FINRA and their respective members to begin reporting a subset of the data initially, and phase in the collection of addition data over time? Should the Commission require all exchanges, FINRA, and their members to implement the proposed requirements first for NMS stocks, then for listed options? Or vice versa? How should the Commission take into consideration any concern commenters might have that market participants might shift manipulative or other illegal trading activity to products or markets not covered by the proposed Rule in its analysis of whether, or how, to phase in compliance with the proposed Rule across products classes (meaning, NMS stock and listed options)? If so, how?

Should ATSs,[274] including so-called dark pools,[275] be required to implement the proposed requirements before broker-dealers that are not registered as ATSs? Would ATSs be able to more quickly comply with the proposed recording and reporting requirements, since they generally are highly automated and their business may be more narrowly focused than, for example, broker-dealers that engage in a customer, proprietary, and/or market making business? Are there any cost savings associated with a phased approach to implementation? Would additional unnecessary costs be incurred by implementing the plan in a phased-in approach? Please provide data to support your views.

IV. Request for Comments

We request and encourage any interested person to comment generally on the proposed Rule. In addition to the specific requests for comment throughout the release, the Commission requests general comment on all aspects of proposed Rule 613 of Regulation NMS. The Commission encourages commenters to provide information regarding the advantages and disadvantages of each aspect of the proposed Rule. The Commission invites commenters to provide views and data as to the costs and benefits associated with the proposed Rule. The Commission also seeks comment regarding other matters that may have an effect on the proposed Rule. We request comment from the point of view of national securities exchanges, national securities associations, members, investors, and other market participants. With regard to any comments, we note that such comments are of great assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments.

V. Paperwork Reduction Act

Certain provisions of the proposal contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995 ("PRA")[276] and the Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. 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 title of the new collection of information is "Creation of a Consolidated Audit Trail Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rules Thereunder."

A. Summary of Collection of Information Under Proposed Rule 613

1. Creation and Filing of an NMS Plan

As detailed above, the proposed Rule would require each national securities exchange and national securities association to jointly file with the Commission, on or before 90 days from approval of the proposed Rule, an NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository for the collection of information for NMS securities.[277] The

[272] For example, as part of COATS compliance, the options exchanges are required to have in place systems to electronically capture all order, transaction, and quotation information on the exchange.

[273] *See* proposed Rule 613(a)(3)(v).

[274] *See supra* note 181.

[275] Dark pools are ATSs that do not provide their best-priced orders for inclusion in the consolidated quotation data. In general, dark pools offer trading services to institutional investors and others that seek to execute large trading interest in a manner that will minimize the movement of prices against the trading interest and thereby reduce trading costs. Dark pools fall within the statutory definition of an exchange, but are exempted if they comply with Regulation ATS. *See* Concept Release on Equity Market Structure, *supra* note 19, at 3599, and *supra* note 181.

[276] 44 U.S.C. 3501 *et. seq.*

[277] *See* proposed Rule 613(a)(1) and *supra* Section III.

NMS plan would be required to require each exchange or association and its respective members to provide certain data to the central repository in compliance with proposed Rule 613.[278] The NMS plan also would need to include certain specified provisions related to administration and operation of the plan,[279] and the operation of the central repository.[280] Further, the NMS plan would be required to include certain provisions related to compliance by the exchanges and associations and their members with the requirement of the proposed Rule and the NMS plan.[281]

Each national securities exchange and national securities association would be required to be a sponsor of the NMS plan.[282] The Commission preliminarily believes that requiring the proposed NMS plan would impose a paperwork burden on national securities exchanges and national securities associations associated with preparing and filing the joint NMS plan.

2. Report

Rule 613(i) also would require the national securities exchanges and national securities associations to jointly provide to the Commission a document outlining how such national securities exchanges and national securities associations would propose to incorporate into the consolidated audit trail information for: (1) Equity securities that are not NMS securities; (2) debt securities; and (3) primary market transactions in NMS stocks, equity securities that are not NMS securities and debt securities.[283] This report would be required to specify in detail the data that would be collected and reported by each market participant, an implementation timeline, and a cost estimate. The Commission preliminarily believes that requiring the proposed report would impose a paperwork burden on national securities exchanges and national securities associations associated with preparing and submitting the report to the Commission.

3. Rule Filings by National Securities Exchanges and National Securities Associations

Each national securities exchange and national securities association would be required to file with the Commission, pursuant to Section 19(b)(2) of the Exchange Act and Rule 19b–4 thereunder,[284] a proposed rule change to require its members to comply with the requirements of the proposed Rule and the NMS plan submitted pursuant to the proposed Rule and approved by the Commission of which the national securities exchange or national securities association is a sponsor.[285] The burden of filing such proposed rule change would already be included under the collection of information requirements contained in Rule 19b–4 under the Exchange Act.[286]

4. Collection and Retention of NBBO and Last Sale Data

The central repository would be required to collect and retain on a current and continuing basis the national best bid and national best offer for each NMS security, transaction reports reported pursuant to a transaction reporting plan filed with the Commission pursuant to, and meeting the requirements of, Rule 601 of Regulation NMS, and last sale reports reported pursuant to the OPRA Plan.[287] The central repository would be required to retain this information for a period of not less than five years.[288]

5. Data Collection and Reporting

The proposed Rule would require each national securities exchange, national securities association, and any member of such national securities exchange or national securities association to collect and electronically provide to the central repository details for each order and reportable event documenting the life of an order through the process of routing, modification, cancellation, and execution (in whole or in part).[289] The proposed Rule would require the collection and reporting to the central repository of some information that national securities exchanges, national securities associations, and their members already are required to collect, and under certain circumstances, report to a third party, in compliance with existing Commission [290] and SRO requirements.[291] The proposed Rule

[278] *See* proposed Rule 613(c) and *supra* Section III.D.

[279] For example, the NMS plan would be required to include provisions: (1) To ensure fair representation of the plan sponsors; (2) for administration of the central repository; (3) addressing the requirements for admission of new plan sponsors and withdrawal of existing plan sponsors; (4) addressing the percentage of votes required by the plan sponsors to effectuate amendments to the plan; (5) addressing the manner in which the costs of operating the central repository would be allocated among the national securities exchanges and national securities associations that are sponsors of the plan, including a provision addressing the manner in which costs would be allocated to new sponsors to the plan. *See* proposed Rule 613(b).

[280] For example, the NMS plan would be required to include a provision requiring the creation and maintenance by the central repository of a method of access to the data, including search and reporting functions. *See* proposed Rule 613(e)(3). Additionally, the NMS plan would be required to include policies and procedures, including standards, to be used by the plan processor to: (1) Ensure the security and confidentiality of all information submitted to, and maintained by, the central repository; (2) ensure the timeliness, accuracy, and completeness of the data provided to the central repository; (3) require the rejection of data that does not meet validation parameters and the retransmission of corrected data; and (4) ensure the accuracy of the consolidation by the plan processor of the data provided to the central repository. *See* proposed Rule 613(e)(4).

[281] The NMS plan would be required to include: (1) A provision that by subscribing to and submitting the plan to the Commission, each national securities exchange and national securities association that is a sponsor to the plan agrees to enforce compliance by its members with the provisions of the plan; and (2) a mechanism to ensure compliance by the sponsors of the plan with the requirements of the plan. *See* proposed Rule 613(g)(3) and (h)(3).

[282] *See* proposed Rule 613(a)(5).

[283] *See* proposed Rule 613(i).

[284] 15 U.S.C. 78s(b)(2) and 17 CFR 240.19b–4.

[285] *See* proposed Rule 613(g)(1).

[286] *See* Securities Exchange Act Release No. 50486 (October 5, 2004), 69 FR 60287, 60293 (October 8, 2004) (File No. S7–18–04) (describing the collection of information requirements contained in Rule 19b–4 under the Exchange Act). The Commission has submitted revisions to the current collection of information titled "Rule 19b–4 Filings with Respect to Proposed Rule Changes by Self-Regulatory Organizations" (OMB Control No. 3235–0045). According to the last submitted revision concluded as of August 5, 2008, the current collection of information estimates 1,279 total annual Rule 19b–4 filings with respect to proposed rule changes by self-regulatory organizations.

[287] *See* proposed Rule 613(e)(5); 17 CFR 242.601.

[288] *See* proposed Rule 613(e)(6).

[289] *See* proposed Rule 613(c)(1) and *supra* Section III.D.

[290] For example, Rule 17a–3 requires broker-dealers to maintain the following information that would be captured by the proposed Rule: Customer name and address; time an order was received; and price of execution. 17 CFR 240.17a–3. Also, Rule 17a–25 requires brokers to maintain the following information with respect to customer orders: Date on which the transaction was executed; account number; identifying symbol assigned to the security; transaction price; the number of shares or option contracts traded and whether such transaction was a purchase, sale, or short sale, and if an option transaction, whether such was a call or put option; the clearing house number of such broker or dealer and the clearing house numbers of the brokers or dealers on the opposite side of the transaction; prime broker identifier; the customer's name and address; the customer's tax identification number; and other related account information. 17 CFR 240.17a–25. This information would be captured by the proposed Rule. *See also* Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a), and Rules 17a–1 and 17a–4 under the Exchange Act, 17 CFR 240.17a–1 and 17 CFR 240.17a–4.

[291] The audit trail rules of several of the national securities exchanges and FINRA require the following information be recorded: Date order was originated or received by a member, security or option symbol, clearing member organization, order identifier, market participant symbol, number of shares executed, designation of order as short sale, limit order, market order, stop order or stop limit order, account type or number, date and time of execution, and execution price and size. *See* BOX Ch. V, Section 4; BX Rule 6955; FINRA Rule 7440; Nasdaq Options Market Chapter IX, Section 4; Nasdaq Rule 6955; NYSE Rule 132B; and NYSE Amex Equities Rule 132B. This information would be captured pursuant to the proposed Rule.

would, however, require exchanges, associations, and their members to report to the central repository information not required to be currently collected and reported pursuant to existing SRO audit trail rules.

For example, although members of national securities exchanges and national securities associations already should know the identity of their customers, and in some instances may be required to provide that information to the Commission or SRO staff upon request,[292] the requirement to electronically capture and report detailed information sufficient to identify the customer to the central repository, in real time, would be new. Further, although some existing audit trail requirements include a unique order identifier,[293] the proposed Rule's requirement that the unique order identifier remain with the order throughout its entire life, across markets and market participants, would go beyond the current requirements. In addition, although such members currently have unique market participant identifiers ("MPIDs"), such MPIDs may differ across markets, whereas the proposed Rule would require that each member have a unique identifier that is the same across all markets. The proposed requirements to report whether an order opens or closes a position for NMS stocks, and to report borrow information, also are not required to be marked on orders by current SRO or Commission rules. Further, much of the information that would be required for the first time to be reported to the central repository would be reported in real time, as the event is occurring.

6. Central Repository

The proposed Rule would require that the central repository be responsible for the receipt, consolidation, and retention of all data submitted to the central repository by the national securities exchanges, national securities associations, and their members.[294] The proposed Rule also would require that (1) the central repository retain the information collected pursuant to subparagraph (c)(7) and (e)(5) of the proposed Rule in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention for a period of not less than five years, and (2) the information be available immediately, or if immediate availability cannot reasonably and practically be achieved, that any search query begin operating on the data not later than one hour after the search query is made.[295] The Commission notes that a plan processor would be responsible for operating the central repository in compliance with the proposed Rule and the NMS plan.

B. Proposed Use of Information

1. Creation and Filing of NMS Plan

As discussed in detail above, the NMS plan would govern the creation, implementation, and maintenance of a consolidated audit trail for NMS securities, which would aid the Commission and national securities exchanges and national securities associations in effectively and efficiently carrying out their regulatory responsibilities. The information that would be collected pursuant to the NMS plan would allow the SROs to more efficiently monitor trading activity in the securities markets, and would facilitate the Commission and the national securities exchanges and national securities associations' trading reconstruction efforts as well as enhance their monitoring, enforcement, and regulatory activities.

2. Report

As the Commission states above in Section III.A., it ultimately intends for the proposed consolidated audit trail, if adopted, to be expanded to cover other securities, including equity securities that are not NMS securities, corporate bonds and other debt instruments; credit default swaps and other security-based swaps; and any other products that may come under the Commission's jurisdiction in the future. Further, the Commission preliminarily believes that it would be beneficial to expand the consolidated audit trail to include information on primary market transactions in NMS stocks and other equity securities that are not NMS stocks, as well as primary market transactions in debt securities. The Commission preliminarily believes that a timely expansion of the scope of the consolidated audit trail beyond NMS securities would be beneficial as illegal trading strategies that the consolidated audit trail would be designed to help detect and deter, such as insider trading, may involve trading in multiple related products other than NMS securities across multiple markets.

To help ensure that such an expansion would occur in a reasonable time and that the systems and technology that would be used to implement the Rule as proposed are designed to be easily scalable, proposed Rule 613(i) would require that the NMS plan contain a provision requiring each national securities exchange and national securities association that is a sponsor of the plan to jointly provide to the Commission within two months after effectiveness of the NMS plan a document outlining how the sponsors would incorporate into the consolidated audit trail information with respect to: (1) Equity securities that are not NMS securities; (2) debt securities; and (3) primary market transactions in NMS stocks, equity securities that are not NMS securities, and debt securities. The sponsors specifically would be required to address, among other things, details for each order and reportable event that they would recommend requiring to be provided; which market participants would be required to provide the data; an implementation timeline; and a cost estimate. The Commission would be able to use the information contained in the report in its consideration and analysis of whether to expand the consolidated audit trail.

3. Collection and Retention of NBBO and Last Sale Data

As discussed above, the requirement that the central repository collect and retain the NBBO and transaction data in an electronic format compatible with the order and event information collected pursuant to the proposed Rule is intended to allow SRO and Commission staff to easily search across order, NBBO, and transaction data bases. The Commission preliminarily believes that having the NBBO information in an electronic format compatible with the order audit trail information would be useful for SROs to enforce compliance with federal securities laws, rules and regulations.[296] The Commission also preliminarily believes that requiring the central repository to collect and retain in its

[292] *See supra* Section I.A. (discussing Rule 17a–25 and the EBS system).

[293] *See supra* Section I.C. (discussing the requirements of FINRA's OATS).

[294] *See* proposed Rule 613(e)(1). The Commission notes that a plan processor would be responsible for operating the central repository in compliance with the proposed Rule and the NMS plan.

[295] *See* proposed Rule 613(e)(6).

[296] The NBBO is used by SROs and the Commission to evaluate members for compliance with numerous regulatory requirements, such as the duty of best execution or Rule 611 of Regulation NMS. *See* Rule 611 of Regulation NMS, 17 CFR 242.611. *See also* ISE Rule 1901, NYSE Arca 6.94, and Phlx Rule 1084. An SRO would be able to compare order execution information to the NBBO information on a more timely basis because the order and execution information would be available on a real time basis and all of the information would be available in a compatible format in the same database. The SROs also may enjoy economies of scale by adopting standard cross-market surveillance parameters for certain types of violations.

database the transaction information in a format compatible with the order execution information would aid the SROs in being able to monitor for certain market manipulations.[297]

4. Data Collection and Reporting

As discussed above, the Commission preliminarily believes that the data collection and reporting requirements of the proposed Rule would enhance the ability of SRO staff to effectively monitor and surveil the securities markets and thus detect and investigate potentially illegal activity in a more timely fashion, whether on one market or across markets. Further, the Commission preliminarily believes that the ability to access such data would improve the ability of SRO staff to conduct timely and accurate trading analysis for market reconstructions and complex enforcement inquiries or investigations, as well as inspections and examinations. Further, the Commission preliminarily believes that the ability to access such data would aid the Commission staff in its regulatory and market analysis efforts.

5. Central Repository

The central repository would be required to receive and retain the data required to be submitted by the national securities exchanges, national securities associations, and their members pursuant to the proposed Rule. SROs and Commission staff would then have access to the data for regulatory purposes, as discussed above.

C. Respondents

1. National Securities Exchanges and National Securities Associations

Proposed Rule 613 would apply to all of the fourteen national securities exchanges and to one national securities association (FINRA) currently registered with the Commission.

2. Members of National Securities Exchanges and National Securities Associations

Proposed Rule 613 would apply to the approximately 5,178 broker-dealers that are currently registered with the Commission and are members of the national securities exchanges or FINRA.[298]

D. Total Annual Reporting and Recordkeeping Burden

1. Burden on National Securities Exchanges and National Securities Associations

a. Creation and Filing of NMS Plan

Proposed Rule 613 would require the national securities exchanges and FINRA to jointly file with the Commission a joint NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and a central repository. The Commission estimates that it would take each national securities exchange and national securities association approximately 840 burden hours of internal legal, compliance, information technology, and business operations time to develop and file the NMS plan, including the required provisions regarding governance, administration, and operation of the plan.[299]

The Commission preliminarily expects that national securities exchange and national securities association respondents may incur one-time external costs for outsourced legal services to develop and draft the NMS plan. While the Commission recognizes that the amount of legal outsourcing used may vary from SRO to SRO, the staff estimates that on average, each national securities exchange and national securities association would outsource 50 hours of legal time to develop and draft the NMS plan, for a capital cost of approximately $20,000 for each national securities exchange and national securities association resulting from outsourced legal work.[300] Therefore, the Commission preliminarily estimates that the average one-time initial burden of developing and filing the NMS plan would be 840 burden hours plus $20,000 external costs for outsourced legal counsel per SRO, for an aggregate estimated burden of 12,600 hours plus $300,000 external costs.

Once the national securities exchanges and national securities associations have established the NMS plan, the Commission estimates that, on average, each national securities exchange and national securities association would incur 192 burden hours annually to ensure that the NMS plan is up to date and remains in compliance with the proposed Rule,[301] for an aggregate estimated burden of 2,880 hours.

b. Report

The Commission estimates that it would take each national securities exchange or national securities association approximately 420 burden hours of internal legal, compliance, business operations and information technology staff time to create the report required by the proposed Rule.[302] The Commission also expects that each national securities exchange and national securities association respondent may incur one-time external costs for outsourced legal services helping to prepare the report. Commission estimates that on average, each national securities exchange and national securities association would outsource 25 hours of legal time to create the report, for an aggregate one-time capital cost of approximately $10,000.[303] Therefore, the Commission

[297] *See supra* Section III.D.1.v. As discussed above, the proposed Rule would require that each report of the execution (in whole or in part) of an order sent to the central repository include a notation as to whether the execution was reported to the consolidated tape pursuant to an effective transaction reporting plan or the OPRA Plan. This requirement should allow regulators to more efficiently evaluate certain trading activity. For example, trading patterns of reported and unreported trades may cause the staff of an SRO or the Commission to make further inquiry into the nature of the trading to ensure that the public was receiving accurate and timely information regarding executions and that market participants were continuing to comply with the trade reporting obligations under SRO rules. Similarly, patterns in the reported and unreported transactions could be indicia of market abuse, including failure to obtain best execution for customer orders or possible market manipulation. Being able to more efficiently compare the consolidated order execution data with the trades reported to the consolidated tape could thus be an important component of overall surveillance activity.

[298] This is the number of broker-dealers filing FOCUS Reports at year-end 2008. FOCUS Reports are required to be filed by all registered broker-dealers, with a few exceptions. Excluded from this number were recently established broker-dealers that had yet to become active, or broker-dealers no longer doing business that had yet to deregister.

[299] The Commission derived the total estimated burdens from the following estimates, which are based on the Commission's understanding of, and burden estimates for, existing NMS plans: (Attorney at 400 hours) + (Compliance Manager at 100 hours) + (Programmer Analyst at 220 hours) + (Business Analyst at 120 hours). The Commission preliminarily believes that the cost of developing and filing the NMS plan pursuant to the proposed Rule would be comparable to the cost to create other existing NMS plans, recognizing that the proposed Rule may include more detail as to what must be incorporated and addressed in the NMS plan implementing the proposed Rule.

[300] Based on industry sources, the Commission estimates that the hourly rate for outsourced legal services in the securities industry is $400 per hour.

[301] The Commission derived the total estimated burdens from the following estimates, which are based on prior Commission experience with burden estimates: (Attorney at 64 hours) + (Compliance Manager at 64 hours) + (Programmer Analyst at 64 hours) = 192 burden hours.

[302] The Commission derived the total estimated burden from the following estimates, which assumes preparation of the report would impose approximately half of the approximate burden of preparing the plan, reflects half of the approximate burden of drafting and filing the NMS plan, and the Commission's preliminary view that the cost of preparing the report would not be as extensive as the drafting and filing of the NMS plan: (Attorney at 200 hours) + (Compliance Manager at 50 hours) + (Programmer Analyst at 110 hours) + (Business Analyst at 60 hours) = 420 burden hours per SRO.

[303] The Commission derived the total estimated burden for outsourced legal counsel based on the

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preliminarily estimates that the one-time initial burden of drafting the report required by the proposed Rule would be 420 burden hours plus $10,000 external costs for outsourced legal counsel per SRO, for an aggregate estimated burden of 6,300 hours and $150,000 external costs.

c. Data Collection and Reporting

The proposed Rule would require the collection and reporting on a real time basis of some information that national securities exchanges and national securities associations already collect to operate their business, and are required to maintain in compliance with Section 17(a) of the Exchange Act and Rule 17a–1 thereunder.[304] For instance, the Commission believes that exchanges keep records pursuant to Section 17(a) of the Exchange Act and Rule 17a–1 thereunder in electronic form, of the receipt of all orders entered into their systems, as well as records of the routing, modification, cancellation, and execution of those orders. However, the proposed Rule would require each SRO to collect and report additional and more detailed information, and to report the information to the central repository in real time in a specified uniform format. The Commission anticipates that exchanges may need to enhance or replace their current systems to be able to comply with the proposed information collection and reporting requirements of the proposed Rule.

The Commission recognizes that the extent to which a particular SRO would need to make systems changes would differ depending upon the SRO's current market structure and existing systems. However, the Commission preliminarily estimates that, on average, the initial one-time burden per national securities exchange and national securities association for development and implementation of the systems needed to capture the required information and transmit it to the central repository in a specified format in compliance with the proposed Rule to be 2,200 hours.[305] Further, the Commission estimates that, on average, each exchange and association would incur approximately 40 hours of outsourced legal counsel legal time for the development and implementation of systems needed to capture the required information and transmit it to the central repository, and a one-time software and hardware cost of $4,542,940 per SRO to develop and implement the necessary systems. Therefore, the Commission preliminarily estimates that the average one-time initial burden per national securities exchange and national securities association for development and implementation of the systems needed to capture the required information and transmit it to the central repository in a specified format in compliance with the proposed Rule would be 2,200 burden hours plus $16,000 costs for outsourced legal counsel and $4,542,940 for hardware and software costs,[306] for an aggregate estimated burden of 33,000 hours and $68,384,100 external and systems costs.

Once a national securities exchange or national securities association has established the appropriate systems required for collection and transmission of the required information to the central repository in a specified format, the Commission preliminarily believes that it would be necessary for each national securities exchange or national securities association to undertake efforts to ensure that their system technology is up to date and remains in compliance with the proposed Rule, which could include personnel time to monitor each SRO's reporting of the required data and the maintenance of the systems to report the required data; activity related to adding extra systems capacity to accommodate new order types that would need to be reported to the central repository; or implementing changes to trading systems which might result in additional reports to the central repository. The Commission preliminarily estimates that, on average, it would take a national securities exchange or national securities association approximately 4,975 hours per year to ensure that the system technology is up to date and remains in compliance with the proposed Rule.[307] The Commission also estimates that it would cost, on average, approximately $1.25 million per year per SRO to continue to comply with the proposed requirements to provide information to the central repository, including costs to maintain the systems connectivity to the central repository and purchase any necessary hardware, software, and other materials.[308] Therefore, the Commission preliminarily estimates that the average ongoing annual burden per SRO would be approximately 4,975 hours plus $1.25 million external costs to maintain the systems necessary to collect and transmit information to the central repository, for an aggregate estimated annual burden of 74,625 hours and $18,750,000 external systems costs.

d. Central Repository

The proposed Rule would require national securities exchanges and national securities associations to jointly establish a central repository tasked with the receipt, consolidation, and retention of the reported order and execution information. The central repository thus would need its own system(s) to receive, consolidate, and retain the electronic data received from the SROs and their members. The system would be required to be accessible by the sponsors and the Commission for regulatory purposes, with validation parameters allowing the central repository to automatically check the accuracy and completeness of the data submitted, and reject data not conforming to these parameters. It is anticipated that the burdens of development and operation of the central repository would be shared among the plan sponsors.

The Commission staff preliminarily estimates that there would be an average initial one-time burden of 17,500 hours per plan sponsor for development and implementation of the systems needed to capture the required information in compliance with the proposed Rule.[309]

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assumption that the report required by the proposed Rule would require approximately half the effort of drafting and filing the proposed NMS plan.

[304] 15 U.S.C. 78q(a); 17 CFR 240.17a–1.

[305] The Commission derived the total estimated burdens from the following estimates, which reflect the Commission's experience with, and burden estimates for, SRO systems changes, and discussions with market participants: (Attorney at 100 hours) + (Compliance Manager at 80 hours) + (Programmer Analyst at 1,960 hours) + (Business Analyst at 60 hours) = 2,200 burden hours per SRO.

[306] These estimates are based on the Commission's previous experience with, and cost estimates for, SRO systems changes, and discussions with market participants. *See* Securities Exchange Act Release No. 50870 (December 16, 2004), 69 FR 77424 (December 27, 2004) ("Regulation NMS Reproposing Release") at 77480 (discussing costs to implement Rule 611 of Regulation NMS). Although the Commission recognizes that the substance of Rule 611 of Regulation NMS is not the same as the proposed Rule, the Commission preliminarily believes that the scope of the systems changes would be comparable.

[307] The Commission derived the total estimated burdens from the following estimates, which reflect the Commission's preliminary view that annual ongoing costs would be approximately half the costs of developing and implementing the systems to capture the required information and transmit it to the central repository, and discussions with market participants: (Attorney at 1,500 hours) + (Compliance Analyst at 1,600 hours) + (Programmer Analyst at 1,375 hours) + (Business Analyst at 500 hours) = 4,975 burden hours per SRO.

[308] This estimate includes an estimated cost of approximately $10,000 per month to maintain systems connectivity to the central repository, including back-up connectivity. This estimate is based on discussions with a market participant.

[309] The Commission derived the total estimated burdens based on the following estimates, which are based on information provided to the Commission regarding the development of reporting systems for the collection, consolidation, and dissemination of quotation and last sale data and discussions with market participants: (Attorney at

Further, the Commission estimates that each exchange and association would incur software and hardware costs of approximately $4 million per plan sponsor related to systems development. Therefore, the Commission preliminarily estimates a one-time initial burden of 17,500 hours per plan sponsor, plus software and hardware costs of approximately $4 million related to systems development,[310] for an aggregate estimated burden of 262,500 hours and $60 million in external systems costs.

Once the plan sponsors have established the systems necessary for the central repository to receive, consolidate, and retain the required information, the Commission estimates that the burden per plan sponsor to ensure that the system technology and functionality is up to date and remains in compliance with the proposed Rule would be 192 hours per year, for an estimated aggregate burden per year of 2,880 hours.[311] The estimated burden would include actions taken to regularly review the operation of the central repository to assure its continued effectiveness and to determine the need for enhancements to accommodate the information required to be collected, or new information collected, and the manner in which the data is processed, as well as periodic assessments of the adequacy of the system technology and functionality of the central repository.

After the central repository systems have been developed and implemented, there would be ongoing costs for operating the central repository, including the cost of paying the CCO; the cost of systems and connectivity upgrades or changes necessary to receive, consolidate, and store the reported order and execution information from SROs and their members; the cost, including storage costs, of collecting and maintaining the NBBO and transaction data in a format compatible with the order and event information collected pursuant to the proposed Rule; the cost of monitoring the required validation parameters, which would allow the central repository to automatically check the accuracy and completeness of the data submitted and reject data not conforming to these parameters consistent with the requirements of the proposed Rule; and the cost of compensating the plan processor. The Commission preliminarily assumes that the plan processor would be responsible for the ongoing operations of the central repository. The Commission estimates that these costs would be approximately $100 million in external costs to the plan processor for operation of the central repository per year, or approximately $6,666,666 per plan sponsor per year.[312]

e. Collection and Retention of the NBBO and Transaction Reports

The proposed Rule would require that the central repository collect and retain on a current and continuous basis the NBBO for each NMS security, transaction reports reported pursuant to an effective transaction reporting plan, and last sale reports reported pursuant to the OPRA Plan. The central repository would be required to maintain this NBBO and transaction data in a format compatible with the order and event information collected pursuant to the proposed Rule.[313] Further, the central repository would be required to retain the information collected pursuant to paragraphs (c)(7) and (e)(5) of the proposed Rule in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention for a period of not less than five years. The information would be required to be available immediately, or if immediate availability could not reasonably and practically be achieved, any search query would be required to begin operating on the data not later than one hour after the search query is made.[314]

The Commission preliminarily has included in the burden estimates to the plan sponsors of developing and implementing the systems necessary to capture the order audit trail information (*see supra* Section V.D.1.d) the: (1) Initial one-time hour burden per plan sponsor for development and implementation of the systems at the central repository necessary to receive and retain this NBBO and last sale information; (2) associated software and hardware costs; and (3) ongoing costs of receiving and retaining the NBBO and last sale information.[315]

The Commission estimates that the ongoing external costs to receive the NBBO and last sale data from the SIPs would be approximately $1,370 per year.[316]

2. Members

The Commission preliminarily believes that the proposed Rule would require the collection and reporting in real time of much of the information that registered broker-dealers already maintain in compliance with existing regulations.[317] For example, Section 17 of the Exchange Act and Rule 17a–3 thereunder mandate that broker-dealers keep certain records of orders handled during the course of business.[318] Certain information also is required to be collected and reported by broker-dealers in compliance with a Commission request pursuant to Rule 17a–25 under

3,000 hours) + (Compliance Manager at 4,000 hours) + (Programmer Analyst at 7,500 hours) + (Business Analyst at 3,000 hours) = 17,500 per SRO. This figure excludes the number of burden hours required to create and file the NMS plan.

[310] This cost estimate includes the estimated costs that each exchange and association would incur for software and hardware costs related to systems development. This cost estimate also would encompass (1) costs related to engaging in an analysis and formal bidding process to choose the plan processor, and (2) any search undertaken to hire a CCO. *See* proposed Rule 613(a)(3)(i) (the plan sponsors would be required to select a person to act as a plan processor for the central repository no later than two months after the effectiveness of the NMS plan) and 613(b)(5) (the plan sponsors would be required to appoint a CCO to regularly review the operation of the central repository to assure its continued effectiveness in light of market and technological developments, and make any appropriate recommendations for enhancements to the nature of the information collected and the manner in which the information is processed).

[311] The Commission derived the total estimated burdens from the following estimates, which are based on prior Commission experience with burden estimates: (Attorney at 16 hours) + (Compliance Manager at 16 hours) + (Programmer Analyst at 16 hours) = 48 burden hours per quarter, or 192 burden hours per year.

[312] The Commission derived the total estimated burdens based on discussions with market participants. The estimated annual cost includes an annual salary for a CCO of $703,800. This figure is based on a $391 per-hour figure for a Chief Compliance Officer from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[313] *See* proposed Rule 613(e)(5).

[314] *See* proposed Rule 613(e)(6).

[315] *See supra* Section V.D.1.d.

[316] The Commission derived this estimate based on the average current cost of obtaining consolidated quotation and transaction information from existing quotation and transaction reporting plans.

[317] *See* Section 17(a) of the Exchange Act, 14 U.S.C. 78q(a), and Rules 17a–3, 17a–4, and 17a–25 under the Exchange Act, 17 CFR 240.17a–3, 17 CFR 240.17a–4, and 17 CFR 240.17a–25; *see also, e.g.,* BATS Rule 20.7; BOX Chapter V, Section 4; CBOE Chapter VI, Rule 6.24; CHX Article 11, Rule 3; FINRA Rule 7440; Nasdaq Options Market Chapter IX, Section 4; NYSE Rule 132B; and NYSE Amex Equities Rule 132B.

[318] 15 U.S.C. 78q *et seq.;* 17 CFR 240.17a–3. Generally, broker-dealers must keep a memorandum of each brokerage order, including the following information: The terms and conditions of an order or instructions; the account for which an order was entered; time of order entry and receipt and, to the extent feasible, time of execution; any modifications or cancellations (and, to the extent feasible, time of cancellation); execution price; and the identity of each associated person, if any, responsible for the account. *See* Rule 17a–3(a)(6)(i) under the Exchange Act, 17 CFR 240.17a–3(a)(6)(i). Broker-dealers also are required to keep a record for each cash and margin account they hold, and the name and address of the beneficial owner of each such account. *See* Rule 17a–3(a)(9) under the Exchange Act, 17 CFR 240.17a–3(a)(9).

the Exchange Act.[319] The proposed Rule would, however, require SRO members to collect and report additional information for each order in a specified uniform format. In addition to the new information, the members also would be required to report most of the information on a real time basis to the central repository, which is not currently required. The Commission anticipates that SRO members would need to either enhance or replace their current order handling, trading, and other systems to be able to collect and report the required order and reportable event information to the central repository as required by the proposed Rule.

The Commission recognizes that the extent to which a particular member would need to make systems changes or replace existing systems would differ depending upon the member's current business operations and systems. The Commission preliminarily believes that members that rely mostly on their own internal order routing and execution management systems would need to make changes to or replace such systems to collect and report the required order and reportable event information to the central repository as required by the proposed Rule. The Commission estimates that there are approximately 1,114 of these types of members.[320] The Commission preliminarily estimates the average initial one-time burden to develop and implement the needed systems changes to capture the required information and transmit it to the central repository in compliance with the proposed Rule for these members would be approximately 6,530 burden hours.[321] The Commission also preliminarily estimates that these members would, on average, incur approximately $1.5 million in one-time external costs for hardware and software to implement the systems changes needed to capture the required information and transmit it to the central repository.[322] Therefore, the Commission preliminarily estimates that the average one-time initial burden per member would be 6,530 hours and $1.5 million, for an estimated aggregate burden of 7,274,420 hours and $1,671,000,000.

This number would likely overestimate the costs for some of these members and underestimate it for others. For example, it may overestimate the cost for ATSs as opposed to members that engage in a customer and proprietary (or market marking) business, in part because of the narrower business focus of some ATSs.[323] The Commission also recognizes that some or all of these members may contract with one or more outside vendors to provide certain front-end order management systems. The third-party vendor may make changes to its systems to permit the members that use the system to capture and provide the required information to the central repository. Likewise, some or all of these members may contract with outside vendors to provide back-office functionality. These third-party vendors may make changes to their systems to permit the members that use the systems to capture and provide the required information to the central repository. The cost of these changes may be shared by the various members that use the systems, and thus may result in a reduced cost to an individual member to implement changes to its own systems to comply with the requirements of the proposed Rule.

Once such a member has established the appropriate systems and processes required for collection and transmission of the required information to the central repository, the Commission estimates that the proposal would impose on each member ongoing annual burdens associated with, among other things, personnel time to monitor each member's reporting of the required data and the maintenance of the systems to report the required data; activity related to adding extra systems capacity to accommodate new order types that would need to be reported to the central repository; or implementing changes to trading systems which might result in additional reports to the central repository. The Commission preliminarily estimates that, on average, it would take a member of a national securities exchange or national securities association approximately 3,050 burden hours per year continued compliance with the proposed Rule.[324] The Commission also estimates that it would cost, on average, approximately $756,000 per year per member to maintain the systems connectivity to the central repository and purchase any necessary hardware, software, and other materials.[325] Therefore, the Commission preliminarily estimates that the average ongoing annual burden per member would be approximately 3,050 hours, plus $756,000 external costs to maintain the systems necessary to collect and transmit information to the central repository, for an estimated aggregate annual burden of 3,397,700 hours and $842,184,000.

The Commission preliminarily believes that other members generally would rely on functionality provided by third parties to electronically capture the required information and transmit it to the central repository in real time. For purposes of the proposed Rule, the Commission assumes that these members, which could include broker-dealers defined as "small entities" for purposes of the Regulatory Flexibility Act,[326] generally do not clear transactions and may not possess their own internal order routing and execution management systems, but instead rely on third-party providers for such functionality. Further, the Commission assumes that many of these members currently do not themselves report order or trade information and instead rely on their clearing firms or other third parties to do it for them.

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[319] *See supra* Section I.A for a detailed discussion of what information is required to be submitted upon request to the Commission pursuant to Rule 17a–25 under the Exchange Act, 17 CFR 240.17a–25.

[320] This number includes members that are clearing broker-dealers that carry customer accounts; broker-dealers that accept customer monies but do no margin business; introducing brokers that clear proprietary securities transactions; ATSs registered with the Commission; other clearing firms; and registered market makers. This number was derived from annual FOCUS reports filed with the Commission for the year ending in 2008.

[321] The Commission derived the total estimated burdens on the following estimates, which reflect the Commission's previous experience with, and burden estimates for, broker-dealer systems changes, and discussions with market participants: (Attorney at 1,240 hours) + (Compliance Manager at 1,540 hours) + (Programmer Analyst at 2,750 hours) + (Business Analyst at 1,000 hours) = 6,530 hours.

[322] These estimates are based on the Commission's previous experience with, and cost estimates for, broker-dealer systems changes, and discussions with market participants. *See* Regulation NMS Reproposing Release, *supra* note 306, at 77480 (discussing costs to implement Rule 611 of Regulation NMS). Although the Commission recognizes that the substance of Rule 611 of Regulation NMS is not the same as the proposed Rule, the Commission preliminarily believes that the scope of the systems changes would be comparable.

These estimated hour burdens and systems costs would include the burden and costs, if any, that would be incurred by members to obtain the required customer information, including beneficial ownership, store it electronically, and transmit it to the central repository.

[323] *See* Regulation NMS Reproposing Release, *supra* note 306, at 77480.

[324] The Commission derived the total estimated burdens on the following estimates, which reflect the Commission's preliminary view that ongoing costs would be approximately half of the costs of developing and implementing the systems to comply with the proposed Rule: (Attorney at 800 hours) + (Compliance Manager at 1,000 hours) + (Programmer Analyst at 500 hours) + (Business Analyst at 750 hours) = 3,050 burden hours.

[325] This estimate includes an estimated cost of approximately $10,000 per month to maintain systems connectivity to the central repository, including back-up connectivity. This estimate is based on discussions with a market participant.

[326] *See infra* Section IX.

These smaller members may look for "turn key" systems that could provide the functionality required by the proposed Rule. As such, the Commission preliminarily believes that these members would not undertake a fundamental restructuring of their business to comply with the proposed Rule. Instead, they might continue to rely on their clearing broker-dealer, or they might purchase a standardized software product provided by a third party that would provide the functionality to electronically capture the required information and transmit it to the central repository in real time. The Commission estimates that there are approximately 3,006 of these types of members.[327] For these members, Commission staff preliminarily estimates the average external cost to compensate a third party, whether the clearing broker-dealer or other third party, for software that would provide the necessary functionality to electronically capture the required information and transmit it to the central repository, would be approximately $50,000 per member.[328] In addition, the Commission preliminarily estimates that each of these members, on average, would incur a one-time burden of 140 hours to incorporate this functionality.[329] Therefore, the Commission preliminarily estimates an initial aggregate burden of 420,840 hours and $150,300,000.

Once such a member has procured the appropriate third party system(s) for collection and transmission of the required information to the central repository, the Commission preliminarily estimates that such a member would continue to incur, on average, an external cost of $50,000 annually to compensate a third party, whether the clearing broker-dealer or for software that would provide the necessary functionality to capture the required information and transmit it to the central repository. The Commission also preliminarily estimates that each such member would incur a cost for compliance personnel necessary to oversee continued compliance with the proposed Rule, which would result in 64 burden hours annually for such member.[330] Therefore, the Commission preliminarily estimates an aggregate ongoing burden of 192,384 hours and $150,300,000 to ensure compliance with the proposed Rule.

The Commission requests specific comments on each of its estimates with respect to the estimated burden and costs on members to comply with the proposed Rule. In particular, the Commission requests comment on the specific types and amount of costs, as well as internal staff burden, that would be incurred to modify members' order handling, trading, and other systems to comply with the proposed Rule. The Commission requests comment whether, and if so how, the estimated costs would be impacted if the members did not have to provide the information in proposed Rule 613(c)(7)(vi) and (vii) (the non-real time information).[331] For instance, would requiring the reporting to the central repository of the account numbers for any subaccounts to which an execution is allocated, and the amount of a commission, if any, paid by the customer and the unique identifier of the broker-dealer(s) to whom the commission is paid, require changes to systems other than order handling and execution systems?

E. Collection of Information Is Mandatory

Each collection of information discussed above would be a mandatory collection of information.

F. Confidentiality

The proposed Rule would require that the information to be collected and electronically provided to the central repository would only be available to the national securities exchanges, national securities association and the Commission for the purpose of performing their respective regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations.[332] Further, the national market system plan submitted pursuant to the proposed Rule would be required to include policies and procedures to ensure the security and confidentiality of all information submitted to the central repository, and to ensure that all plan sponsors and their employees, as well as all employees of the central repository, shall use appropriate safeguards to ensure the confidentiality of such data and shall agree not to use such data for any purpose other than surveillance and regulatory purposes.[333]

G. Retention Period of Recordkeeping Requirements

National securities exchanges and national securities associations would be required to retain records and information pursuant to Rule 17a–1 under the Exchange Act.[334] Members would be required to retain records and information in accordance with Rule 17a–4 under the Exchange Act.[335]

H. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment to: (1) Evaluate whether each proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of each proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of each collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

[327] This number includes introducing broker-dealers that do not clear transactions. This number excludes non-clearing firms that specialize in direct participation programs; non-clearing firms that sell insurance products; and non-clearing firms that are underwriters and retailers of mutual funds because these firms do not deal in NMS securities. This number was derived from annual FOCUS reports filed with the Commission for the year ending in 2008.

[328] This estimate is based on the Commission's previous experience with, and burden estimates for, broker-dealer systems changes. *See* Regulation NMS Reproposing Release, *supra* note 306, at 77480 (discussing costs to implement Rule 611 of Regulation NMS). Although the Commission recognizes that the substance of Rule 611 of Regulation NMS is not the same as the proposed Rule, the Commission preliminarily believes that the scope of the systems changes would be comparable.

[329] The Commission derived the estimated burdens from the following estimates, which are based on prior Commission experience with burden estimates: (Attorney at 50 hours) + (Compliance Manager at 50 hours) + (Programmer Analyst at 40 hours) = 140 hours.

These estimated hour burdens and systems costs would include the burden and costs, if any, that would be incurred by members to obtain the required customer information, including beneficial ownership, store it electronically, and transmit it to the central repository.

[330] The Commission bases this estimate one a full-time Compliance Manager spending approximately 2 days per quarter of his time on overseeing ongoing compliance with the proposed Rule.

[331] Proposed Rule 613(c)(7)(vi) would require the reporting to the central repository of the following information: (1) The account number for any subaccounts to which the execution is allocated (in whole or part); (2) the unique identifier of the clearing broker or prime broker, if applicable; (3) the unique order identifier of any contra-side order(s); (4) special settlement terms, if applicable; (5) short sale borrow information and identifier; and (6) the amount of a commission, if any, paid by the customer, and the unique identifier of the broker-dealer(s) to whom the commission is paid. Proposed Rule 613(c)(7)(vii) would require the reporting to the central repository of a cancelled trade indicator, if the trade is cancelled.

[332] *See* proposed Rule 613(e)(2).

[333] *See* proposed Rule 613(e)(4)(i).

[334] 17 CFR 240.17a–1.

[335] 17 CFR 240.17a–4.

VI. Consideration of Costs and Benefits

The Commission is sensitive to the anticipated costs and benefits of the proposed Rule and requests comments on the costs and benefits of the proposed Rule. The Commission encourages commenters to identify, discuss, analyze, and supply relevant data regarding any such costs or benefits.

A. Benefits

Proposed Rule 613 would require all national securities exchanges and national securities associations to jointly submit to the Commission an NMS plan to create, implement, and maintain a consolidated audit trail. The proposed consolidated audit trail would capture, in real time, certain information about each order (including quotations) for an NMS security, including the identity of the customer placing the order, and the details of routing, modification, cancellation, and execution (in whole or in part). In effect, an "electronic audit trail report" would be created for every event in the life of the order. The consolidated audit trail would be maintained by a central repository, and all exchanges, FINRA and the Commission would have access to the consolidated audit trail data for regulatory purposes.

The Commission preliminarily believes that proposed Rule 613 would significantly aid each of the exchanges and FINRA in carrying out its respective statutory obligations to be organized and have the capacity to comply, and enforce compliance by its members, with its rules, and with the federal securities laws, rules, and regulations. Likewise, the Commission believes that proposed Rule 613 would significantly aid the Commission in its ability to oversee the exchanges and associations, and to enforce compliance by the members of exchanges and associations with the respective exchange's or association's rules, and the federal securities laws and regulations. The proposed consolidated audit trail also would aid the Commission in its efforts to limit the manipulation of security prices, and to limit the use of manipulative or deceptive devices in the purchase or sale of a security. Further, the proposal would benefit exchanges, FINRA, and Commission staff by improving the ability of exchanges, FINRA and Commission staff to conduct more timely and accurate trading analysis for market reconstructions, complex enforcement inquiries or investigations, as well as inspections and examinations.

Specifically, the Commission preliminarily believes that, as proposed, Rule 613 would enable exchanges and FINRA to more effectively and efficiently detect, investigate, and deter illegal trading activity, particularly cross-market illegal activity, in furtherance of their statutory obligations. In addition, the Commission preliminarily believes that proposed Rule 613 would enhance the ability of the Commission staff in its regulatory and market analysis efforts. The proposed rule would achieve these objectives in several ways. First, proposed Rule 613 would require the central repository to collect the same data on customer and order event information from each exchange, FINRA, and all members of the exchanges and FINRA, in a uniform format. Currently, the scope and format of audit trail information relating to orders and executions differs, sometimes significantly, among exchanges and FINRA. Thus, by requiring that all exchanges, FINRA and their members submit uniform customer and order event data to the central repository in a uniform format that would more readily allow for consolidation, the proposed Rule would allow regulators to more easily, and in a more timely manner, surveil potential manipulative activity across markets and market participants. The Commission preliminarily believes that this increased efficiency would enhance the ability of SRO and Commission staff to detect and investigate manipulative activity in a more timely manner, whether the activity is occurring on one market or across markets (or across different product classes). Timely pursuit of potential violations can be important in, among other things, seeking to freeze and recover any profits received from illegal activity.

The Commission also preliminarily believes that the proposed consolidated audit trail would enhance the ability of SRO and Commission staff to regulate the trading of NMS securities by requiring that key pieces of information currently not captured in existing audit trails be reported to the proposed consolidated audit trail. For example, proposed Rule 613 would require that the customer that submits or originates an order be identified in the consolidated audit trail. In addition, the proposed Rule would require the assignment of unique identifiers for each order, each customer, and each broker-dealer and SRO that handles an order. Further, the proposed Rule would greatly enhance the ability to track an order from the time of order inception through routing, modification, cancellation, and execution. The Commission preliminarily believes that this information would allow regulators to more easily track potential manipulative activity across markets and market participants, and would place SRO and Commission staff in a better position to surveil whether exchange rules, as well as federal securities laws, rules and regulations, are complied with.

The proposal also would require that most of the required audit trail information be submitted on a real time basis. Most existing audit trails currently collect information on orders at the end of the day, or upon request, rather than in real time.[336] Other order and execution information, such as EBS data and Rule 17a–25 data, is provided to the Commission only upon request. The proposed consolidated audit trail would require that certain information about orders and executions be provided on a real time basis. The Commission preliminarily believes that this requirement could significantly increase the ability of SRO and Commission staff to identify and investigate manipulative activity in a more timely manner.[337]

The Commission preliminarily believes that the proposal also would benefit exchanges, FINRA, and Commission staff by improving the ability of exchanges, FINRA and Commission staff to conduct timely and accurate trading analysis for market reconstructions, complex enforcement inquiries or investigations, as well as inspections and examinations. Today, trading activity is widely dispersed among various market centers, and one or more related orders for one or more securities or other related products may be routed to multiple broker-dealers and more than one exchange, or be executed in the OTC market. Thus, SRO and Commission regulatory staff investigating potentially illegal behavior may have to collect information from multiple broker-dealers and then examine, analyze and reconcile the disparate information provided in widely divergent formats to accurately reconstruct all trading activity during a particular time frame in the course of investigating potentially manipulative activity. Obtaining the necessary order and execution information and undergoing the necessary analysis to determine whether any wrongdoing exists based on the information available today requires substantial investment of time and effort on behalf

[336] *See supra* Sections I.C., I.D., II.A., and V.A.5.

[337] *See supra* Section III.D.1.

of regulatory authorities. Under proposed Rule 613, regulatory authorities would be able to access all information about events in the life of an order or related orders, and obtain critical information identifying the customer (or beneficial owner) behind the order(s) directly from the central repository in a uniform format. Thus, the Commission preliminarily believes that ability of SRO and Commission staff to conduct timely and accurate trading analysis for market reconstructions, complex enforcement inquiries and investigation, as well as inspections and examinations, would be significantly improved.

The Commission also preliminarily believes that the proposal would benefit SROs, as well as the NMS for NMS securities, by ultimately reducing some regulatory costs, which may result in a more effective re-allocation of overall costs. For example, by providing a more comprehensive and searchable database, the Commission preliminarily believes that the consolidated audit trail would significantly decrease the amount of time invested by SRO staff to determine whether any illegal activity is occurring either on one market or across markets. Currently, SRO regulatory staff may need to submit multiple requests to its members during the course of an investigation into possible illegal activity, or submit multiple requests to ISG to obtain audit trail information from other SROs about trading in a particular security, and then commit significant staff time to collating and analyzing the data produced. The proposal would benefit the Commission in similar respects. For example, Commission staff often must submit numerous requests to members after the Commission receives information from equity cleared reports in an attempt to identify the ultimate customer (or beneficial account holder) that entered the order or orders in question. Substantial Commission staff resources currently are invested in analyzing the data that is received in response to these requests.

Under proposed Rule 613, SRO regulatory staff would have immediate, easily searchable access to the consolidated audit trail data through the central repository for purposes of conducting surveillance, investigations, and enforcement activities. Commission staff likewise would have more efficient and timely access for purposes of conducting risk assessments of referrals received, investigations, and enforcement activities, and for purposes of conducting market reconstructions or other analysis. Thus, the Commission preliminarily believes that the proposal would benefit SRO and Commission staff, as well as the market for NMS securities as whole, by providing immediately accessible audit trail information to regulatory staff, which would in turn reduce staff time and effort that would otherwise be needed to collect and analyze audit trail information and allow such staff time and effort to be redirected to more effective uses, possibly even allowing the staff to engage in more investigations. In other words, if the costs per investigation decreased because of efficiencies in the proposed consolidated audit trail information, SRO or Commission staff may be able to review and investigate a greater amount of suspicious activity.

Likewise, the Commission preliminarily believes that proposed Rule 613 would benefit the exchanges, FINRA, the Commission, and the members of SROs, as well as investors and the public interest, by reallocating the overall cost of regulating the markets for NMS securities on an ongoing basis toward more efficient regulation. For instance, the Commission preliminarily believes that the proposed consolidated audit trail would eliminate the need for certain SRO and Commission rules that currently mandate the collection and provision of information, at least with respect to NMS securities. As noted above, many exchanges and FINRA each have their own disparate audit trail rules. Thus, a member of the various exchanges and FINRA could be subject to the audit trail rules of, and be required to submit different information to, more than one exchange and FINRA. The Commission intends that the proposed consolidated audit trail replace the need to have disparate SRO audit trail rules. If proposed Rule 613 were adopted, and the consolidated audit trail was implemented, the Commission preliminarily believes that the exchanges and FINRA would not need to have separate and disparate audit trail rules that apply to NMS securities applicable to their members. Thus, the Commission preliminarily believes that the proposed consolidated audit trail would ultimately result in the ability of SROs to repeal their existing audit trail rules because SRO audit trail requirements would be encompassed within proposed Rule 613. Similarly, the proposed consolidated audit trail also may render duplicative and thus unnecessary certain data obtained from the EBS system pursuant to Rule 17a–25 (and the SRO rules implementing the EBS system), and from the equity cleared data, at least as it relates to NMS securities. SRO and Commission staff instead would be able to access the audit trail information for every order directly from the central repository.[338]

The Commission requests comment on any ongoing cost savings to SROs or their members that could be achieved by the proposal. Are there any other systems or technologies that could be replaced by the proposed audit trail? Would additional Commission action be required to achieve cost savings due to redundant rules or systems? Are there any new systems or technology requirements that could offset these potential cost savings? To what extent would any cost savings amount to a reallocation of resources towards more effective or efficient uses? Please provide specific examples. The Commission also requests comment as to whether the proposed Rule should require the NMS plan to include provisions relating to transition from the existing audit trails to the proposed consolidated audit trail.

As discussed above, the Commission preliminarily believes that the proposal would significantly enhance the ability of SRO staff to efficiently and effectively regulate their market and their members, including detecting and investigating potential manipulative activity. The Commission also preliminarily believes that the proposed consolidated audit trail would benefit the Commission in its regulatory and market analysis efforts. More timely detection and investigation of potential manipulative activity may lead to greater deterrence of future illegal activity if potential wrongdoers perceive a greater chance of regulators identifying their activity in a more timely fashion. To the extent investors consider the improvement in regulators' ability to detect and investigate wrongdoing as significant to their investment decisions, investor trust, which is a component of investor confidence, is improved and investors may be more willing to invest in the securities markets.[339] An increase in investor participation in the securities markets, at least to the extent that the increase is allocated efficiently, can potentially benefit the securities markets as a whole, through better capital formation. Thus, the Commission preliminarily believes that the proposed consolidated audit trail

[338] The Commission notes that, if the proposed Rule were adopted, the SROs would need to consider the continued need for their existing audit trail rules until such time that their members begin complying with the requirements of the proposed Rule.

[339] See Guiso, Sapienza, and Zingales, "Trusting the Stock Market," available at *http://ssrn.acom/abstract=811545*.

would benefit the NMS for NMS securities by encouraging more efficient and potentially a higher level of capital investment.

The Commission requests comment on how the proposal would impact investor protections and investor confidence. In particular, would the consolidated audit trail better align investor protections to the expectations that investors have about their protections? What would be the economic effect of the potential changes to investor protections or to better alignment of those protections with investor expectations? Would any of the anticipated benefits of the proposed Rule be mitigated if market participants alter their trading behavior, such as by shifting their trading activity to products or markets that do not require the capture of customer information to avoid compliance with the requirements of the proposed Rule? If so, please explain how so, and what, if any, steps the Commission should take in response.

The Commission also preliminarily believes that proposed Rule 613 would enhance the overall reliability of audit trail data that is available to the Commission and SRO regulatory staff. Because the proposed Rule would require that the NMS plan include policies and procedures, including standards, to be used by the plan processor to ensure the timeliness, accuracy, and completeness of the audit data submitted to the central repository, there would be an automatic check on the incoming audit trail data submitted by exchanges and FINRA, and their members, for reliability and accuracy. The Commission expects that these policies and procedures would include validation parameters that would need to be met before audit trail data would be accepted into the central repository, and that the central repository would reject data that did not meet certain validation parameters, and require resubmission of corrected data. Thus, the Commission preliminarily believes that the integrity of audit trail information available to the Commission and to the regulatory staff of the exchanges and FINRA would be enhanced and safeguarded by the provisions applicable to the central repository pursuant to proposed Rule 613.

B. Costs

As discussed below, the Commission acknowledges that there likely would be significant up-front costs to implement the proposal. However, the Commission preliminarily believes that SRO and Commission staff, as well as SRO members, would realize other cost savings and benefits.

1. Creation and Filing of NMS Plan

The proposed Rule would require the exchanges and FINRA to jointly develop and file an NMS plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information in real time for all orders in NMS securities, across all markets, from the time of order inception through execution, cancellation or modification.[340] Exchanges and FINRA would be expected to undertake any joint action necessary to develop and file the NMS plan, and there would be attendant costs in doing so. For example, the Commission anticipates that exchange and FINRA staff would need to meet and draft the required terms and provisions of the NMS plan.[341] The Commission preliminarily believes that the existing exchanges and FINRA would incur an aggregate one-time cost of approximately $3,503,100 to prepare and file the NMS plan.[342] Once exchanges and FINRA have established the NMS plan, the Commission estimates that, on average, each exchange and FINRA would incur a cost of $48,384 per year to ensure that the plan is up to date and remains in compliance with the proposed Rule,[343] for an estimated aggregate annual cost of $725,760.

In estimating the costs for creation of the NMS plan, the Commission considered exchange and FINRA staff time necessary for preparing and filing the plan with the Commission. The Commission also considered the cost of outsourced legal services. The Commission requests comment on whether there are additional costs that would contribute to the expense of creating and filing the NMS plan. Please describe any such cost in detail and provide an estimate of the costs. In estimating the ongoing costs of the NMS plan, the Commission considered exchange and FINRA staff time necessary for periodically reviewing the plan in light of current market trends and technology. The Commission requests comment on these estimates and what types of costs would be incurred to keep the plan up to date.

2. Synchronizing Clocks

The proposed Rule would require each exchange and FINRA, and the members of each exchange and FINRA, to synchronize its business clocks that are used for the purpose of recording the date and time of any reportable event that must be reported pursuant to the proposed Rule to the time maintained by the National Institute of Standards and Technology, consistent with industry standards.[344] As part of the initial implementation of the consolidated audit trail, the exchanges, FINRA and their members therefore would have to ensure that their business clocks are synchronized with the time maintained by the National Institute of

[340] *See* proposed Rule 613(c)(1), (c)(3), (c)(7); *see also supra* Sections III.A., III.B., III.D., and V.A.5.

[341] As discussed above in Section III, these required provisions include provisions relating to: A governance structure to ensure the fair representation of the plan sponsors; administration of the plan, including the selection of the plan processor; the admission of new sponsors of the NMS plan and the withdrawal of existing sponsors from the plan; the percentage of votes required by the plan sponsors to effectuate amendments to the plan; the manner in which costs of operating the central repository would be allocated among the exchanges and FINRA, including a provision addressing the manner in which costs would be allocated to new sponsors of the plan; the appointment of a Chief Compliance Officer; the provision stating that by subscribing to and submitting the plan to the Commission each plan sponsor agrees to enforce compliance by its members with the provisions of the plan; and the provision requiring the creation and maintenance by the central repository of a method of access to the consolidated data that includes search and reporting functions. *See* proposed Rules 613(b), 613(e)(3), and 613(g)(3). The NMS plan also would be required to include policies and procedures, including standards, to be used by the plan processor to ensure the security and confidentiality of all information submitted to the central repository; to ensure the timeliness, accuracy, and completeness of the data provided to the central repository; to require the rejection of data provided to the central repository that does not meet the validation parameters set out in the plan and the re-transmission of corrected data; and to ensure the accuracy of the processing of the data provided to the central repository. *See* proposed Rule 613(e)(4).

[342] This figure includes internal personnel time and external legal costs. Commission staff estimates that each exchange and association would expend (400 Attorney hours × $305 per hour) + (100 Compliance Manager hours × $258 per hour) + (220 Programmer Analyst hours × $193 per hour) + (120 Business Analyst hours × $194 per hour) = $213,540. The $305 per-hour figure for an Attorney; the $258 per hour figure for a Compliance Manager; the $193 per hour figure for a Programmer Analyst; and the $194 per hour figure for a Business Analysis (Intermediate) are from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. Commission staff also estimates that each exchange and association would outsource, on average, 50 hours of legal time, at an average hourly rate of $400. Thus, the Commission preliminarily estimates, on average, a total cost of $233,540 per SRO. *See supra* Section V.D.1.a. (discussing PRA costs for developing and filing the NMS plan).

[343] Commission staff estimates that annually each exchange and association would expend (64 Attorney hours × $305 per hour) + (64 Compliance Manager hours × $258 per hour) + (64 Programmer Analyst hours × $193 per hour) = $48,384, to ensure that the NMS plan is up to date and remains in compliance with the proposed Rule. *See supra* note 301.

[344] *See* proposed Rule 613(d)(1).

Standards and Technology. The proposed Rule also would require that the NMS plan provide for the annual evaluation of the synchronization time standard to determine whether it should be shortened, consistent with industry standards.[345]

The Commission recognizes that the cost to each SRO and member to synchronize their clocks consistent with the proposed requirements would vary depending upon the SRO or member's existing systems. The Commission preliminarily believes, however, that most SROs and their members currently synchronize their clocks, and that therefore the SROs and their members would not incur significant costs to comply with this requirement.[346] The Commission recognizes that each individual member or SRO's costs may vary depending upon their current synchronization practices, their business structure, their order management and trading systems, and their geographic diversity. The Commission preliminarily estimates that an SRO or member that would need to make system changes to comply with the requirement would incur an average one-time initial cost of approximately $9,650.[347]

The Commission also preliminarily estimates that there would be an average ongoing annual cost of approximately $11,580 to each exchange, FINRA, and member to synchronize their business clocks to the time maintained by the National Institute of Standards and Technology, consistent with industry standards.[348] Further, the Commission preliminarily estimates that there would be an average cost to exchanges, FINRA and their members of approximately $6,192 per SRO or member to annually evaluate the synchronization time standards to determine whether it should be shortened, consistent with industry standards.[349]

As stated above, the Commission preliminarily believes that the costs to the SROs and their members associated with synchronizing their clocks would not be significant because most SROs and their members currently synchronize their clocks. The Commission requests comments on whether commenters agree. If not, what costs would be incurred? Please be specific as to the type of changes necessary and the costs of making them. Further, the proposed Rule would require that all SROs and their members synchronize to same time standard and to the same level of accuracy. The Commission requests comment on its estimate of the cost to SROs and their members of initializing synchronizing business clocks, the ongoing costs for maintaining accurate synchronization, and the costs associated with annual evaluation of the synchronization time standard. Would SROs or their members incur costs, and if so, what types of costs?

3. Costs To Provide Information

As discussed above in Section V.A.5, the Commission preliminarily believes that the proposed Rule would require the collection and reporting on a real time basis of some information that national securities exchanges and national securities associations already record to operate their business, and are required to maintain in compliance with Section 17(a) of the Exchange Act and Rule 17a–1 thereunder.[350] However, the proposed Rule would require each SRO to collect and report additional and more detailed information, and to report the information to the central repository in real time in a specified format. Based on discussions with SROs, the Commission anticipates that exchanges would need to enhance or replace their current systems to be able to comply with the proposed information collection and reporting requirements of the proposed Rule.

Likewise, the Commission preliminarily believes the proposed Rule would require the collection of much of the information that registered broker-dealers already maintain in compliance with existing regulations.[351] The proposed Rule, however, would require members to collect additional information for each order and, in addition to the new information, the members also would be required to report most of the information on a real time basis to the central repository in a specified uniform format. Based on discussions with members, the Commission anticipates that the SRO members would need to enhance or replace their current order handling, trading and other systems to be able to collect and report the required order and reportable event information to the central repository as required by the proposed Rule.

The Commission recognizes that the extent to which a particular SRO or member would need to make systems changes would differ depending upon the SRO's market structure (*e.g.,* floor vs. electronic) and systems, or the member's current business operations and systems. The Commission preliminarily estimates that the average one-time, initial cost to exchanges and FINRA to put in place the systems necessary to identify, collect and transmit the consolidated audit trail information to the central repository would total approximately $5 million per SRO,[352] for an aggregate estimated cost of $75 million for all SROs. In estimating this cost, the Commission has considered SRO staff time necessary to build new systems or enhance existing systems to comply with the proposed Rule.[353] In addition, the Commission estimated costs for system hardware, software, and other materials.[354] What other types of costs

[345] *See* proposed Rule 613(d)(2).

[346] *See* CHX Rule 4, Interpretations and Policies .02; FINRA Rule 7430; NYSE and NYSE Amex Equities Rule 123, Supplementary Material .23; NYSE and NYSE Amex Equities Rule 132A; and NYSE Arca Options Rule 6.20.

[347] Commission staff estimates that, on average, each exchange, association, and member would expend 50 hours of information technology time, at a cost of $193 per hour to make systems changes to comply with the requirement that clocks be synchronized. This estimate is based on discussions with market participants.

[348] Commission staff estimates that each exchange, association and member would expend approximately five hours of information technology time, per month, at $193 per hour. This estimate is based on discussions with industry participants.

[349] This estimate assumes that each SRO or member would expend (16 Programmer Analyst hours × $193 per hour) + (16 Business Analyst hours × $194 per hour) = $6,192 to carry out this annual evaluation.

[350] 15 U.S.C. 78q(a) *et seq.;* 17 CFR 240.17a–1. Rule 17a–1 requires an exchange or association to keep and preserve at least one record of all documents or other records that shall be received by it in the course of its business as such and in the conduct of its self-regulatory activity. This would include records of the receipt of all orders entered into their systems, as well as records of the routing, modification, cancellation, and execution of those orders. The Commission understands that SROs have automated this process and thus keep these records in electronic format.

[351] *See supra* notes 317 to 319 and accompanying text.

[352] The Commission based this estimated cost on the Commission's previous experience with, and burden estimates for, SRO systems changes and discussions with market participants. *See* Regulation NMS Reproposing Release, *supra* note 306, at 77480 (discussing costs of implementing Rule 611 of Regulation NMS). Although the Commission recognizes that the substance of Rule 611 is not the same as the proposed Rule, the Commission preliminarily believes that the scope of systems changes would be comparable.

[353] Commission staff estimates that each exchange and association would expend (100 Attorney hours × $305 per hour) + (80 Compliance Manager hours × $258 per hour) + 1,960 Programmer Analyst hours × $193 per hour) + 60 Business Analyst hours × $194) = $441,060 to develop and implement the systems needed to capture the required information and transmit it. In addition, the Commission estimates that each exchange and association would expend 40 hours of outsourced legal time at an average rate of $400 per hour. *See supra* note 305.

[354] Commission staff estimates that the cost for system hardware, software, and other materials would be $4,542,940. *See supra* note 306 and accompanying text.

might SROs incur? Please be specific in your response.

Once an SRO has implemented the changes necessary to collect and transmit the required information to the central repository as required by the proposed Rule, the Commission estimates that each SRO would incur, on average, an annual ongoing cost of $2.5 million to ensure compliance with the proposed Rule,[355] for an estimated ongoing annual aggregate cost of $37.5 million for all SROs.

The Commission understands that many members, particularly smaller members, currently rely on third parties to report information required to be reported pursuant to SRO audit trail or other rules. For example, a member that is an introducing broker who sends all of its customer order flow to a clearing broker currently may rely on that clearing broker for reporting purposes. The Commission preliminarily believes that these members would not undertake a fundamental restructuring of their business to comply with the proposed Rule. Instead, they might continue to rely on their clearing broker-dealer, or they might look for the ability to purchase a standardized software product provided by a third party that would provide the functionality to electronically capture the required information and transmit it to the central repository in real time. The costs of this approach are likely to be significantly lower than the costs to a member that enhances its own systems, or creates new systems, to comply with the proposed requirements to report information to the central repository. The Commission estimates that there are approximately 3,006 of these types of members, and that the average cost to such members to compensate a third party, whether a clearing broker-dealer or other third party, for software that would provide the necessary functionality to electronically capture the required information and transmit it to the central repository would be approximately $50,000 per member.[356] In addition, the Commission estimates that, on average, each member would incur a one-time cost of $35,870 to incorporate the new functionality into its existing systems to ensure compliance with the proposed Rule.[357] Thus, the Commission preliminarily estimates that each of these members would incur, on average, a one-time cost of $85,870, for an estimated aggregate cost of $258,125,220.

The Commission also preliminarily estimates that each of these members would continue to incur, on average, annual costs of $66,512 to ensure continued compliance with the proposed Rule.[358]

Do commenters believe that smaller members would likely rely on third parties to provide a functionality that would provide required data to the central repository? Why or why not? Would it be more cost effective for a small member to enhance existing systems or create new systems to comply with the proposed Rule? Why or why not? What would be the costs associated with each approach? Should members that currently rely on another party to report, such as their clearing broker, be able to have their clearing firms report on their behalf? Why or why not? How would allowing third-party reporting impact the ability to report data in real time? Would the manner in which these members currently maintain customer information create practical difficulties for providing the beneficial ownership information, or additional burdens that have not been taken into account in estimating costs? For example, is customer information stored electronically? What is the impact of the manner in which this information is currently stored on the Commission's cost estimates?

The Commission preliminarily estimates that there are 1,114 members that would undertake their own development changes to implement the proposed Rule.[359] The Commission preliminarily estimates that the average one-time, initial cost to these members for development, including programming and testing of the systems necessary to identify, collect and transmit the consolidated audit trail information to the central repository, would be approximately $3 million per member,[360] for an estimated aggregate cost of $3,342,000,000. This number would likely overestimate the costs for some of these members and underestimate it for others. For example, it likely overestimates the cost for ATSs as opposed to broker-dealers that have a customer and proprietary, or market-making, business, in part because of the narrower business focus of some ATSs. The Commission recognizes that some of these members may contract with one or more outside vendors to provide certain front-end order management systems. The third-party vendor may make changes to its systems to permit the members that use the system to capture and provide the required information to the central repository. Likewise, some of these members may contract with outside vendors to provide back-office functionality. These third-party vendors may make changes to their systems to permit the members that use the systems to capture and provide the required information to the central repository. The cost of these changes may be shared by the various members that use the systems, and thus may result in a reduced cost to an individual

[355] Commission staff estimates that each exchange and association would expend (1,500 Attorney hours × $305 per hour) + (1,600 Compliance Manager hours × $258 per hour) + (1,375 Programmer Analyst hours × $193 per hour) + (500 Business Analyst hours × $194 per hour) to ensure that the systems technology is up to date and remains in compliance with the proposed Rule, for a total of $1,250,675. In addition, Commission staff estimates that each exchange and association would expend approximately $1.25 million on system hardware, software, connectivity and other materials. These estimates reflect the preliminary view that ongoing costs to maintain compliance with the proposed Rule would be half of the initial costs. *See supra* notes 307 and 308.

[356] *See supra* note 328. The Commission based this estimated cost on the Commission's previous experience with, and burden estimates for, broker-dealer systems changes. *See* Regulation NMS Reproposing Release, *supra* note 306, at 77480 (discussing costs of implementing Rule 611 of Regulation NMS). Although the Commission recognizes that the substance of Rule 611 is not the same as the proposed Rule, the Commission preliminarily believes that the scope of systems changes would be comparable.

[357] Commission staff estimates that annually each of these types of members would expend (50 Attorney hours × $305 per hour) + (50 Compliance Manager hours × $258 per hour) + (40 Information Analyst hours × $193 per hour) = $35,870 to incorporate the new functionality into its existing systems.

These costs would include any systems or other changes necessary to obtain the required customer information, including the identity of the beneficial owner, and electronically storing it for transmittal to the central repository with the order information.

[358] This estimate is based on a cost of $50,000 per year to compensate a third party for the functionality to capture the required information and transmit it to the central repository, and a cost of $16,512 for personnel time to oversee compliance with the proposed Rule (64 hours Compliance Manager × $258 per hour). *See supra* note 330.

[359] *See supra* Section V.D.2 and note 320.

[360] Commission staff estimates that each member would expend (1,240 Attorney hours × $305 per hour) + (1,540 Compliance Manager hours × $258 per hour) + (2,750 Programmer Analyst hours × $193 per hour) + (1,000 Business Analyst hours × $194 per hour) = $1,500,270 to develop and implement the systems needed to capture the required information and transmit it. In addition, the Commission estimates that the cost for system hardware, software, and other materials would be approximately $1.5 million. This estimate is based on the Commission's previous experience with, and burden estimates for, broker-dealer systems changes. *See* Regulation NMS Reproposing Release, *supra* note 306, at 77480 (discussing cost estimates for implementing Rule 611 of Regulation NMS). Although the Commission recognizes that the substance of Rule 611 is not the same as the proposed Rule, the Commission preliminarily believes that the scope of systems changes would be comparable. These costs would include any systems or other changes necessary to obtain the required customer information, including the identity of the beneficial owner, and electronically storing it for transmittal to the central repository with the order information.

member to implement changes to its own systems to comply with the requirements of the proposed consolidated audit trail.

The Commission requests comment on this estimate. Specifically, what types of costs would members incur building new systems, or enhancing existing systems, to comply with the proposed Rule? Would members need to expand their capacity as part of any systems upgrades? What would be the costs associated with this? Would the manner in which these members currently maintain customer information create practical difficulties for providing the beneficial ownership information, or additional burdens that have not been taken into account in estimating costs? For example, is customer information stored electronically? What is the impact of the manner in which this information is currently stored on the Commission's cost estimates?

Once these members have largely implemented the changes necessary to collect and report the required order and reportable event information to the central repository as required by the proposed Rule, the Commission estimates that each such member would incur, on average, an annual ongoing cost of approximately $1.5 million,[361] for an estimated aggregate ongoing cost of $1,671,000,000. These estimates would cover the costs associated with continued compliance with the proposed Rule.[362]

The Commission requests comment on what ongoing costs SROs and their members would incur to continue to collect and report the required information in compliance with the proposed Rule. What types of costs would be included? Are there differences in the costs that SROs and their members would incur? Why or why not?

The proposal would require the transmission of information in real time to the central repository. The Commission preliminarily believes that this approach would have greater benefits and would be lower cost than an alternative of transmitting all reports in batch mode. Real time submission could simply require a "drop copy" of a reportable event be sent to the central repository at the same time that the reportable event is otherwise occurring. Batching, however, would require the build up of reports to be sent periodically, and the amount of data sent in a batch could be significantly larger than the data sent in real time. The Commission requests comment on the technology requirements and other costs of real time transmission of information versus periodically batching the reports. Would real time reporting be more or less costly than batch reporting? Please explain with specificity why or why not and provide cost estimates. If real time reporting would be more expensive, are the greater costs justified by the benefits of real time reporting described above? If batch reporting is the better alternative, what should be the frequency of the batch reporting and why? Does the answer depend on the type of security? The Commission also requests comment on what types of systems changes SROs and members would need to make to implement the proposed Rule and NMS plan requirements, and the attendant costs. What specific types or items of information, if any, would be required to be reported to the central repository by a member that would not already be collected and maintained in an automated format?

4. Cost of Enhanced Surveillance Systems

Pursuant to the proposed Rule, exchanges and FINRA also would be required to develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information collected through the proposed consolidated audit trail.[363] The Commission preliminarily estimates that the average one-time cost to implement this requirement would be approximately $10 million for each exchange and FINRA, for an estimated aggregate cost of $150 million.[364] The Commission also estimates, on average, ongoing annual costs associated with the enhanced surveillance would be approximately $2,610,600,[365] for an estimated aggregate, ongoing cost of $39,159,000. Based on discussions with market participants, the Commission recognizes that these estimated costs may vary, perhaps significantly, based on the market model utilized by a particular SRO. For certain SROs, these figures may overestimate the costs associated with developing or enhancing surveillance systems, while for others, it may underestimate the costs. The Commission requests comment on whether these figures accurately estimate the costs for developing or enhancing surveillance systems to comply with the proposed Rule for the SROs. Would these figures be lower or higher for SROs whose trading systems are fully electronic? Would the cost estimates be higher or lower for those SROs that have a trading floor? What other considerations would impact individual SRO costs? Please be specific in your response.

The Commission also requests comment on whether SROs would be able to enhance their existing surveillance and regulation to make use of the proposed consolidated information or would they need to develop new surveillance systems to comply with the proposed Rule? How would SROs enhance their current surveillance systems? What would be the costs associated with updating current systems as opposed to developing new surveillance systems? Would it be more cost efficient to establish coordinated surveillance across exchanges and FINRA, rather than having each SRO be responsible for surveillance on its own market using the consolidated data? What would be the costs associated with developing consolidated cross-market surveillance?

5. Central Repository System

The central repository would be responsible for the receipt, consolidation, and retention of all the data required to be submitted by the exchanges and FINRA, and their members. The proposed Rule also would require that the central repository collect and retain on a current and continuous basis the NBBO for each NMS security, transaction reports reported pursuant to an effective transaction reporting plan, and last sale reports reported pursuant to the OPRA Plan. The central repository would be

[361] Commission staff estimates that each member would expend (800 Attorney hours × $305 per hour) + (1,000 Compliance Manager hours × $258 per hour) + (500 Programmer Analyst hours × $193 per hour) + (750 Business Analyst hours × $194 per hour) = $744,000 to ensure that the systems technology is up to date and remains in compliance with the proposed Rule. In addition, Commission staff estimates that each member would expend approximately $756,000 on system hardware, software, connectivity and other materials. These estimates reflect the preliminary view that ongoing costs to maintain compliance with the proposed Rule would be half of the initial estimated costs.

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

[363] *See* proposed Rule 613(f).

[364] This estimate is based on discussions with market participants. This estimate does not separately break out personnel time versus system costs.

[365] Commission staff estimates that each member would expend (3,600 Senior Compliance Examiner hours × $212 per hour) and (1,800 Information Analyst hours × $193 per hour) to operate and monitor the enhanced surveillance systems and carry out surveillance functions. In addition, Commission staff estimates that each member would expend approximately $1.5 million on system hardware, software, connectivity and other technology per year on an on-going basis for this purpose. These estimates are based on discussions with a market participant.

required to maintain the NBBO and transaction data in a format compatible with the order and event information collected pursuant to the proposed Rule. Further, the central repository would be required to retain the information collected pursuant to paragraphs (c)(7) and (e)(5) of the proposed Rule in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention for a period of not less than five years. The information shall be available immediately, or if immediate availability cannot reasonably and practically be achieved, any search query must begin operating on the data not later than one hour after the search query is made.[366]

The central repository thus would need its own system(s) to receive, consolidate, and retain the electronic data received from the plan sponsors and their members, as well as to collect and retain the NBBO and last sale data. The system would be required to be accessible and searchable by the sponsors and the Commission for regulatory purposes,[367] with validation parameters allowing the central repository to automatically check the accuracy and the completeness of the data submitted, and reject data not conforming to these parameters. It is anticipated that the costs of development and operation of the central repository would be shared among the plan sponsors. The Commission preliminarily estimates a one-time initial cost to create the central repository, its systems and structure, of approximately $120 million for an average cost of approximately $8 million per plan sponsor.[368]

Does this estimate accurately reflect SRO staff time needed to create the central repository as well as the costs for any hardware, software and other materials required? Are there other cost components to creating the central repository the Commission should consider? Is the creation of a central repository as described in the proposed Rule for collection and consolidation of data the most cost effective way to achieve the objective of creation of a consolidated audit trail? Are there other alternatives the Commission should consider? Please describe the costs associated with any alternatives described.

Once the plan sponsors have established the systems necessary for the central repository to receive, consolidate, and retain the required information, the Commission estimates that ongoing annual costs to operate the central repository would be approximately $100 million,[369] which would be approximately $6.6 million per year per plan sponsor. The Commission also estimates that each plan sponsor would incur, on average, ongoing costs of $48,384 per year for actions taken to review the operation and administration of the central repository.[370] In addition, the Commission estimates that the central repository would incur an ongoing cost of $1,370 per year to purchase the NBBO and last sale data feeds from the SIPs.[371]

The Commission request comment on these estimated costs. Does this estimate accurately reflect the cost of storing data in a convenient and usable standard electronic data format that is directly available and searchable, without any manual intervention, for a period of not less than 5 years? Would these costs estimates change if the scope of the consolidated audit trail were expanded to include equity securities that are not NMS securities; corporate bonds, municipal bonds, and asset-backed securities and other debt instruments; credit default swaps, equity swaps, and other security-based swaps? What systems or other changes would be necessary to accommodate these other products? How would those changes impact costs?

6. SRO Rule Filings

The exchanges and FINRA also would be required to file proposed rule changes to implement the provisions of the NMS plan with respect to their members.[372] The Commission notes that the exchanges and FINRA would be able to use the NMS plan as a roadmap to draft the content of their required proposed rule changes. The Commission also notes that the rule filing format and process is not new to the exchanges or to FINRA.[373] The Commission estimates that the aggregate cost of each SRO filing a proposed rule change to implement the NMS plan to be approximately $590,175.[374]

7. Expansion of the Proposed Consolidated Audit Trail

The proposed Rule would require the plan sponsors to jointly provide to the Commission a report outlining how the sponsors would incorporate into the consolidated audit trail information with respect to: (1) Equity securities that

[366] *See* proposed Rule 613(e)(6).

[367] The proposed Rule would require that the central processor create and maintain a method of access to the consolidated data. *See* proposed Rule 613(e)(3). The Rule requires that this method of access would be designed to include search and reporting functions to optimize the use of the consolidated data. The cost of creating a method of access to the consolidated audit trail data is included within the overall systems cost estimate.

[368] Commission staff estimates that each exchange and association would expend (3,000 Attorney hours × $305 per hour) + (4,000 Compliance Manager hours × $258 per hour) + (7,500 Programmer Analyst hours × $193 per hour) + (3,000 Business Analyst hours × $194 per hour) = $3,976,500 to create the central repository. In addition, the Commission estimates that the cost per exchange or association for system hardware, software, and other materials would be approximately $4 million. *See supra* Section V.D.1.d. and note 309.

This estimate includes the estimated costs that each exchange and association would incur for software and hardware costs related to systems development. This cost estimate also would encompass (1) costs related to engaging in an analysis and formal bidding process to choose the plan processor, and (2) any search undertaken to hire a CCO. *See* proposed Rule 613(a)(3)(i) (the plan sponsors would be required to select a person to act as a plan processor for the central repository no later than two months after the effectiveness of the NMS plan) and 613(b)(5) (the plan sponsors would be required to appoint a CCO to regularly review the operation of the central repository to assure its continued effectiveness in light of market and technological developments, and make any appropriate recommendations for enhancements to the nature of the information collected and the manner in which the information is processed).

[369] *See supra* Section V.D.1.d. This cost estimate includes ongoing costs for operating the central repository, including the cost of systems and connectivity upgrades or changes necessary to receive, consolidate, and retain and store the reported order information from SROs and their members; the cost, including storage costs, of collecting and maintaining the NBBO and transaction data in a format compatible with the order and event information collected pursuant to the proposed Rule; the cost of monitoring the required validation parameters; the cost of compensating the plan processor; and an ongoing annual cost of $703,800 to compensate the CCO. *See supra* note 312.

[370] Commission staff estimates that annually each exchange and association would expend (64 Attorney hours × $305 per hour) + (64 Compliance Manager hours × $258 per hour) + (64 Programmer Analyst hours × $193 per hour) = $48,384 to ensure and review the operation and administration of the central repository. *See supra* note 343 and accompanying text.

[371] *See supra* Section V.D.1.e.

[372] *See* proposed Rule 613(g)(1).

[373] The Commission notes that, for its 2009 fiscal year (October 1, 2008 to September 30, 2009), the then existing twelve exchanges and FINRA filed approximately 1,308 proposed rule changes in the aggregate pursuant to Section 19(b) and Rule 19b–4 thereunder.

[374] This figure was calculated as follows: (129 Attorney hours × $305) = $39,345 × 15 SROs = $590,175. Commission staff estimates that each exchange and association would expend approximately 129 hours of legal time × $305 to prepare and file a complex rule change. *See* Securities Exchange Act Release No. 50486 (October 4, 2004), 69 FR 60287 (October 8, 2004) (File No. S7–18–04). The $305 per-hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. *See* Securities Exchange Act Release No. 59748 (April 10, 2009), 74 FR 18042, 18093 (April 20, 2009) (S7–08–09) (noting the Commission's modification to the $305 per hour figure for an attorney).

are not NMS securities; (2) debt securities; and (3) primary market transactions in equity securities that are not NMS securities, in NMS stocks, and in debt securities. The sponsors would be required to address, among other things, details for each order and reportable events that they would recommend requiring to be provided; which market participants would be required to provide the data; an implementation schedule; and a cost estimate. Thus, the exchanges and FINRA would need to, among other things, undertake an analysis of technological and computer system acquisitions and upgrades that would be required to incorporate such an expansion. The Commission preliminarily estimates that the one-time cost to the exchanges and FINRA to create and file with the Commission a report for expanding the scope of the consolidated audit trail would be approximately $1,751,550 for a one-time cost of $116,770 per SRO.[375]

Does this estimate accurately reflect the expenses, including SRO staff time and systems analyses, which SROs would incur in preparing the required report? Are there other costs components that should be considered in determining costs associated with preparing the required report? Please provide details on any additional costs that should be considered.

8. Other Costs

Proposed Rule 613 would specifically require, for the receipt or origination of each order, information to be reported to the central repository with respect to the ultimate customer that generates the order. Specifically, members would be required to report to the central repository information about the beneficial owner of the account originating the order and the person exercising investment discretion for the account originating the order, if different from the beneficial owner, and each customer would be identified by a unique customer identifier. Thus, information about "live" orders, as well as overall order and execution information for a particular customer, would be available in the central repository. In recognition of the sensitivity of this data, the proposed Rule requires the NMS Plan to include policies and procedures, including standards, to be used by the plan processor to ensure the security and confidentiality of all information submitted to, and maintained by, the central repository.

However, a potential cost could be incurred if the security and confidentiality of the information submitted to the central repository is breached, either by malfeasance or accident. In either case, if identifying information about customers and their trading is made public—contrary to the expectations and intentions of the customers—the Commission preliminarily believes that this may have a negative effect on the securities markets. Specifically, investors may be less willing to allocate their capital to the securities markets if their expectation that their personal identifying and trading information will be adequately protected by the central repository is not met. Under these circumstances, there could be a reduction in the capital invested in the markets for NMS securities by investors, to the detriment of the U.S. securities markets overall.

Proposed Rule 613 also would require that the NMS plan include policies and procedures, including standards, for the plan processor to use to ensure the integrity of the information submitted to the central repository. Specifically, the proposed Rule requires that the policies and procedures be designed to ensure the timeliness, accuracy, and completeness of the data provided to the central repository by the exchanges, FINRA and their members, and to require the rejection of data provided if the data does not meet validation parameters, and the re-transmission of such data. The Commission notes that, despite such safeguards for ensuring the integrity of the audit trail data, the information submitted by the exchanges, FINRA and their members could be inaccurate, either due to system or human error. If the reliability of the data is compromised, this could reduce the usefulness of the consolidated audit trail data for regulatory purposes.

Are there any other non-tangible costs associated with potential breaches of the integrity or confidentiality of the data required to be submitted to the central repository that the Commission should consider?

9. Total Costs

Based on the assumptions and resulting estimated costs discussed above, the Commission preliminarily estimates the initial aggregate cost the exchanges and FINRA would incur to comply with the proposed Rule, other than costs related to creating and operating the central repository, would be approximately $231 million,[376] and ongoing aggregate annual costs would be approximately $77.7 million.[377] In addition, the exchanges and FINRA would incur an initial aggregate cost of approximately $120 million to set up the central repository,[378] with ongoing annual costs to operate the central repository of approximately $101 million.[379] For SRO members that would make changes to their own order management and trading systems to comply with the proposed Rule,[380] we estimate the initial aggregate one-time cost for implementation of the proposed Rule would be approximately $3.4 billion [381] and aggregate ongoing annual costs would be approximately $1.7 billion.[382] For SRO members that are

[375] Commission staff estimates that each member would expend (200 Attorney hours × $305 per hour) + (50 Compliance Manager hours × $258 per hour) + (110 Programmer Analyst hours × $193 per hour) + (60 Business Analyst hours × $194 per hour) + (25 Outsourced Legal Counsel hours × $400 per hour) = $116,770 to create and file with the Commission a report for expanding the scope of the consolidated audit trail. *See supra* Section V.D.1.b and note 302.

[376] This aggregate cost estimate includes the aggregate one-time cost of preparing and filing the NMS plan ($3,503,100); the aggregate average one-time cost for each exchange and FINRA to synchronize clocks consistent with the proposed requirements ($144,750); the aggregate average one-time cost for each exchange and FINRA to identify, collect and transmit the consolidated audit trail information to the central repository ($75 million); the aggregate average one-time cost for each exchange and FINRA to develop and implement surveillance systems, or enhance existing surveillance systems ($150 million); the aggregate one-time cost for each exchange and FINRA to file proposed rule changes to implement the provisions of the NMS plan with respect to their members ($590,175); and the aggregate one-time cost to the exchanges and FINRA of jointly providing to the Commission a report outlining how the exchanges and FINRA would expand the scope of the consolidated audit trail ($1,751,550).

[377] This aggregate cost estimate includes the aggregate average ongoing annual cost to ensure that the plan is up to date and remains in compliance with the proposed Rule ($725,760); the aggregate average ongoing annual cost to synchronize clocks consistent with industry standards ($173,700); the aggregate average ongoing annual cost to evaluate the synchronization standards ($92,880); the aggregate average ongoing annual cost to ensure that each exchange and FINRA is providing information in compliance with the proposed Rule ($37.5 million); and the aggregate average ongoing annual cost associated with enhanced surveillance ($39,159,000).

[378] *See supra* note 368.

[379] *See supra* notes 369 to 371 and accompanying text.

[380] We preliminarily estimate there are 1,114 of these broker-dealers, including all clearing firms and alternative trading systems. *See supra* note 320.

[381] This aggregate cost estimate includes the aggregate average one-time cost for such members to identify, collect and transmit the consolidated audit trail information to the central repository ($3,342,000,000); and the aggregate average initial cost for such members to synchronize clocks consistent with the proposed requirements ($10,750,100).

[382] This aggregate cost estimate includes the aggregate average ongoing annual cost for such members to identify, collect and transmit the consolidated audit trail information to the central repository ($1,671,000,000); and the aggregate average ongoing annual cost for such members to

Continued

likely to rely on a third party to comply with the proposed Rule (such as their clearing broker),[383] we estimate the initial aggregate one-time cost for implementation of the proposed Rule would be approximately $287 million [384] and ongoing annual costs would be approximately $253 million.[385] Therefore, for all SROs and members, we estimate that the total one-time aggregate cost to implement the proposed Rule would be approximately $4 billion and the total ongoing aggregate annual costs would be approximately $2.1 billion.

C. Request for Comment

The Commission requests general comment on the costs and benefits of proposed Rule 613 of Regulation NMS discussed above, as well as any costs and benefits not already described which could result from the proposed Rule. The Commission also requests data to quantify any potential costs or benefits.

The Commission requests comment on what, if any, would be the impact of the proposed Rule on competition among the exchanges and other non-exchange market centers? If commenters believe there would be an impact on competition, please explain and quantify the costs or benefits of such impact. If commenters believe that there would be a cost, what steps could the Commission take to mitigate such costs?

The Commission also requests comment on whether the requirements of the proposed Rule, such as the requirement to provide detailed information to the central repository on a real time basis, would have an impact on any form of legal trading activity engaged in by market participants, or the speed with which trading occurs. For example, would requiring additional information to be attached to an order when the order is routed from one member or exchange to another—such as the unique order identifier—impact the speed with which routing and trading occurs? If not, why not? If so, why? If there would be an impact, do commenters believe that the impact would be negative? Why or why not? Also, would the requirement to provide customer and order information to the central repository in real time impact market participant trading activity? If so, how so? If commenters believe the impact would provide a benefit, please explain and quantify. If commenters believe that the impact would impose a cost, please explain and quantify. For example, would market participants be hesitant to engage in certain legal trading activity because of a concern about providing customer and order information in real time? Would market participants shift their trading activity to products or markets that do not require the capture of customer information to avoid compliance with this requirement of the proposed Rule? If so, how should the Commission address those concerns? Please be specific in your responses. The Commission requests comment on any other changes to behavior that commenters believe may result from application of the proposed Rule. For example, do commenters believe that the proposal would cause illegal trading activity to shift to products or markets not covered by the proposed Rule? If so, should that impact the scope of the proposed Rule? If so, how so? If not, why not?

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

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[386] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[387] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As discussed below, the Commission's preliminary view is that the proposed Rule should promote efficiency, competition, and capital formation.

Section 11A(a)(3)(B) of the Exchange Act provides in part that the Commission may, by rule, require SROs to act jointly with respect to matters as to which they share authority under the Exchange Act in regulating a national market system for securities.[388] Proposed Rule 613 would require all national securities exchanges and national securities associations to jointly submit to the Commission an NMS plan to create, implement, and maintain a consolidated audit trail for NMS securities. Under the proposal, pursuant to the NMS plan, and SRO rules adopted thereunder to implement the plan, national securities exchanges and national securities associations, as well as their members, would be required to provide detailed order and execution data to a central repository to populate a consolidated audit trail.[389]

A. Competition

The Commission considered the impact of proposed Rule 613 on the national securities exchanges, national securities associations, and their members that trade NMS securities. The Commission begins its consideration of potential competitive impacts with observations of the current structure of the markets for trading NMS securities.

The industry for the trading of NMS securities is a competitive one, with reasonably low barriers to entry and significant competition for order flow. The intensity of competition across trading platforms that trade NMS securities has increased dramatically in the past decade as a result of technological advances and regulatory changes. This increase in competition has resulted in decreases in market concentration, more competition among market centers, a proliferation of trading platforms competing for order flow, and decreases in trading fees.

In addition, the Commission, within the past five years, has approved applications by BATS,[390] Direct

annually evaluate the synchronization time standards and perform any necessary synchronization adjustments ($19,798,008).

[383] We preliminarily estimate there are 3,006 of these broker-dealers, mainly including non-clearing broker-dealers. *See supra* note 327.

[384] This aggregate cost estimate includes the aggregate average initial cost for such members to identify, collect and transmit the consolidated audit trail information to the central repository ($258,125,220); and the aggregate average initial cost for such members to synchronize clocks consistent with the proposed requirements ($29,007,900).

[385] This aggregate cost estimate includes the aggregate average ongoing annual cost for such members to identify, collect and transmit the consolidated audit trail information to the central repository ($199,935,072); and the aggregate average ongoing annual cost for such members to annually evaluate the synchronization time standards and perform any necessary synchronization adjustments ($53,422,632).

[386] 15 U.S.C. 78c(f).

[387] 15 U.S.C. 78w(a)(2).

[388] *See* Section 11A(a)(3)(B) of the Exchange Act, 15 U.S.C. 78k–1(a)(3)(B).

[389] *See supra* Section III.D. for a detailed description of the required data.

[390] *See* Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (order approving BATS Exchange's application for registration as a national securities exchange).

Edge,[391] Nasdaq,[392] and C2 [393] to become registered as national securities exchanges for trading equities, approved proposed rule changes by two existing exchanges—the ISE [394] and CBOE [395]—to add cash equity trading facilities to their existing options business; and approved proposed rule changes by two existing exchanges—Nasdaq and BATS—to add options trading facilities to their existing cash equities business.[396]

The Commission believes that competition among trading venues for NMS stocks has been facilitated by several Commission rules: Rule 611 (the Order Protection Rule), which encourages quote-based competition between market centers; Rule 605, which empowers investors and brokers to compare execution quality statistics across trading venues; and Rule 606, which enables customers to monitor the order routing practices. Similarly, there is rigorous competition among the options exchanges that has been facilitated by regulatory efforts. These include the move to multiple listing,[397] the extension of the Commission's Quote Rule to options,[398] the prohibition against trading outside of the national best bid and offer,[399] the adoption of market structures on the floor-based exchanges that permit individual market maker quotations to be reflected in the exchange's quotation,[400] and the Minimum Quoting Increment Pilot Program.[401]

The broker-dealer industry also is a highly competitive industry with low barriers to entry. Most trading activity is concentrated among several dozen large participants, with thousands of small participants competing for niche or regional segments of the market. The reasonably low barriers to entry for broker-dealers are evidenced, for example, by the fact that the average number of new broker-dealers entering the market each year between 2001 and 2008 was 389.[402]

There are approximately 5,178 registered broker-dealers, of which approximately 890 are small broker-dealers.[403] To limit costs and make business more viable, the small participants often contract with bigger participants to handle certain functions, such as clearing and execution, or to update their technology. Larger broker-dealers often enjoy economies of scale over smaller broker-dealers and compete with each other to service the smaller broker-dealers, who are both their competitors and customers.

In the Commission's preliminary judgment, the costs of proposed Rule 613 would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In industries characterized by easy entry and intense competition, the viability of some of the competitors may be sensitive to regulatory costs. Nonetheless, the Commission preliminarily believes that the overall marketplace for NMS securities would remain highly competitive, despite the costs associated with implementing proposed new Rule 613, even if those costs influence the entry or exit decisions of some individual broker-dealer firms.

As discussed above in Sections V and VI, the Commission acknowledges that the proposal would entail significant costs of implementation. In particular, requiring national securities exchanges, national securities associations, and their members to capture the required information and provide it to the central repository in a uniform format, in particular information that is not currently captured under the existing audit trail or other regulatory requirements, would likely require significant one-time initial expenses to enhance or modify existing order handling, trading, and other systems. In addition, national securities exchanges and national securities associations would need to enhance or create new surveillance procedures to use the consolidated audit trail information. Preliminarily, the Commission does not believe that these implementation expenses would impose an undue burden on competition among SROs or among other market participants. The Commission preliminarily believes that the requirements associated with the proposed Rule are necessary and appropriate, and would apply uniformly to all national securities exchanges, national securities associations and their members, and thus would not result in an undue burden on competition.

As discussed above in Section II, the approach of proposed new Rule 613 would advance the purposes of the Exchange Act in a number of significant ways. The Commission preliminarily believes that proposed Rule 613 should aid each of the exchanges and FINRA in carrying out its statutory obligation to be organized and have the capacity to comply, and enforce compliance by its members, with its rules, and with the federal securities laws, rules, and regulations. Likewise, the Commission believes that proposed Rule 613 should aid the Commission in fulfilling its statutory obligation to oversee the exchanges and associations, and to enforce compliance by the members of

[391] *See* Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (order approving EDGA Exchange and EDGX Exchange's applications for registration as national securities exchanges).

[392] *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (order approving Nasdaq's application for registration as a national securities exchange).

[393] *See* Securities Exchange Act Release No. 61152 (December 10, 2009), 74 FR 66699 (December 16, 2009) (order approving C2 Options Exchange's application for registration as a national securities exchange).

[394] *See* Securities Exchange Act Release No. 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (order approving rules to govern trading equities).

[395] *See* Securities Exchange Act Release No. 55389 (March 2, 2007), 72 FR 10575 (March 8, 2007 (order approving CBOE Stock Exchange LLC as a facility of CBOE).

[396] *See* Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14321 (March 18, 2008) (order approving rules governing the trading of options on the Nasdaq Options Market, LLC); and 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (order approving rules governing the trading of options on BATS Options Exchange, Inc.).

[397] *See* Securities Exchange Act Release No. 26870 (May 26, 1989), 54 FR 23963 (June 5, 1989) (S7–25–87).

[398] *See* Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75439 (December 1, 2000).

[399] *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (approved of Options Order Protection and Locked/Crossed Market Plan).

[400] *See, e.g.,* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441, 34442 (June 9, 2003) (SR–CBOE–2002–05) (adopting, among other things, amendments to incorporate firm quote requirements in CBOE's rules).

[401] On January 26, 2007, the then-existing six options exchanges implemented a pilot program to quote certain options series in thirteen classes in one-cent increments ("Minimum Quoting Increment Pilot Program"). Nasdaq became a participant in the Minimum Quoting Increment Pilot Program on March 31, 2008, when it commenced trading on its options platform, and BATS become a participant in the Pilot Program on February 26, 2010, when it commenced trading on BATS Options. Since 2007, the Minimum Quoting Increment Pilot Program has been extended and expanded several times. *See, e.g.,* Securities Exchange Act Release Nos. 56276 (August 17, 2007), 72 FR 47096 (August 22, 2007) (SR–CBOE–2007–98); 56567 (September 27, 2007), 72 FR 56396 (October 3, 2007) (SR–Amex–2007–96); 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–Nasdaq–2008–026); 60711 (September 23, 2009), 74 FR 49419 (September 28, 2009) (SR–NYSEArca–2009–44); and 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2004–44).

[402] This number is based on a Commission staff review of FOCUS Report filings reflecting registered broker-dealers from 2001 through 2008. The number does not include broker-dealers that are delinquent on FOCUS Report filings. New registered broker-dealers for each year during the period from 2001 through 2008 were identified by comparing the unique registration number of each broker-dealer filed for the relevant year to the registration numbers filed for each year between 1995 and the relevant year.

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

exchanges and associations with the respective exchange's or association's rules, and the federal securities laws and regulations. The proposed consolidated audit trail also would aid the Commission in its efforts to limit the manipulation of security prices, and to limit the use of manipulative or deceptive devices in the purchase or sale of a security. By potentially decreasing the opportunities for illegal activity and market manipulation, the proposed Rule should promote fair competition among market participants on the basis of effective regulation. Further, by imposing uniform audit trail requirements on all SROs and their members, and thus removing any incentive to compete based on regulation (or lack thereof), the Commission preliminarily believes that the proposed Rule would allow SROs and their members to more effectively compete on other terms such as the services provided, price, and available liquidity.

Based on the analysis above, the Commission preliminarily believes that the proposal would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. However, we seek comment on the impact of the proposed Rule on competition. The Commission requests comment on what, if any, would be the impact of the proposed Rule on competition among the exchanges and other non-exchange market centers. If commenters believe there would be an impact on competition, please explain and quantify the costs or benefits of such impact. For example, as noted above, exchanges would have access through the central repository to trading information about their competitors' customers. Do commenters believe that access to this information would have an impact on competition among exchanges? If so, please explain what the potential impact could be, and whether you believe that such impact would be an adverse. If so, please further address what, if any, steps the Commission should take in the proposed Rule to address such concerns.

B. Capital Formation

As discussed above in Section II, proposed Rule 613 is intended to enhance the ability of the SROs and the Commission to more efficiently and in a more timely manner monitor trading in NMS securities across all markets and market participants, which should further the ability of the SROs and the Commission staff to effectively enforce SRO rules and federal securities laws, rules and regulations. For example, the proposed consolidated audit trail would ensure that all orders are tracked from origination to execution or cancellation. Further, the consolidated audit trail would provide information on any modifications or routing decisions made with regard to an order. The Commission preliminarily believes that the proposed audit trail information would greatly enhance the ability of its staff to effectively monitor and surveil the securities markets. This enhanced ability of the SROs and Commission staff to enforce the federal securities laws, rules, and regulations should help ensure that market participants that engage in fraudulent or manipulative activities are identified more swiftly, which should deter future attempts to do the same. In general, the faster fraudulent or manipulative activity is identified and action is taken, the more likely ill-gotten gains will remain available to pay penalties or compensate victims.

The Commission preliminarily believes that by enhancing the SROs' and the Commission's ability to enforce the federal securities laws, rules and regulations, proposed Rule 613 could help maintain or increase investor confidence in the fairness of the securities markets. Investor confidence may increase as the potential for the detection of illegal activity is increased and the risk of investment loss due to undetected illegal activity decreases. Bolstering investor confidence in the fairness of the securities markets may increase the level of investment, which could promote capital formation to the extent that the increase is allocated efficiently. This would promote capital formation because as capital is better allocated, issuers with the most productive capital needs may be better able to raise capital.

C. Efficiency

Proposed Rule 613 would require the creation and maintenance of a consolidated audit trail, which the Commission preliminarily believes would greatly enhance the ability of SRO staff to effectively monitor and surveil the securities markets, and thus detect illegal activity in a more timely manner, whether on one market or across markets. With an audit trail designed to help the SROs reconstruct and analyze time-sequenced order and trading data, the SROs could more quickly investigate the nature and causes of unusual market movements or trading activity and initiate investigations and take regulatory actions where warranted. An increase in detected and prosecuted violations of the securities laws, rules, and regulations would likely act as deterrent to future violations. Likewise, the ability of the Commission to better understand unusual market activity, such as during a period of intense volatility, could lead to better oversight, or more focused regulation where warranted, of the causes of such activity. For example, the possibility of more prompt detection of illegal activity would likely deter future abusive or manipulative trading activity from being used to manipulate market prices to artificial levels or by accelerating a declining market in one or several securities. Thus, the Commission preliminarily believes that proposed Rule 613 would help to ensure that markets function efficiently. As a result, the Commission preliminarily believes that the proposed consolidated audit trail would help promote the efficient functioning of markets, which should help enhance the protection of investors and further the public interest.

Further, the Commission preliminarily believes that the proposed Rule, by creating one central repository to which each national securities exchange, national securities association, and their members would be required to provide the same data in the same format, could reduce or eliminate the need for each individual SRO to have it own disparate requirements. Elimination of often inconsistent regulation on members would promote efficiency because members would no longer be required to submit disparate data to multiple regulators pursuant to multiple, and sometimes inconsistent, SRO and Commission rules.

The Commission requests comment on all aspects of this analysis and, in particular, on whether the proposed consolidated audit trail would place a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, as well as the effect of the proposal on efficiency, competition, and capital formation. The Commission also requests comment on the impact, if any, of the proposed Rule on investors' trading activities. Would the proposed Rule impact investors' incentives to engage in certain types of legal trading in NMS securities, or other products, on the exchanges or OTC markets that would be subject to the proposed Rule? If so, why, and what impact would that have on the competitiveness of the U.S. markets? Would the proposed Rule impact market participants' incentives to engage in certain types of illegal trading activity in products other than NMS securities or in other markets? If so, how so, and what if any steps should

the Commission take to address the expected changes in behavior? Commenters are requested to provide empirical data and other factual support for their views.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA," [404] the Commission must advise the Office of Management and Budget as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation.

The Commission requests comment on the potential impact of proposed Rule 613 on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

IX. Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act ("RFA") [405] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [406] of the Administrative Procedure Act,[407] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on "small entities." [408]

Proposed Rule 613 of Regulation NMS would require the national securities exchanges and national securities associations to jointly develop and file with the Commission a NMS plan to implement and maintain a consolidated audit trail. Pursuant to such NMS plan, and rules that would be adopted by the SROs to implement the plan, national securities exchanges and national securities associations, as well as their members, would be required to provide data to a central repository to populate a consolidated audit trail.[409]

A. Reasons for the Proposed Rule

The Commission preliminarily believes that with today's electronic, interconnected markets, there is a heightened need for regulators to have efficient access to a more robust and effective cross-market order and execution tracking system. As discussed above, currently many of the national securities exchanges and FINRA have audit trail rules and systems to track information relating to orders received and executed, or otherwise handled, in their respective markets. While the information gathered from these audit trail systems aids the SRO and Commission staff in their regulatory responsibility to surveil for compliance with SRO rules and the federal securities laws and regulations, the Commission preliminarily believes that existing audit trails are limited in their scope and effectiveness in varying ways.[410] In addition, while the SRO and Commission staff also currently receives information about orders and/or trades through the EBS system, Rule 17a–25,[411] and from equity cleared reports, the information is limited, to varying degrees, in detail and scope.[412]

The creation and implementation of a consolidated audit trail, as proposed, would enable regulators to better fulfill their regulatory responsibilities to monitor for and investigate potentially illegal activity in the NMS for securities in a more timely fashion, whether on one market or across markets. A consolidated audit trail also would enhance the ability of the Commission in investigating and preparing market reconstructions, and in understanding the causes of unusual market activity. Further, timely pursuit of potential violations can be important in seeking to freeze and recover any profits received from illegal activity.

B. Objectives and Legal Basis

Each national securities exchange and national securities association must be organized and have the capacity to comply, and enforce compliance by its members, with its rules, and with the federal securities laws, rules, and regulations.[413] Likewise, the Commission oversees the exchanges and associations,[414] and enforces compliance by the members of exchanges and associations with the respective exchange's or association's rules, and the federal securities laws and regulations.[415] The Commission preliminarily believes that the exchanges, FINRA and the Commission itself could more effectively and efficiently fulfill these statutory obligations to oversee and regulate the NMS if the SROs and the Commission had direct access to more robust, and timely, order and execution information across all markets.

The Commission is proposing Rule 613 under the authority set forth in Exchange Act Sections 2, 3(b), 5, 6, 11, 11A, 15, 15A, 17(a) and (b), 19, 23(a), and 36 thereof, 15 U.S.C. 78b, 78c(b), 78e, 78f, 78k-1, 78o, 78o–3, 78q(a) and (b), 78s, 78w(a), and 78mm.

C. Small Entities Subject to the Proposed Rule

1. National Securities Exchanges and National Securities Associations

The proposed Rule would apply to national securities exchanges registered with the Commission under Section 6 of the Exchange Act and national securities associations registered with the Commission under Section 15A of the Exchange Act. None of the national securities exchanges registered under Section 6 of the Exchange Act or national securities associations registered with the Commission under Section 15A of the Exchange Act that would be subject to the proposed Rule are "small entities" for purposes of the RFA.[416]

2. Broker-Dealers

Proposed Rule 613(g) would apply to all broker-dealers that are members of a national securities exchange or national securities association. Commission rules

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

[405] 5 U.S.C. 601 *et seq.*

[406] 5 U.S.C. 603(a).

[407] 5 U.S.C. 551 *et seq.*

[408] The Commission has adopted definitions for the term small entity for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18451 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[409] *See* proposed Rule 613(c) and *supra* Sections III.B. and III.D.

[410] *See supra* Section II.A.

[411] 17 CFR 240.17a–25.

[412] *See supra* Sections I.A and I.B. for a description of the EBS system, Rule 17a–25, and equity cleared reports.

[413] *See, e.g.,* Sections 6(b)(1), 19(g)(1) and 15A(b)(2) of the Exchange Act, 15 U.S.C. 78(f)(b)(1), 78s(g)(1), and 78o–3(b)(2).

[414] *See, e.g.,* Sections 2, 6(b), 15A(b), and 19(h)(1) of the Exchange Act, 15 U.S.C. 78(b), 15 U.S.C. 78(f)(6), 15 U.S.C. 78o–3(b), and 15 U.S.C. 78(h)(1).

[415] *See, e.g.,* 19(h)(1) of the Exchange Act, 15 U.S.C. 78(h)(1).

[416] *See* 17 CFR 240.0–10(e). Paragraph (e) of Rule 0–10 states that the term "small business," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Rule 601 of Regulation NMS, 17 CFR 242.601, and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10. Under this standard, none of the exchanges subject to the proposed Rule is a "small entity" for the purposes of the RFA. FINRA is not a small entity as defined by 13 CFR 121.201.

generally define a broker-dealer as a small entity for purposes of the Exchange Act and the Regulatory Flexibility Act if the broker-dealer had a total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared, and it is not affiliated with any person (other than a natural person that is not a small entity).[417]

The Commission estimates that as of December 31, 2008, there were approximately 890 Commission-registered broker-dealers that would be considered small entities for purposes of the statute. Each of these broker-dealers, assuming that they are all members of one or more national securities exchange or FINRA, would be required to comply with the proposed Rule.

D. Reporting, Record Keeping, and Other Compliance Requirements

Proposed Rule 613(g)(2) would impose new reporting and record keeping requirements on small broker-dealers. While certain elements of order and execution information that such small broker-dealers would be required to collect and submit to the central repository are already required to be maintained by broker-dealers pursuant to Rules 17a–3 and 17a–25 under the Exchange Act or the SRO audit trail rules, the proposed Rule would require the collection of additional information that is not required to be collected under these rules. Further, small broker-dealers would be responsible for complying with the proposed Rule's requirements for reporting to the central repository the required order and transaction data.

The proposed Rule would require that most of the information collected be reported on a real time basis, rather than on an "as requested" basis, and that all required information be submitted in a uniform format. Accordingly, the Commission preliminarily believes that even those small broker-dealers that already have systems in place for submitting order and transaction information to regulators upon request, or to comply with existing SRO audit trail rules, would need to make modifications to their existing order handling and trading systems to comply with the proposed Rule, or rely on outside vendors to provide a functionality that would provide information to the central repository.

E. Duplicative, Overlapping, or Conflicting Federal Rules

As stated above, broker-dealers are subject to record keeping and reporting requirements under Rules 17a–3 and 17a–25 under the Exchange Act. Rule 17a–3 requires that broker-dealers maintain records that would capture some of the same information required to be collected and submitted pursuant to the proposed Rule.[418] Also, as part of the Commission's existing EBS system, pursuant to Rule 17a–25 under the Exchange Act, the Commission requires registered broker-dealers to keep records of some of the information that would be captured by proposed Rule 613.[419]

However, data collected pursuant to Rules 17a–3 and 17a–25 is limited in scope and is provided to the Commission only upon request. The proposed Rule would require the collection of significantly more information[420] and would require that most of the information about orders and executions be provided to the central repository on a real time basis, not merely be stored and provided upon request. Thus, the Commission preliminarily believes that while these Federal rules overlap with certain requirements of the proposed Rule, the scope and purpose of the proposed Rule is more expansive than what is currently required and will more efficiently provide regulators with the information needed to effectively surveil trading activity across markets.

F. Significant Alternatives

Pursuant to 3(a) of the RFA, the Commission must consider the following types of alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (3) the use of performance rather than design standards; and (4) and exemption from coverage of the proposed Rule, or any part thereof, for small entities.

The Commission has considered whether it would more be more cost effective to enhance existing systems to achieve the proposed Rule's objective, rather than create a central repository. For example, the Commission considered expanding the scope of the information collected by existing audit trails, the EBS system, and/or Rule 17a–25, but determined that this approach would not result in the creation of a comprehensive consolidated audit trail. Under such an approach, SROs would still need to check multiple repositories of data to gather information about trading activity occurring across markets. Further, the goal of capturing data in a uniform format would be complicated if data were collected by multiple repositories. In addition, this approach would not resolve concerns over how long it takes to obtain data when it is not available in real time, but only required to be provided upon request. Without the centralization of data in a uniform electronic format, the Commission preliminarily believes that the goals of the proposed Rule could not be achieved.

The Commission preliminarily believes that proposing a new uniform audit trail rule that would apply equally across all SROs and their members would be more efficient and effective than requiring each SRO to separately amend and enhance its existing order audit trail or EBS rules and systems, and amending Rule 17a–25. The scope of the proposed audit trail—requiring each member and SRO to report the same information for each order, for each reportable event, in a uniform format, in real time, across all markets—is fundamentally different than what is collected under existing order audit trails, the EBS system, and Rule 17a–25.

The Commission also has considered allowing certain small broker-dealers to submit certain trading data in a manual,

[417] *See* 17 CFR 240.0–10(c).

[418] *See* 17 CFR 240.17a–3. Pursuant to Rule 17a–3, broker-dealers are, for example, required to maintain the following information that would be captured by the proposed rule: Customer name and address; time an order was received; and price of execution.

[419] *See* 17 CFR 240.17a–25. Pursuant to Rule 17a–25, broker-dealers are, for example, required to maintain the following information with respect to customer orders that would be captured by the proposed Rule, and provide it to the Commission upon request: Date on which the transaction was executed; account number; identifying symbol assigned to the security; transaction price; the number of shares or option contracts traded and whether such transaction was a purchase, sale, or short sale, and if an option transaction, whether such was a call or put option; the clearing house number of such broker or dealer and the clearing house numbers of the brokers or dealers on the opposite side of the transaction; prime broker identifier; the customer's name and address; the customer's tax identification number; and other related account information.

[420] Such additional information would include: A unique customer identifier for each customer; a unique identifier that would attach to the order at the time the order is received or originated by the member and remain with the order through the process of routing, modification, cancellation, and execution (in whole or in part); a unique identifier of the broker-dealer receiving or originating the order; the unique identifier of the branch office and registered representative receiving or originating the order; the date on which the order is routed; time at which the order is routed (in milliseconds); and if the order is executed, in whole or in part, the account number for any subaccounts to which the execution is allocated; the unique order identifier of any contra-side order(s); and the amount of a commission, if any, paid by the customer, and the unique identifier of the broker-dealer(s) to whom the commission is paid.

rather than an electronic, format.[421] However, the Commission preliminarily does not believe that the intent and objectives of proposed Rule 613 could be achieved if small broker-dealers are subject to differing compliance or reporting requirements, such as manual reporting of data, or timetables. The Commission preliminarily believes that to be effective the consolidated audit trail should contain order and execution information from all broker-dealers, including small broker-dealers, in a uniform electronic format. Without this information, the SROs and the Commission would not have a complete and timely cross-market audit trail to utilize in their regulatory oversight of small broker-dealers, their customers, and the securities markets. Further, the Commission preliminarily believes that the timetable contained in the proposed Rule, which would give brokers-dealers two years after effectiveness of the NMS plan to implement the proposed requirements to collect and report the required information to the central repository, would allow small broker-dealers sufficient time to modify existing systems, or procure third party functionality, to comply with the proposed Rule.[422]

Further, the Commission preliminarily believes that it has drafted the proposed Rule to be as straightforward as possible to achieve its objectives. Any simplification, consolidation or clarification of the Rule should occur for all entities, not just small broker-dealers. The Commission does not propose to dictate for entities of any size any particular design standards (*e.g.,* technology) that must be employed to achieve the objectives of the proposed Rule. However, in order to provide consistent, comparable data to the central repository, the nature of the information collected is a design standard.

The Commission would be able to rely on its exemptive authority under Section 36 of the Exchange Act to grant relief, when necessary, to small broker-dealers from the requirements of the proposed Rule. The Commission preliminarily believes that a wholesale exemption from the proposed Rule for small broker-dealers, however, would make it harder for the Commission and SROs to recognize the anticipated benefits of the consolidated audit trail.

[421] *See* 17a–25 Adopting Release, *supra* note 20, at 35839–35840.

[422] *See supra* notes 326–330 and accompanying text and notes 356–358 and accompanying text.

G. Solicitation of Comments

The Commission invites commenters to address whether the proposed Rule would have a significant economic impact on a substantial number of small entities, and, if so, what would be the nature of any impact on small entities. The Commission requests that commenters provide empirical data to support the extent of such impact.

X. Statutory Authority

Pursuant to the Exchange Act and particularly, Sections 2, 3(b), 5, 6, 11A, 15, 15A, 17(a) and (b), 19, and 23(a) thereof, 15 U.S.C. 78b, 78c(b), 78e, 78f, 78k–1, 78o, 78o–3, 78q(a) and (b), 78s and 78w(a), the Commission proposes Rule 613 of Regulation NMS, as set forth below.

Text of Proposed Rule

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

PART 242—REGULATIONS M, SHO, ATS, AC, AND NMS AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l,* 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

2. Add § 242.613 to read as follows:

§ 242.613 Consolidated Audit Trail.

(a) *Creation of a National Market System Plan Governing a Consolidated Audit Trail.*

(1) Each national securities exchange and national securities association shall jointly file on or before [90 days from approval of this rule] a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository as required by this section.

(2) The national market system plan, or any amendment thereto, filed pursuant to this section shall be filed with the Commission pursuant to § 242.608.

(3) The national market system plan submitted pursuant to this section shall require each national securities exchange and national securities association to:

(i) By two months after effectiveness of the national market system plan jointly (or under the governance structure described in the plan) select a person to be the plan processor;

(ii) By four months after effectiveness of the national market system plan synchronize their business clocks and by four months after effectiveness of the national market system plan require members of each such exchange and association to synchronize their business clocks in accordance with paragraph (d) of this section;

(iii) By one year after effectiveness of the national market system plan provide to the central repository the data specified in paragraph (c) of this section;

(iv) By fourteen months after effectiveness of the national market system plan implement a new or enhanced surveillance system(s) as required by paragraph (f) of this section; and

(v) By two years after effectiveness of the national market system plan require members of each such exchange and association to provide to the central repository the data specified in paragraph (c) of this section.

(4) Each national securities exchange and national securities association shall be a sponsor of the national market system plan submitted pursuant to this section and approved by the Commission.

(5) No national market system plan filed pursuant to this section, or any amendment thereto, shall become effective unless approved by the Commission or otherwise permitted in accordance with the procedures set forth in § 242.608.

(b) *Operation and Administration of the National Market System Plan.*

(1) The national market system plan submitted pursuant to this section shall include a governance structure to ensure fair representation of the plan sponsors, and administration of the central repository, including the selection of the plan processor.

(2) The national market system plan submitted pursuant to this section shall include a provision addressing the requirements for the admission of new sponsors of the plan and the withdrawal of existing sponsors from the plan.

(3) The national market system plan submitted pursuant to this section shall include a provision addressing the percentage of votes required by the plan sponsors to effectuate amendments to the plan.

(4) The national market system plan submitted pursuant to this section shall include a provision addressing the manner in which the costs of operating the central repository will be allocated among the national securities exchanges

and national securities associations that are sponsors of the plan, including a provision addressing the manner in which costs will be allocated to new sponsors to the plan.

(5) The national market system plan submitted pursuant to this section shall require the appointment of a Chief Compliance Officer to regularly review the operation of the central repository to assure its continued effectiveness in light of market and technological developments, and make any appropriate recommendations for enhancements to the nature of the information collected and the manner in which it is processed.

(c) *Data Collection.* (1) The national market system plan submitted pursuant to this section shall provide for an accurate, time-sequenced record of orders beginning with the receipt or origination of an order by a member of a national securities exchange or national securities association, and further documenting the life of the order through the process of routing, modification, cancellation, and execution (in whole or in part) of the order.

(2) The national market system plan submitted pursuant to this section shall require each national securities exchange, national securities association, and member to collect and provide to the central repository the information required by paragraph (c)(7) of this section in a uniform electronic format.

(3) The national market system plan submitted pursuant to this section shall require each national securities exchange, national securities association, and member to collect and provide to the central repository the information required by paragraphs (c)(7)(i) through (v) of this section on a real time basis.

(4) The national market system plan submitted pursuant to this section shall require each national securities exchange, national securities association, and member to collect and provide to the central repository the information required by paragraphs (c)(7)(vi) and (vii) of this section promptly after the national securities exchange, national securities association, or member receives the information, but in no instance later than midnight of the day that the reportable event occurred or the national securities exchange, national securities association, or member receives such information.

(5) The national market system plan submitted pursuant to this section shall require each national securities exchange and its members to collect and provide to the central repository the information required by paragraph (c)(7) of this section for each NMS security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange.

(6) The national market system plan submitted pursuant to this section shall require each national securities association and its members to collect and provide to the central repository the information required by paragraph (c)(7) of this section for each NMS security for which transaction reports are required to be submitted to the association.

(7) The national market system plan submitted pursuant to this section shall require each national securities exchange, national securities association, and any member of such exchange or association to collect and electronically provide to a central repository details for each order and each reportable event, including, but not limited to, the following information:

(i) For the original receipt or origination of the order:

(A) Information of sufficient detail to identify the customer;

(B) A unique customer identifier for each customer;

(C) Customer account information;

(D) A unique identifier that will attach to the order at the time the order is received or originated by the member and remain with the order through the process of routing, modification, cancellation, and execution (in whole or in part);

(E) The unique identifier of the broker-dealer receiving or originating the order;

(F) The unique identifier of the branch office and registered representative receiving or originating the order;

(G) Date of order receipt or origination;

(H) Time of order receipt or origination (in milliseconds); and

(I) Material terms of the order.

(ii) For the routing of an order, the following information:

(A) The unique order identifier;

(B) Date on which the order is routed;

(C) Time at which the order is routed (in milliseconds);

(D) The unique identifier of the broker-dealer or national securities exchange routing the order;

(E) The unique identifier of the broker-dealer or national securities exchange receiving the order;

(F) If routed internally at the broker-dealer, the identity and nature of the department or desk to which an order is routed; and

(G) Material terms of the order.

(iii) For the receipt of an order, the following information:

(A) The unique order identifier;

(B) Date on which the order is received;

(C) Time at which the order is received (in milliseconds);

(D) The unique order identifier of the broker-dealer or national securities exchange receiving the order;

(E) The unique identifier of the broker-dealer or national securities exchange routing the order; and

(F) Material terms of the order.

(iv) If the order is modified or cancelled, the following information:

(A) Date the modification or cancellation is received or originated;

(B) Time the modification or cancellation is received or originated (in milliseconds);

(C) Price and remaining size of the order, if modified;

(D) Other changes in material terms of the order, if modified; and

(E) Identity of the person giving the modification or cancellation instruction.

(v) If the order is executed, in whole or in part, the following information:

(A) The unique order identifier;

(B) Date of execution;

(C) Time of execution (in milliseconds);

(D) Execution capacity (principal, agency, riskless principal);

(E) Execution price and size;

(F) The unique identifier of the national securities exchange or broker-dealer executing the order; and

(G) Whether the execution was reported pursuant to an effective transaction reporting plan or the Options Price Reporting Authority Plan.

(vi) If the order is executed, in whole or in part:

(A) The account number for any subaccounts to which the execution is allocated (in whole or part);

(B) The unique identifier of the clearing broker or prime broker, if applicable;

(C) The unique order identifier of any contra-side order(s);

(D) Special settlement terms, if applicable;

(E) Short sale borrow information and identifier; and

(F) The amount of a commission, if any, paid by the customer, and the unique identifier of the broker-dealer(s) to whom the commission is paid.

(vii) If the execution is cancelled, a cancelled trade indicator.

(8) All plan sponsors and their members shall use the same unique customer identifier and unique broker-dealer identifier for each customer and broker-dealer.

(d) *Clock Synchronization.* The national market system plan submitted pursuant to this section shall require

each national securities exchange, national securities association, and member of such exchange or association subject to this section to:

(1) Synchronize on its business clocks that are used for the purposes of recording the date and time of any reportable event that must be reported pursuant to this section to the time maintained by the National Institute of Standards and Technology, consistent with industry standards; and

(2) Evaluate annually the synchronization standard to determine whether it should be shortened, consistent with changes in industry standards.

(e) *Central Repository.*

(1) The national market system plan submitted pursuant to this section shall provide for the creation and maintenance of a central repository. Such central repository shall be responsible for the receipt, consolidation, and retention of all data submitted pursuant to this section.

(2) Each national securities exchange, national securities association, and the Commission shall have access to the central repository, including all systems operated by the central repository, and access to and use of the data reported to and consolidated by the central repository under paragraph (c) of this section, for the purpose of performing its respective regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations. The national market system plan submitted pursuant to this section shall provide that such access to and use of such data by each national securities exchange, national securities association, and the Commission for the purpose of performing its regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations shall not be limited.

(3) The national market system plan submitted pursuant to this section shall include a provision requiring the creation and maintenance by the central repository of a method of access to the consolidated data that includes search and reporting functions.

(4) The national market system plan submitted pursuant to this section shall include policies and procedures, including standards, to be used by the plan processor to:

(i) Ensure the security and confidentiality of all information submitted to the central repository. All plan sponsors and their employees, as well as all employees of the central repository, shall agree to use appropriate safeguards to ensure the confidentiality of such data and shall agree not to use such data for any purpose other than surveillance and regulatory purposes. Nothing in this paragraph (i) shall be construed to prevent a plan sponsor from using the data that it submits to the central repository for regulatory, surveillance, commercial, or other purposes as otherwise permitted by applicable law, rule, or regulation;

(ii) Ensure the timeliness, accuracy, and completeness of the data provided to the central repository pursuant to paragraph (c) of this section;

(iii) Require the rejection of data provided to the central repository pursuant to paragraph (c) of this section that does not meet these validation parameters and the re-transmission of corrected data; and

(iv) Ensure the accuracy of the consolidation by the plan processor of the data provided to the central repository pursuant to paragraph (c) of this section.

(5) The national market system plan submitted pursuant to this section shall require the central repository to collect and retain on a current and continuing basis and in a format compatible with the information collected pursuant to paragraph (c)(7) of this section;

(i) The national best bid and national best offer for each NMS security;

(ii) Transaction reports reported pursuant to an effective transaction reporting plan filed with the Commission pursuant to, and meeting the requirements of, § 242.601; and

(iii) Last sale reports reported pursuant to the Options Price Reporting Authority Plan filed with the Commission pursuant to, and meeting the requirements of, § 242.608.

(6) The national market system plan submitted pursuant to this section shall require the central repository to retain the information collected pursuant to paragraphs (c)(7) and (e)(5) of this section in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention for a period of not less than five years. The information shall be available immediately, or if immediate availability cannot reasonably and practically be achieved, any search query must begin operating on the data not later than one hour after the search query is made.

(f) *Surveillance.* Every national securities exchange and national securities association subject to this section shall develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the consolidated audit trail.

(g) *Compliance by Members.* (1) Each national securities exchange and national securities association shall file with the Commission pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and § 240.19b–4 on or before [120 days from approval of this rule] a proposed rule change to require its members to comply with the requirements of this section and the national market system plan submitted pursuant to this section and approved by the Commission of which the national securities exchange or national securities association is a sponsor.

(2) Each member of a national securities exchange or national securities association that is a sponsor of the national market system plan submitted pursuant to this section and approved by the Commission shall collect and submit to the central repository the information required by paragraph (c) of this section and shall comply with the synchronization requirements of paragraph (d) of this section.

(3) The national market system plan submitted pursuant to this section shall include a provision that by subscribing to and submitting the plan to the Commission, each national securities exchange and national securities association that is a sponsor to the plan agrees to enforce compliance by its members with the provisions of the plan.

(4) The national market system plan submitted pursuant to this section shall include a mechanism to ensure compliance with the requirements of the plan by the members of a national securities exchange or national securities association that is a sponsor of the national market system plan submitted pursuant to this section and approved by the Commission.

(h) *Compliance by National Securities Exchanges and National Securities Associations.* (1) Each national securities exchange and national securities association shall comply with the provisions of the national market system plan submitted pursuant to this section and approved by the Commission of which it is a sponsor.

(2) Any failure by a national securities exchange or national securities association to comply with the provisions of the national market system plan submitted pursuant to this section and approved by the Commission of which it is as sponsor shall be considered a violation of this section.

(3) The national market system plan submitted pursuant to this section shall include a mechanism to ensure compliance by the sponsors of the plan with the requirements of the plan.

(i) *Other Securities and Other Types of Transactions.* The national market system plan submitted pursuant to this section shall include a provision requiring each national securities exchange and national securities association to jointly provide to the Commission within two months after effectiveness of the national market system plan a document outlining how such exchanges and associations would propose to incorporate into the consolidated audit trail information with respect to equity securities that are not NMS securities, debt securities, primary market transactions in NMS stocks, primary market transactions in equity securities that are not NMS securities, and primary market transactions in debt securities, including details for each order and reportable event that would be required to be provided, which market participants would be required to provide the data, an implementation timeline, and a cost estimate.

(j) *Definitions.*

(1) The term *customer* shall mean:

(i) The beneficial owner(s) of the account originating the order; and

(ii) The person exercising investment discretion for the account originating the order, if different from the beneficial owner(s);

(2) The term *customer account information* shall include, but not be limited to, account number, account type, customer type, date account opened, and large trader identifier (if applicable).

(3) The term *material terms of the order* shall include, but not be limited to, the NMS security symbol, security type, price (if applicable), size (displayed and non-displayed), side (buy/sell), order type; if a sell order, whether the order is long, short, short exempt; if a short sale, the locate identifier, open/close indicator, time in force (if applicable), whether the order is solicited or unsolicited, whether the account has a prior position in the security; if the order is for a listed option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close, and any special handling instructions.

(4) The term *order* shall mean:

(i) Any order received by a member of a national securities exchange or national securities association from any person;

(ii) Any order originated by a member of a national securities exchange or national securities association; or

(iii) Any bid or offer.

(5) The term *reportable event* shall include, but not be limited to, the receipt, origination, modification, cancellation, routing, and execution (in whole or in part).

Dated: May 26, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–13129 Filed 6–4–10; 8:45 am]

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Federal Register

Tuesday,

June 8, 2010

Part III

Environmental Protection Agency

40 CFR Parts 60, 1039, 1042, et al.

Standards of Performance for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 1039, 1042, 1065, and 1068

[EPA–HQ–OAR–2010–0295, FRL–9156–4]

RIN 2060–AP67

Standards of Performance for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to the standards of performance for new stationary compression ignition internal combustion engines under section 111(b) of the Clean Air Act. The proposed rule would implement more stringent standards for stationary compression ignition engines with displacement greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder, consistent with recent revisions to standards for similar mobile source marine engines. The action also proposes to provide additional flexibility to owners and operators of affected engines, and would correct minor mistakes in the initial standards of performance. In addition, the action proposes revisions to the requirements for engines with displacement at or above 30 liters per cylinder to align more closely with recent standards for similar mobile source marine engines, and for engines in rural portions of Alaska that are not accessible by the Federal Aid Highway System. Finally, the proposal would make minor revisions to the standards of performance for new stationary spark ignition internal combustion engines to mirror certain revisions proposed for compression ignition engines, which would provide consistency where appropriate for the regulation of stationary internal combustion engines. The proposed standards would reduce nitrogen oxides by an estimated 1,100 tons per year, particulate matter by an estimated 38 tons per year, and hydrocarbons by an estimated 18 tons per year by the year 2030.

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

Public Hearing. If anyone contacts us requesting to speak at a public hearing by June 28, 2010, a public hearing will be held beginning at 10 am on July 8, 2010. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541–7966 to verify whether or not a hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0295, 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.*
- *Fax:* (202) 566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. EPA requests a separate copy also be sent to the contact person identified below (*see* **FOR FURTHER INFORMATION CONTACT**). In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 735 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. EPA, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0295. We also rely on documents in Docket ID Nos. EPA–HQ–OAR–2005–0029 and EPA–HQ–OAR–2003–0190 and incorporate those dockets into the record for this proposed rule. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing: If a public hearing is held, it will be held at EPA's campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC or an alternate site nearby.

Docket: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0295. All documents in the docket are listed in the *http://www.regulations.gov* index. We also rely on documents in Docket ID Nos. EPA–HQ–OAR–2005–0029 and EPA–HQ–OAR–2003–0190, and incorporate those dockets into the record for this proposed rule. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 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 Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Melanie King, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–2469; facsimile number (919) 541–5450; e-mail address *king.melanie@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS [1]	Examples of regulated entities
Any manufacturer that produces or any industry using a stationary internal combustion engine as defined in the proposed rule.	2211	Electric power generation, transmission, or distribution.
	622110	Medical and surgical hospitals.
	335312	Motor and generator manufacturing.
	33391	Pump and compressor manufacturing.
	333992	Welding and soldering equipment manufacturing.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your engine is regulated by this action, you should examine the applicability criteria in § 60.4200 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule will be available on the WWW through the Technology Transfer Network Web site (TTN). Following signature, EPA will post a copy of the proposed rule on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

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

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Send or deliver information identified as CBI to only the following address: Ms. Melanie King, c/o OAQPS Document Control Officer (Room C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2010–0295. 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 EPA 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.

Docket. The docket number for the proposed new source performance standards (NSPS) is Docket ID No. EPA–HQ–OAR–2010–0295. We will also rely on documents in Docket Nos. EPA–HQ–OAR–2005–0029 and EPA–HQ–OAR–2003–0190.

Organization of This Document. The following outline is provided to aid in locating information in the preamble.

I. Background
A. Initial New Source Performance Standards
B. Events Following Promulgation of Initial NSPS
II. Summary of Proposed Amendments
A. Standards for New Engines With Displacement Greater Than or Equal to 10 l/cyl and Less Than 30 l/cyl
B. Compliance Requirements for Owners and Operators
C. Temporary Replacement Engines
D. Standards for Engines With Displacement Greater Than or Equal to 30 l/cyl
E. Requirements for Engines Located in Rural Alaska
F. Reconstruction
G. Minor Corrections and Revisions
III. Summary of Environmental, Energy and Economic Impacts
A. What are the air quality impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental and energy impacts?
IV. Solicitation of Public Comments and Participation
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
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C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act of 1995
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F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. Background

A. Initial New Source Performance Standards

This action proposes revisions to NSPS for new compression ignition (CI) stationary internal combustion engines (ICE). The NSPS were initially published on July 11, 2006 (71 FR 39153). New source performance standards implement section 111(b) of the Clean Air Act (CAA), and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The standards apply to new stationary sources of emissions, *i.e.,* sources whose construction, reconstruction, or modification begins after a standard for those sources is proposed.

For the first time, the NSPS put Federal restrictions on emissions of particulate matter (PM), oxides of nitrogen (NO_X), non-methane hydrocarbons (NMHC) and carbon monoxide (CO) from new stationary CI engines. The NSPS also restricted the level of sulfur permitted in diesel fuel used in new stationary CI engines. The

levels in the NSPS were generally based on standards promulgated in previous rules for similar nonroad (*i.e.,* mobile off-highway) engines. For larger engines with displacement greater than or equal to 10 liters per cylinder (l/cyl) and less than 30 l/cyl, the levels were based on standards for similar marine engines. EPA noted in the proposed rule (70 FR 39870) that it was reviewing the possibility of promulgating more stringent standards for such marine engines in the near future and would review whether to revise the standards for stationary engines with displacement greater than or equal to 10 l/cyl and less than 30 l/cyl when the more stringent standards for marine engines with displacement greater than or equal to 10 l/cyl and less than 30 l/cyl were promulgated. For engines with displacement greater than or equal to 30 l/cyl, the standards were based on evidence collected for those specified engines.

The standards for emergency engines were less stringent than those for non-emergency engines, given questions regarding the use of emission reduction aftertreatment technologies for such engines and the fact that such engines are rarely used, except in case of emergency. EPA also promulgated less stringent standards, and no fuel sulfur restrictions, for engines in U.S. Pacific territories where low sulfur fuel may be difficult to receive. However, these less stringent standards did not apply to engines at or above 30 l/cyl. Similarly, EPA delayed the low sulfur fuels requirement until December 1, 2010, for rural areas of Alaska not accessible by the Federal Aid Highway System (FAHS), and allowed the Governor of Alaska to submit an alternative plan for implementing the NSPS for public utilities located in these rural areas of Alaska.

EPA estimated that the NSPS would reduce NO_X emissions from stationary CI ICE by an estimated 38,000 tons per year (tpy), PM emissions by about 3,000 tpy, NMHC emissions by about 600 tpy, sulfur dioxide (SO_2) emissions by an estimated 9,000 tpy, and CO emissions by approximately 18,000 tpy in the year 2015. EPA estimated that emissions of hazardous air pollutants would be reduced by approximately 93 tons in the year 2015. EPA estimated the NSPS would reduce NO_X emissions from stationary CI ICE by an estimated 270,000 tpy, PM emissions by about 17,000 tpy, NMHC emissions by about 8,000 tpy, SO_2 emissions by an estimated 24,000 tpy, and CO emissions by approximately 95,000 tpy in the year 2030.

For the vast majority of engines, compliance requirements, particularly testing requirements, are primarily geared towards the manufacturers of the engines, not the owners and operators of engines. The engines had to be tested, certified and labeled prior to installation. Owners and operators are, however, required to operate and maintain their engines according to the written instructions of the engine manufacturers or according to procedures developed by the owner/operators and approved by the manufacturer.

B. Events Following Promulgation of Initial NSPS

Following promulgation of the initial NSPS, EPA received several comments from interested parties regarding aspects of the final rule. In particular, engine manufacturers stated their belief that the standards promulgated for engines with displacement greater than or equal to 30 l/cyl were not feasible, especially those located at areas without requirements for low sulfur diesel fuel. Engine manufacturers also noted some minor errors in the standards as published.

The American Petroleum Institute (API) petitioned for review of the final NSPS, and stated to EPA that, among other concerns, API believed that the compliance requirements did not allow owner and operators enough flexibility to use operation and maintenance procedures, different from those recommended by manufacturers, that would provide good emission control practice for minimizing emissions. API also had other comments regarding the final rule, including concern regarding use of the term "useful life" in the stationary engine context, and concern that temporary portable engines would be treated as subject to NSPS requirements beyond the requirements for nonroad engines.

On January 18, 2008, EPA published a final rule containing separate standards of performance for stationary spark ignition (SI) engines. (73 FR 3567) While these regulations are distinct from the standards of performance for CI engines, certain aspects of these regulations, particularly regarding compliance and definitions, are intended to be consistent with the regulations promulgated for CI engines.

Additionally, on June 30, 2008, EPA published more stringent standards for new locomotives and for new CI marine vessels under 40 CFR parts 1033 and 1042, respectively, including marine vessel engines with displacement greater than or equal to 10 l/cyl and less than 30 l/cyl. (73 FR 37095) The rule promulgated two new tiers of standards for newly manufactured marine CI engines at or above 600 kilowatt (KW) (800 horsepower (HP)), the second of which was based on the application of catalytic aftertreatment technology.

Further, on April 30, 2010, EPA promulgated final fuel requirements and standards regulating emissions from marine engines with displacement above 30 l/cyl. (75 FR 22896) These requirements are equivalent to the limits adopted by the International Maritime Organization (IMO) in October 2008 as an amendment to Annex VI of the International Convention for the Prevention of Pollution from Ships (also called MARPOL Annex VI).

Finally, on October 31, 2008, the State of Alaska, pursuant to the provision in the final rule allowing it to request alternative provisions for rural Alaska, requested that EPA make certain changes in its requirements to account for circumstances in rural Alaska that are different from those in the rest of the United States. Alaska's specific recommendations are discussed below.

II. Summary of Proposed Amendments

A. Standards for New Engines With Displacement Greater Than or Equal to 10 l/cyl and Less Than 30 l/cyl

We are proposing to incorporate the recently-promulgated standards for new marine engines into our standards for new stationary engines with displacement greater than or equal to 10 l/cyl and less than 30 l/cyl. The standards were found to be feasible for the marine engines covered by those requirements. As we discussed in the original NSPS final rule, stationary engines in this displacement range are similar in design to marine CI engines and are generally certified to marine standards. EPA is, therefore, basing the proposed revised standards for non-emergency stationary CI ICE with a displacement between 10 l/cyl and 30 l/cyl on the technologies identified in the recent rulemaking to be used to meet the emission standards for marine CI engines.

The proposed standards would not take effect until 2013, at the earliest. The standards are summarized in the tables in this preamble. The first tier of standards divides these engines by displacement. The second divides the engines by maximum engine power.

TABLE II–1—FIRST TIER STANDARDS FOR STATIONARY CI ENGINES WITH A DISPLACEMENT ≥10 AND <30 LITERS PER CYLINDER [a]

Engine size—liters per cylinder, rated power	PM g/HP-hr (g/KW-hr)	NO_X + HC [b] g/HP-hr (g/KW-hr)	Year
10.0 ≤ displacement <15.0, <3,700 KW	0.10 (0.14)	4.6 (6.2)	2013
15.0 ≤ displacement <20.0, <3,700 KW	[c] 0.20 (0.27)	5.2 (7.0)	2014
20.0 ≤ displacement <25.0, <3,700 KW	0.20 (0.27)	7.3 (9.8)	2014
25.0 ≤ displacement <30.0, <3,700 KW	0.20 (0.27)	8.2 (11.0)	2014

[a] See note (c) of Table II–2 for optional standards.
[b] NO_X + HC standards do not apply to 2,000 KW to 3,700 KW engines.
[c] For engines below 3,300 KW in this group, the PM standard is 0.25 g/HP-hr (0.34 g/KW-hr).

TABLE II–2—SECOND TIER STANDARDS FOR STATIONARY CI ENGINES WITH A DISPLACEMENT ≥10 AND <30 LITERS PER CYLINDER

Engine size, rated power	PM g/HP-hr (g/KW-hr)	NO_X + HC [b] g/HP-hr (g/KW-hr)	HC g/HP-hr (g/KW-hr)	Year
≥ 3,700 KW	[a] 0.09 (0.12)	1.3 (1.8)	0.14 (0.19)	[c] 2014
	0.04 (0.06)	1.3 (1.8)	0.14 (0.19)	[b c] 2016
2,000 ≤ KW < 3,700	0.03 (0.04)	1.3 (1.8)	0.14 (0.19)	[c d] 2014
1,400 ≤ KW < 2,000	0.03 (0.04)	1.3 (1.8)	0.14 (0.19)	[c] 2016
600 ≤ KW < 1,400	0.03 (0.04)	1.3 (1.8)	0.14 (0.19)	[b] 2017

[a] This standard is 0.19 g/HP-hr (0.25 g/KW-hr) for engines with 15–30 liter/cylinder displacement.
[b] Optional compliance start dates can be used within these model years.
[c] Option: 1st Tier PM/NO_X + HC at 0.10/5.8 g/HP-hr (0.14/7.8 g/KW-hr) in 2012, and 2nd Tier in 2015.
[d] The 1st Tier PM standards continue to apply for these engines in model years 2014 and 2015 only.

The first tier of standards is based on engine-based technologies already in use or expected to be used for other mobile and stationary engines (*e.g.,* improved fuel injection, engine mapping, and calibration optimization), as well as the use of ultra low sulfur (*i.e.,* 15 parts per million (ppm) sulfur) diesel (ULSD). The second tier of standards is expected to be met with the use of catalytic exhaust aftertreatment that have already been used for other similar mobile and stationary engines, like catalyzed diesel particulate filters (CDPF) and selective catalytic reduction (SCR).

B. Compliance Requirements for Owners and Operators

In the original final NSPS, EPA required all engines to be installed, configured, operated, and maintained according to the specifications and instructions provided by the engine manufacturer. EPA also allowed the option for owners and operators to follow procedures developed by the owner or operator that have been approved by the engine manufacturer for cases where site-specific conditions may require changes to the manufacturer's typical guidelines.

Several parties objected to this requirement. According to the parties, this requirement restricts owners and operators from using the most appropriate methods for installing, operating and maintaining engines in the field. The parties claim that owners and operators are in the best position to determine the most appropriate method of installing, operating and maintaining engines in the field and have more experience in doing so than engine manufacturers, and that operation and maintenance provisions in manufacturer manuals are often too stringent and inflexible to be required in binding regulations.

Based on the comments and information received during and after the rulemakings for both the CI and SI NSPS, EPA believes it is not appropriate to require owners and operators to follow manufacturer operation and maintenance procedures without allowing alternative options for owners and operators. Therefore, we are proposing to revise the regulations to allow owners and operators to develop their own operation and maintenance plans as an alternative to following manufacturer operation and maintenance procedures. However, if an owner/operator decides to take this approach, EPA will need greater assurance that the engine is meeting emission requirements. Thus, owner/operators using this approach will generally be subject to further testing of their engines and will be required to keep maintenance plans and records. EPA will consider such engines to be operating in a non-certified manner. Engines greater than 500 HP will be required to conduct a performance test within 1 year of startup (or within 1 year of changing the manufacturer's recommended configuration or settings for the engine) to demonstrate compliance with the emission standards, and will also have to conduct subsequent performance testing every 8,760 hours or 3 years (whichever comes first) thereafter. These engines will in addition be required to keep a maintenance plan and records of conducted maintenance.

Engines greater than or equal to 100 HP and less than or equal to 500 HP will be required to conduct a performance test within 1 year of startup (or within 1 year of changing the manufacturer's recommended configuration or settings for the engine) to demonstrate compliance with the emission standards and will in addition be required to keep a maintenance plan and records of conducted maintenance. Engines below 100 HP operating in a non-certified manner will not have to conduct further performance testing, but are required to keep a maintenance plan and records.

Owners and operators will also have the ability to adjust engine settings outside of manufacturer settings as long as they ensure the engines comply with the standards at those settings with a performance test.

Parties also noted that the operation and maintenance requirements extended beyond emission-related operation and maintenance and

extended to operation and maintenance of all aspects of the engine, which the parties believed should be beyond the scope of the regulation. EPA agrees that the operation and maintenance requirements of the NSPS should be restricted to emission-related operation and maintenance, and is proposing to revise the regulations accordingly.

Finally, one party has reported that owners and operators of engines in marine locations often need to use engines that meet the marine nonroad engine standards, but that the current NSPS requires the engine, if the engine is on a stationary platform rather than a ship, to meet the standards for land-based engines, rather than marine engines. EPA has not proposed to change the current regulation, but requests comment on the need for stationary engines in marine offshore settings to use engines meeting the marine engine standards, rather than land-based engine standards. Based on the comments received, EPA may decide to revise this requirement in the final rule.

C. Temporary Replacement Engines

EPA received comments during and after the initial CI NSPS rule and during the SI NSPS rule indicating that there was some confusion regarding the status of temporary engines (*i.e.,* generally engines in one location for less than 1 year) under EPA's regulations. Further, there was concern that for those temporary engines that were considered stationary under the definitions of stationary and nonroad engine, because they replaced other stationary engines during periods when the main engines were off-line (*e.g.,* for maintenance work), owners and operators of major sources would have little or no ability to oversee the operations of these temporary engines, as they were generally owned and maintained by other entities.

EPA notes that except for certain instances (*e.g.,* engines at seasonal sources or engines that replace stationary engines at a site), engines in one location for less than 1 year are generally considered to be mobile nonroad engines under EPA's regulatory definitions of nonroad engine and stationary engine, and, therefore, the NSPS and other regulations applicable to stationary engines are not applicable to such engines. Examples of such nonroad engines are engines that are brought to a major source stationary source for less than 1 year for purposes of general maintenance or construction.

Portable engines that replace existing stationary engines on a temporary basis are considered stationary engines. This provision allows the permitting authority to count the emissions of the temporary unit in the emissions from the stationary source, as it would for the permanent unit. This prevents sources from avoiding the counting of such units in its projected or actual emissions. EPA agrees with comments that with regard to temporary replacement engines, which are generally portable and moved from place to place, it is most appropriate that these engines, though considered stationary, should be allowed under the NSPS to meet requirements for mobile nonroad engines. These sources are not under the long-term control (or in many cases the short-term control) of the local source, and, therefore, it is appropriate to hold them to the requirements for similar sources that are mobile in character. EPA also notes that under the pre-existing general provisions for 40 CFR part 60, the fact that an engine moves from place to place does not, by the sole basis of that movement, make the engine a "new" engine for the purposes of the NSPS.

D. Standards for Engines With Displacement Greater Than or Equal to 30 l/cyl

In the final NSPS, EPA required owners and operators of stationary CI ICE with a displacement of greater than or equal to 30 l/cyl to reduce NO_X emissions by 90 percent or more, or alternatively they had to limit the emissions of NO_X in the stationary CI internal combustion engine exhaust to 1.6 grams per KW-hour (g/KW-hr) (1.2 grams per HP-hour (g/HP-hr)). They were also required to reduce PM emissions by 60 percent or more, or alternatively they had to limit the emissions of PM in the stationary CI internal combustion engine exhaust to 0.15 g/KW-hr (0.11 g/HP-hr). These standards were applicable in all areas, including areas in the Pacific (*e.g.,* Guam) and rural Alaska that were exempted, at least temporarily, from using low sulfur fuel. The standards were also applicable to all engines in this displacement category, whether they were used for emergency or non-emergency purposes.

Following completion of the original rule, EPA received comments from engine manufacturers stating that the standards would be infeasible in areas where low sulfur fuel was not used. The engine manufacturers recommended less stringent standards for areas where low sulfur fuel is not required. EPA also received later comments indicating that the standards were also infeasible for engines in areas with access to lower sulfur fuel, and that the standards should instead be harmonized with the IMO standards for similar engines in marine vessels. These comments also requested that EPA take the same approach to emergency engines with displacement greater than or equal to 30 l/cyl as EPA takes for smaller emergency engines. For other emergency engines, EPA promulgated emission standards that do not require the use of aftertreatment, given the limited use of the engines, the ineffectiveness of the aftertreatment during startup, and the need for safe, reliable and immediate operation of the engine during emergencies. The comments state that engines of this size have been used as emergency generators at nuclear power plants in order to assure the safe shut-down of the reactor in case of emergency due to their excellent performance and reliability.

Regarding the NO_X standard for these engines, EPA agrees that it is appropriate to adjust the stringency of the NO_X standard to match the worldwide NO_X standard approved in the IMO's Annex VI and promulgated by EPA for marine engines with displacement above 30 l/cyl. While the technology required by the existing NSPS has been used on other stationary engines, EPA realizes the need to provide lead time for the technology to transfer to the largest of engines. The final IMO NO_X standard is comparable to the existing NSPS NO_X standard, but provides more leadtime for final implementation. Revising the standard to match the standard for marine engines allows manufacturers to design a single type of engine for both uses. This standard has been substantially reviewed by EPA and other governments and has been found to be feasible in the time provided. For engines installed prior to January 1, 2012, the standard is proposed to be 17.0 g/KW-hr (12.7 g/HP-hr) when maximum engine speed is less than 130 revolutions per minute (rpm); $45 \cdot n^{-0.2}$ g/KW–hr ($34 \cdot n^{-0.2}$ g/KW-hr) when n (maximum engine speed) is 130 or more but less than 2,000 rpm; 9.8 g/KW-hr (7.3 g/HP-hr) when maximum engine speed is 2,000 rpm or more. For engines installed after January 1, 2012, we are proposing a more stringent standard of 14.4 g/KW-hr (10.7 g/HP-hr) when maximum engine speed is less than 130 rpm; $44 \cdot n^{-0.23}$ g/KW-hr ($33 \cdot n^{-0.23}$ g/KW-hr) where n (maximum engine speed) is 130 or more but less than 2,000 rpm; and 7.7 g/KW-hr (5.7 g/HP-hr) where maximum engine speed is greater than or equal to 2,000 rpm. For engines installed after January 1, 2016, we are proposing a more stringent

standard that presumes the use of aftertreatment. The levels are proposed to be 3.4 g/KW-hr (2.5 g/HP-hr) when maximum engine speed is less than 130 rpm; $9.0 \cdot n^{-0.20}$ g/KW-hr ($6.7 \cdot n^{-0.20}$ g/KW-hr) where n (maximum engine speed) is 130 or more but less than 2,000 rpm; and 2.0 g/KW-hr (1.5 g/HP-hr) where maximum engine speed is greater than or equal to 2,000 rpm.

For engines installed in Pacific island areas that are not required to use lower sulfur fuel, while EPA believes that SCR can be installed on such engines even where high sulfur fuel is being used, EPA agrees that the use of high sulfur fuel, and the presence of other impurities in this type of fuel (*i.e.,* heavy fuel oil), as well as different density and viscosity, make it difficult to achieve similar results from SCR as would occur with lower sulfur fuel. Maintenance of high NO_X reduction levels is also more difficult when using high sulfur fuel. The use of higher sulfur heavy fuel oil also increases engine-out NO_X emissions because of the increased levels of contaminants in the fuel. EPA also notes that the areas in question do not have any significant ozone problem. We, therefore, are proposing not to require the more stringent standards that would otherwise apply beginning in 2016 in these areas.

Similarly, we are proposing not to require the more stringent, aftertreatment-forcing NO_X standards for emergency engines with displacement at or above 30 l/cyl. As the commenters noted, EPA did not require aftertreatment-forcing requirements for other emergency engines due to the limited use of the engines, the ineffectiveness of the aftertreatment during startup, and the need for safe, reliable and immediate operation of the engine during emergencies. EPA agrees that similar concerns are present for emergency engines in this power category.

EPA is also modifying its fuel requirements for engines with displacement at or above 30 l/cyl. The final rule promulgated by EPA for marine engines with displacement above 30 l/cyl required those engines to use fuel meeting a 1,000 ppm sulfur level beginning in 2014, and also made other revisions to the mobile source fuel requirements that will likely have the effect of making 1,000 ppm sulfur fuel the outlet for diesel fuel that does not meet the 15 ppm sulfur standard generally required for mobile source fuel. Therefore, EPA is revising the fuel sulfur standards for stationary CI engines with displacement at or above 30 l/cyl to a 1,000 ppm sulfur level beginning in 2014.

EPA agrees that the numerical standards for PM promulgated in the final rule would be very difficult, if not impossible, to achieve using high sulfur fuel. EPA therefore agrees that it is appropriate to revise the concentration limit for PM for stationary CI ICE with a displacement of greater than or equal to 30 l/cyl in areas where low sulfur fuel is not required. EPA is proposing a standard of 0.40 g/KW-hr (0.30 g/HP-hr). Given the substantial health concerns associated with diesel PM emissions, EPA believes it is appropriate to require this level for all engines where low sulfur fuel is not required. Similarly, we are proposing to revise the PM standard for emergency engines to 0.40 g/kW-hr (0.30 g/HP-hr), for the reasons provided above regarding NO_X standards for such engines.

EPA is not proposing to change the PM standard for non-emergency engines in areas where the lower sulfur fuel is available. As EPA explained in the original NSPS, EPA believes this standard is achievable for engines using existing technology and low sulfur fuel. The substantial health risks associated with diesel PM require that these stringent standards remain in place.

E. Requirements for Engines Located in Rural Alaska

In the initial final NSPS, EPA agreed to delay the sulfur requirements for diesel fuel intended for stationary ICE in rural areas of Alaska not accessible by the FAHS ("rural Alaska") until December 1, 2010, except that any 2011 model year and later stationary CI engines operating in rural Alaska prior to December 1, 2010, would be required to meet the 15 parts per million (ppm) sulfur requirement for diesel fuel. This approach was consistent with the approach that was used for nonroad and highway engines in rural Alaska. EPA also included a special section in the final rule that specified that until December 1, 2010, owners and operators of stationary CI engines located in Alaska should refer to 40 CFR part 69 to determine the diesel fuel requirements applicable to such engines.

In addition, the final regulations included language that allows Alaska to submit for EPA approval through rulemaking process an alternative plan for implementing the requirements of this regulation for public-sector electrical utilities located in rural areas of Alaska not accessible by the FAHS. The alternative plan must be based on the requirements of section 111 of the CAA including any increased risks to human health and the environment and must also be based on the unique circumstances related to remote power generation, climatic conditions, and serious economic impacts resulting from implementation of the final NSPS.

EPA also included an option in the final rule for owners and operators of pre-2011 model year engines located in remote areas of Alaska to petition the Administrator to use any fuels mixed with used oil that do not meet the fuel requirements in § 60.4207 of the final rule beyond the required fuel deadlines. The owner or operator must show that there is no other place to burn the used oil. Each petition, if approved, is valid for a period of up to 6 months.

EPA communicated with officials from the State of Alaska on several occasions following the promulgation of the final rule, and gave the State of Alaska an extension from the original deadline of January 11, 2008, to provide its alternative plan for rural Alaska to EPA. On October 31, 2008, EPA received Alaska's request for several revisions to the NSPS as it pertains to engines located in the rural part of Alaska not served by the FAHS.

In particular, the State of Alaska requested the following:

- Allow NSPS owner-operator requirements to apply only to model year 2011 and later engines.
- Maintain a December 1, 2010 deadline for transition of regulated engines to ULSD.
- Authorize continued use of single circuit jacketwater marine diesel engines for prime power applications.
- Remove limitations on using fuels mixed with used lubricating oil that do not meet the fuel requirements of 40 CFR part 60, subpart IIII.
- Review emission control design requirements needed to meet new NSPS emission standards, including the possibility of removing or delaying emissions standards requiring advanced exhaust gas emissions aftertreatment technologies until the technology is proven for remote and arctic applications.

EPA agrees that the circumstances in rural Alaska require special rules. EPA is, therefore, proposing several amendments for engines used in rural Alaska:

1. Exempting all pre-2011 model year engines from diesel fuel sulfur requirements;

2. Allowing owners and operators of stationary CI engines located in rural areas of Alaska to use engines certified to marine engine standards, rather than land-based nonroad engine standards;

3. Removing requirements to use aftertreatment devices for NO_X, in particular, SCR, for engines used in rural Alaska.

In proposing these revisions, EPA notes the following information provided by the State of Alaska. In general, the State notes that over 180 rural communities in Alaska that are not accessible by the FAHS rely on diesel engines and fuel for electricity. These communities are scattered over long distances in remote areas and are not connected to population centers by road or power grid. These communities are located in the most severe arctic environments in the United States.

Regarding the request that owners and operator requirements apply only to model year 2011 and later engines, the State of Alaska focused on two particular requirements for pre-2011 engines: the requirement that pre-2011 engines that are manufactured after April 1, 2006 use ULSD beginning on December 1, 2010; and the requirement that after December 31, 2008, owners and operators may not install engines that do not meet the applicable requirements for 2007 model year engines.

The State of Alaska noted that Alaska village power plants are typically operated by a single part-time operator with an alternate, that there is a high rate of turnover among plant operators, and that operators have limited training, expertise or resources. The State of Alaska notes that pre-2011 engines will all be fueled, prior to December 1, 2011, with the same fuel. The State of Alaska believes that it would greatly simplify operations to coordinate the fuel requirements with the introduction of 2011 model year engines, rather than retroactively requiring some, but not all, earlier engines to meet the fuel requirements. It would also facilitate the smoother transition to ULSD fuel, rather than requiring numerous engines to all meet the requirements at the same time. The State of Alaska noted that there is no technological requirement for pre-model year 2011 engines to use aftertreatment, and thus no technological need to use ULSD. EPA agrees that the requested revision will reduce the complexity of the regulations and that ULSD is not technologically necessary prior to model year 2011. EPA also notes that the requirement to use ULSD for 2011 and later model year engines will eventually lead to a complete turnover of the fuel used in the remote villages. Therefore, EPA is proposing this revision.

The State of Alaska notes that the planning, construction and operation of engines in rural Alaska is complex. The timeframe for these projects, which are coordinated among several governmental entities, typically exceeds 3 years. The State of Alaska notes that several projects that were designed and funded based on pre-2007 model year engines will not be installed prior to December 31, 2008. Therefore, the State of Alaska requests that the deadline be moved to December 2010. While EPA understands that some extra time may be needed to allow for these pre-existing projects to go forward with pre-2007 engines, EPA does not believe the State of Alaska has justified a 2-year extension, beyond the 2 years already provided in the regulations. However, EPA believes that a 1-year extension would be appropriate. EPA is, therefore, proposing a 1-year extension for owners and operators in rural Alaska to install pre-2007 model year engines.

Regarding its request for continued use of single circuit jacketwater marine diesel engines for prime power applications, the State of Alaska notes that rural villages in Alaska use combined heat and power cogeneration plants, which are vital to their economy, given the high cost of fuel and the substantial need for heat in that climate. Heat recovery systems are used with diesel engines in rural communities to provide heat to community facilities and schools. Marine-jacketed diesel engines are used wherever possible because of their superior heat recovery and thermal efficiency. The State of Alaska has noticed great reductions in heat recovery when using Tier 3 non-marine engines. The State notes that reductions in fuel efficiency will lead to greater fuel use and greater emissions from burning extra heating oil. EPA agrees with the State that there are significant benefits from using marine engines, and is proposing a revision that will allow engines in rural Alaska to use marine-certified engines. However, as the State of Alaska notes, marine-certified engines, particularly those below 800 HP, are not required to meet more stringent requirements for reduction of PM emissions, which is the most significant pollutant of concern in these areas. Therefore, EPA is proposing to require that owners and operators of engines manufactured in model years that would otherwise be certified to Tier 4 PM standards (*e.g.,* model years 2011 and later for engines greater than or equal to 130 KW (175 HP) and less than or equal to 560 KW (750 HP)) must either be certified to Tier 4 standards (whether land-based nonroad or marine) or must install PM reduction technologies on their engines to achieve at least 85 percent reduction in PM.

Regarding the issue of using aftertreatment technologies that the State of Alaska says has not been tested in remote arctic climates, EPA notes that the State of Alaska is particularly concerned with NO_X standards that would likely entail the use of SCR in rural Alaska. NO_X reductions are particularly important in areas where ozone is a concern, because NO_X is a precursor to ozone. However, the State of Alaska, and rural Alaska in particular, does not have any significant ozone problems. Moreover, the use of SCR entails the supply, storage and use of a chemical reductant, usually urea, that needs to be used properly in order to achieve the expected emissions reductions, and that may have additional operational problems in remote arctic climates. As noted above, these villages are not accessible by the Federal Aid Highway System and are scattered over long distances in remote areas and are not connected to population centers by road or power grid. They are located in the most severe arctic environments in the United States and they rely on stationary diesel engines and fuel for electricity and heating, and these engines need to be in working condition, particularly in the winter. While the availability of reductant is not a problem in the areas on the highway system, its availability in remote villages, particularly in the early years of the Tier 4 program, may be an issue, which is notable given the importance of the stationary engines in these villages. Furthermore, the costs for the acquisition, storage and handling of the chemical reductant would be greater than for engines located elsewhere in the United States due to the remote location and severe arctic climate of the villages. In order to maintain proper availability of the chemical reductant during the harsh winter months, new heated storage vessels may be needed at each engine facility, further increasing the compliance costs for these remote villages. Given the issues that would need to be addressed if SCR were required, and the associated costs of this technology when analyzed under NSPS guidelines, EPA understands the State of Alaska's argument that it is inappropriate to require such standards for stationary engines in rural Alaska.[1] Therefore, EPA is proposing not to require owners and operators of new stationary engines to meet the Tier 4 standards for NO_X in these areas and is soliciting comment on this decision. However, owners and operators of 2011 and later model year engines that do not

[1] Note that this action applies to stationary engines only; it is unlikely that such an approach would be appropriate for mobile engines, given that they are less permanent in a village and can move in and out of areas as work requires, and because EPA has less ability to enforce such an approach for mobile sources, where EPA does not regulate the owner or operator directly.

meet the Tier 4 PM standards would be required to use PM aftertreatment, as discussed above. The use of PM aftertreatment will also achieve reductions in CO and hydrocarbons.

Finally, regarding allowing owners and operators to blend up to 1.75 percent used oil into the fuel system, the State notes that there are no permitted used oil disposal facilities in rural Alaskan communities. The State believes that it has developed a cost-effective and reliable used-oil blending system that is currently being used in many rural Alaskan communities, disposing of the oil in an environmentally beneficial manner and capturing the energy content of the used oil. The absence of allowable blending would, according to the State, necessitate the shipping out of the used oil and would risk improper disposal and storage, as well as spills.

According to the State, blending waste oil at 1.75 percent or less will keep the fuel within American Society for Testing and Materials (ASTM) specifications if the sulfur content of the waste oil is below 200 ppm. The State acknowledges the need for engines equipped with aftertreatment devices to use fuel meeting the sulfur requirements.

EPA agrees that the limited blending of used oil into the diesel fuel used by stationary engines can be an environmentally beneficial manner of disposing of such oil and may be of little to no concern when kept within appropriate limits. In fact, in EPA's highway diesel regulations (40 CFR 80.522), we allow for the blending of used motor oil into fuel burned in highway engines if the engine was certified to the emission standards with the addition of the used oil, and if the oil is added in a manner consistent with the engine certificate. Nevertheless, EPA believes that there are certain issues that need to be further reviewed if EPA is to include in the final rule a provision allowing used oil to be mixed with diesel fuel in remote areas of Alaska. First, while any provision allowing used oil to be mixed with diesel fuel would need to be carefully circumscribed (*e.g.,* the used oil could be no more than 1.75 percent of mixture and could not have a sulfur level above 200 ppm), EPA would like to have further information on whether, even at such circumscribed levels, mixing used oil into the fuel will have an effect on the operation or maintenance requirements for such engines, particularly engines using PM aftertreatment, and if so, how such changes will be managed by the operators.

Second, on April 29, 2010, EPA proposed a set of regulatory actions under the CAA that address emissions from boilers, process heaters, and certain solid waste incinerators. On the same day, in a related action under the Resource Conservation and Recovery Act (RCRA), EPA proposed to define which non-hazardous secondary materials are "solid waste" for purposes of subtitle D (non-hazardous waste) of RCRA when burned in a combustion unit, since section 129(g)(5) of the CAA provides that "solid waste" shall have the meaning established by the Administrator under RCRA. Under the proposed solid waste rule, used oil that does not meet the on-specification ("on-spec") levels and properties of 40 CFR 279.11 ("off-spec used oil") would be considered a solid waste, unless it is processed to meet the on-spec used oil limits specified in 40 CFR 279.11, and a combustion unit that burns off-spec used oil would be a solid waste incineration unit and would be subject to emission standards under section 129 of the CAA.

Due to these issues, EPA believes that it would not be appropriate at this time to propose to allow the blending of used oil for stationary diesel engines under the NSPS. EPA solicits comment on whether to allow the blending of used oil into diesel fuel under the NSPS in rural areas of Alaska.

F. Reconstruction

EPA is proposing to add a definition for "reconstruct" that is specific for the NSPS for stationary CI ICE and stationary SI ICE. EPA is also proposing to add provisions to the NSPS that require reconstructed engines to meet the emission standards for the model year in which the reconstruction occurs if the reconstructed engine meets any of the following criteria:

- The crankshaft is removed as part of the reconstruction; or
- The fixed capital cost of the new and refurbished components exceeds 50 percent of the fixed capital cost of a comparable new engine; or
- The serial number of the engine is removed as part of the reconstruction; or
- The reconstructed engine consists of a previously used engine block with all new components.

The proposed rule also clarifies that the provisions for modified and reconstructed engines apply to anyone who modifies or reconstructs an engine, including engine owners/operators, engine manufacturers, and anyone else. The proposed rule also adds additional clarification regarding what standards are applicable for modified or reconstructed engines.

G. Minor Corrections and Revisions

EPA is proposing several minor revisions in this rule to correct mistakes in the initial rule or to clarify the rule. The revisions being proposed are listed below:

- Replacing the term "useful life" with "certified emissions life," for purposes of clarity;
- Revising Table 3 in the in 40 CFR part 60, subpart IIII to account for a mistake in how Table 3 characterized the certification requirements for high speed fire pump engines in the initial final rule;
- Revising the definition of "emergency stationary internal combustion engine," and the allowance for maintenance checks and readiness testing for such engines, to be consistent with the provisions promulgated in the recently completed requirements for existing stationary engines in 40 CFR part 63, subpart ZZZZ;
- Revising the requirement for emergency engines to install non-resettable hour meters such that emergency engines that meet the requirements for non-emergency engines do not have to install the hour meters;
- Revising the applicability provisions to make clearer EPA's requirement that all owners and operators of new sources must meet the deadlines for installation of compliant stationary engines;
- Revising certain provisions of the NSPS for stationary SI engines, particularly concerning definitions and compliance by owners and operators of such engines, to ensure consistency where appropriate for the regulation of stationary ICE; and
- Adding a definition of "installed" to provide clarity to the provisions regarding installing engines produced in previous model years.

III. Summary of Environmental, Energy and Economic Impacts

A. What are the air quality impacts?

The proposed rule would reduce NO_X emissions from stationary CI ICE between 10 and 30 l/cyl by an estimated 300 tpy, PM emissions by about 8 tpy, and NMHC emissions by about 4 tpy, in the year 2018. EPA estimated emissions reductions for the year 2018 because the year 2018 is the first year the emission standards would be fully implemented for stationary CI engines between 10 and 30 l/cyl. In the year 2030, the proposed rule would reduce NO_X emissions from stationary CI ICE between 10 and 30 l/cyl by an estimated 1,100 tpy, PM emissions by about 38 tpy, and NMHC emissions by about 18 tpy. Emissions

reductions were estimated for the year 2030 to provide an estimate of what the reductions would be once there has been substantial turnover in the engine fleet. EPA expects very few stationary CI ICE with a displacement of 30 l/cyl or more to be installed per year, and no emissions or emissions reductions have been estimated for these engines.

B. What are the cost impacts?

The total costs of the proposed rule are mostly based on the cost associated with purchasing and installing controls on non-emergency stationary CI ICE. The costs of aftertreatment were based on information developed for CI marine engines. Further information on how EPA estimated the total costs of the proposed rule can be found in a memorandum included in the docket (Docket ID. No. EPA–HQ–OAR–2010–0295).

The total national capital cost for the proposed rule is estimated to be approximately $236,000 in the year 2018, with a total national annual cost of $142,000 in the year 2018. The year 2018 is the first year the emission standards would be fully implemented for stationary CI engines between 10 and 30 l/cyl. The total national capital cost for the proposed rule in the year 2030 is $235,000, with a total national annual cost of $711,000.

C. What are the economic impacts?

EPA expects that there will be less than a 0.03 percent increase in price and a similar decrease in product demand associated with this proposal for producers and consumers in 2018. For more information, please refer to the economic impact analysis for this rulemaking in the docket.

D. What are the non-air health, environmental and energy impacts?

EPA does not anticipate any significant non-air health, environmental or energy impacts as a result of this proposed rule.

IV. Solicitation of Comments and Public Participation

EPA seeks full public participation in arriving at its final decisions, and strongly encourages comments on all aspects of this proposed rule from all interested parties. Whenever applicable, full supporting data and detailed analysis should be submitted to allow EPA to make maximum use of the comments. The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost effective data submissions. A redline/strikeout version of the complete standards of performance for stationary compression ignition engines and for stationary spark ignition engines which shows the changes that are being proposed in this action is available from the rulemaking docket.

EPA is seeking specific comment on the appropriate test method for measuring PM emissions from stationary engines with a displacement greater than or equal to 30 l/cyl. Currently, the NSPS for stationary CI engines requires these engines to be tested using EPA Method 5, which requires the cooling of the engine flue gas to 120 degrees C (248 degrees F). In a letter from the Engine Manufacturers Association (EMA) to EPA dated December 4, 2008 (*see* docket number EPA–HQ–OAR–2010–0295), EMA stated that cooling the flue gas for large stationary engines to the filter holder temperature required by EPA Method 5 will result in measurement results that are non-reproducible. The letter stated that the condensation of semi-volatile organic components from the exhaust gas on the cold surfaces needed to cool the gas will lead to results that are not repeatable. The letter from EMA recommended that engine owners and operators be allowed to use EPA Method 17 or EPA Method 5B in lieu of EPA Method 5. EPA does not believe that the use of EPA Method 5 will lead to non-reproducible results because the particulate deposited on the internal walls of the sampling probe are recovered for weighing; the recovery and inclusion of the particulate deposited in the probe addresses the issue of variations in the deposition location of the condensed semi-volatile compounds. EPA seeks comment on whether EPA Method 5 is the appropriate test method for stationary CI engines with a displacement greater than or equal to 30 l/cyl, and any data to support the claim that the use of Method 5 to test these engines results in large uncertainties and non-reproducible emissions data.

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.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action does not impose an information collection burden because the Agency is not requiring any additional recordkeeping, reporting, notification or other requirements in this proposed rule. The changes being proposed in this action do not affect information collection, but include revisions to emission standards and other minor issues. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 60 subpart A) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0590. 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 this proposed 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. The companies owning facilities with affected stationary ICE can be grouped into small and large categories using Small Business Administration (SBA) general size standard definitions. Size standards are based on industry classification codes (*i.e.,* North American Industrial Classification System, or NAICS) that each company uses to identify the industry or industries in which they operate in. The SBA defines a small business in terms of the maximum employment, annual sales, or annual energy-generating capacity (for electricity generating units—EGUs) of the owning entity. These thresholds vary by industry and are evaluated based on the primary industry classification of the affected companies. In cases where companies are classified by multiple NAICS codes, the most conservative SBA definition

(*i.e.,* the NAICS code with the highest employee or revenue size standard) was used.

In addition, for the electric power generation industry, the small business size standard is an ultimate parent entity defined as having a total electric output of 4 million megawatt-hours (MW-hr) in the previous fiscal year. The specific SBA size standard is identified for each affected industry within the economic impact analysis for the proposal. In this case, we presume the affected engines will all be located in the electric power generation industry.

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 (SISNOSE). We estimate that only one small entity is expected to incur costs associated with this proposed rule, and the annualized costs are less than 0.02 percent of their sales. Hence, we conclude that there is no SISNOSE for this rule.

For more information on the small entity impacts associated with the proposed rule, please refer to the Economic Impact Analysis in the public docket. Although the proposed rule would not have a significant economic impact on a substantial number of small entities, EPA nonetheless tried to reduce the impact of the proposed rule on small entities. When developing the revised standards, EPA took special steps to ensure that the burdens imposed on small entities were minimal. EPA conducted several meetings with industry trade associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. The proposed rule requires the minimum level of testing, monitoring, recordkeeping, and reporting to affected stationary ICE sources necessary to ensure compliance. 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 of 1995

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 1 year. Only minimal changes are being proposed by the Agency in this action and where compliance costs are incurred, only a nominal number of stationary CI engines will experience a compliance cost expense. 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. The changes being proposed in this action by the Agency are minimal and mostly affect stationary CI engine manufactures and will not affect small governments.

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 proposed action primarily affects private industry, and does not impose significant economic costs on State or local governments. 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 proposed rule 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. Thus, Executive Order 13175 does not apply to this proposed rule. 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 Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that are based on 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 proposed rule is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action is not subject to Executive Order 13211 (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(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 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 does not affect the level of protection provided to human health or the environment. The changes the Agency is proposing in this action will reduce emissions from certain stationary CI engines, which were previously not controlled as stringently as now. Other changes the Agency is proposing to make have minimal effect on emissions.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping.

40 CFR Part 1039

Administrative practice and procedure, Air pollution control.

40 CFR Part 1042

Administrative practice and procedure, Air pollution control.

40 CFR Part 1065

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Research.

40 CFR Part 1068

Administrative practice and procedure, Air pollution control, Imports, Motor vehicle pollution, Penalties, reporting and recordkeeping requirements, Warranties.

Dated: May 21, 2010.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart IIII—[AMENDED]

2. Section 60.4200 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 60.4200 Am I subject to this subpart?

(a) The provisions of this subpart are applicable to manufacturers, owners, and operators of stationary compression ignition (CI) internal combustion engines (ICE) and other persons as specified in paragraphs (a)(1) through (4) of this section. For the purposes of this subpart, the date that construction commences is the date the engine is ordered by the owner or operator.

(1) Manufacturers of stationary CI ICE with a displacement of less than 30 liters per cylinder where the model year is:

(i) 2007 or later, for engines that are not fire pump engines;

(ii) The model year listed in Table 3 to this subpart or later model year, for fire pump engines.

(2) Owners and operators of stationary CI ICE that commence construction after July 11, 2005, where the stationary CI ICE are:

(i) Manufactured after April 1, 2006, and are not fire pump engines, or

(ii) Manufactured as a certified National Fire Protection Association (NFPA) fire pump engine after July 1, 2006.

(3) Owners and operators of any stationary CI ICE that are modified or reconstructed after July 11, 2005 and any person that modifies or reconstructs any stationary CI ICE after July 11, 2005.

(4) The provisions of § 60.4208 of this subpart are applicable to all owners and operators of stationary CI ICE that commence construction after July 11, 2005.

* * * * *

(e) Owners and operators of facilities with internal combustion engines that are acting as temporary replacement units and that are located at a stationary source for less than 1 year and that have been properly certified as meeting the standards that would be applicable to such engine under the appropriate nonroad engine provisions, are not required to meet any other provisions under this subpart with regard to such engines.

3. Section 60.4201 is amended by revising paragraph (d) and adding paragraphs (e) and (f) to read as follows:

§ 60.4201 What emission standards must I meet for non-emergency engines if I am a stationary CI internal combustion engine manufacturer?

* * * * *

(d) Stationary CI internal combustion engine manufacturers must certify the following non-emergency stationary CI ICE to the certification emission standards for new marine CI engines in 40 CFR 94.8, as applicable, for all pollutants, for the same displacement and maximum engine power:

(1) Their 2007 model year through 2012 non-emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder;

(2) Their 2013 model year non-emergency stationary CI ICE with a maximum engine power greater than or equal to 3,700 KW (4,958 HP) and a displacement of greater than or equal to 10 liters per cylinder and less than 15 liters per cylinder; and

(3) Their 2013 model year non-emergency stationary CI ICE with a displacement of greater than or equal to 15 liters per cylinder and less than 30 liters per cylinder.

(e) Stationary CI internal combustion engine manufacturers must certify the following non-emergency stationary CI ICE to the certification emission standards and other requirements for new marine CI engines in 40 CFR 1042.101, 40 CFR 1042.107, 40 CFR 1042.110, 40 CFR 1042.115, 1042.120, and 40 CFR 1042.145, as applicable, for all pollutants, for the same displacement and maximum engine power:

(1) Their 2013 model year non-emergency stationary CI ICE with a maximum engine power less than 3,700 KW (4,958 HP) and a displacement of greater than or equal to 10 liters per cylinder and less than 15 liters per cylinder; and

(2) Their 2014 model year and later non-emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder.

(f) Notwithstanding the requirements in paragraphs (a) through (e) of this section, stationary CI internal combustion engine manufacturers are not required to certify reconstructed engines; however they may elect to do so. The reconstructed engine must be certified to the emission standards specified in paragraphs (a) through (e) of this section that are applicable to the model year, maximum engine power, and displacement of the reconstructed stationary CI ICE.

4. Section 60.4202 is amended by removing and reserving paragraph (c) and adding paragraphs (e) through (g) to read as follows:

§ 60.4202 What emission standards must I meet for emergency engines if I am a stationary CI internal combustion engine manufacturer?

* * * * *

(e) Stationary CI internal combustion engine manufacturers must certify the following emergency stationary CI ICE that are not fire pump engines to the certification emission standards for new marine CI engines in 40 CFR 94.8, as applicable, for all pollutants, for the same displacement and maximum engine power:

(1) Their 2007 model year through 2012 emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder;

(2) Their 2013 model year emergency stationary CI ICE with a maximum engine power greater than or equal to 3,700 KW (4,958 HP) and a displacement of greater than or equal to 10 liters per cylinder and less than 15 liters per cylinder; and

(3) Their 2013 model year emergency stationary CI ICE with a displacement of greater than or equal to 15 liters per

cylinder and less than 30 liters per cylinder.

(f) Stationary CI internal combustion engine manufacturers must certify the following emergency stationary CI ICE to the certification emission standards and other requirements applicable to Tier 3 new marine CI engines in 40 CFR 1042.101, 40 CFR 1042.107, 40 CFR 1042.115, 40 CFR 1042.120, and 40 CFR 1042.145, for all pollutants, for the same displacement and maximum engine power:

(1) Their 2013 model year emergency stationary CI ICE with a maximum engine power less than 3,700 KW (4,958 HP) and a displacement of greater than or equal to 10 liters per cylinder and less than 15 liters per cylinder; and

(2) Their 2014 model year and later emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder.

(g) Notwithstanding the requirements in paragraphs (a) through (f) of this section, stationary CI internal combustion engine manufacturers are not required to certify reconstructed engines; however they may elect to do so. The reconstructed engine must be certified to the emission standards specified in paragraphs (a) through (f) of this section that are applicable to the model year, maximum engine power and displacement of the reconstructed emergency stationary CI ICE.

5. Section 60.4203 is revised to read as follows:

§ 60.4203 How long must my engines meet the emission standards if I am a manufacturer of stationary CI internal combustion engines?

Engines manufactured by stationary CI internal combustion engine manufacturers must meet the emission standards as required in §§ 60.4201 and 60.4202 during the certified emissions life of the engines.

6. Section 60.4204 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 60.4204 What emission standards must I meet for non-emergency engines if I am an owner or operator of a stationary CI internal combustion engine?

* * * * *

(c) Owners and operators of non-emergency stationary CI engines with a displacement of greater than or equal to 30 liters per cylinder must meet the following requirements:

(1) For engines installed prior to January 1, 2012, limit the emissions of NO_X in the stationary CI internal combustion engine exhaust to the following:

(i) 17.0 g/KW-hr (12.7 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $45 \cdot n^{-0.2}$ g/KW-hr ($34 \cdot n^{-0.2}$ g/HP-hr) when maximum engine speed is 130 or more but less than 2,000 rpm, where n is maximum engine speed; and

(iii) 9.8 g/KW-hr (7.3 g/HP-hr) when maximum engine speed is 2,000 rpm or more.

(2) For engines installed on or after January 1, 2012 and before January 1, 2016, limit the emissions of NO_X in the stationary CI internal combustion engine exhaust to the following:

(i) 14.4 g/KW-hr (10.7 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $44 \cdot n^{-0.23}$ g/KW-hr ($33 \cdot n^{-0.23}$ g/HP-hr) when maximum engine speed is greater than or equal to 130 but less than 2,000 rpm and where n is maximum engine speed; and

(iii) 7.7 g/KW-hr (5.7 g/HP-hr) when maximum engine speed is greater than or equal to 2,000 rpm.

(3) For engines installed on or after January 1, 2016, limit the emissions of NO_X in the stationary CI internal combustion engine exhaust to the following:

(i) 3.4 g/KW-hr (2.5 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $9.0 \cdot n^{-0.20}$ g/KW-hr ($6.7 \cdot n^{-0.20}$ g/HP-hr) where n (maximum engine speed) is 130 or more but less than 2,000 rpm; and

(iii) 2.0 g/KW-hr (1.5 g/HP-hr) where maximum engine speed is greater than or equal to 2,000 rpm.

(4) Reduce particulate matter (PM) emissions by 60 percent or more, or limit the emissions of PM in the stationary CI internal combustion engine exhaust to 0.15 g/KW-hr (0.11 g/HP-hr).

(d) Owners and operators of non-emergency stationary CI ICE with a displacement of less than 30 liters per cylinder who conduct performance tests in use must meet the not-to-exceed (NTE) standards as indicated in § 60.4212.

(e) Owners and operators of any modified or reconstructed non-emergency stationary CI ICE subject to this subpart must meet the emission standards applicable to the model year, maximum engine power, and displacement of the modified or reconstructed non-emergency stationary CI ICE that are specified in paragraphs (a) through (d) of this section.

7. Section 60.4205 is amended by revising paragraphs (a) and (d) and adding paragraphs (e) and (f) to read as follows:

§ 60.4205 What emission standards must I meet for emergency engines if I am an owner or operator of a stationary CI internal combustion engine?

(a) Owners and operators of pre-2007 model year emergency stationary CI ICE with a displacement of less than 10 liters per cylinder that are not fire pump engines must comply with the emission standards in Table 1 to this subpart. Owners and operators of pre-2007 model year emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder that are not fire pump engines must comply with the emission standards in 40 CFR 94.8(a)(1).

* * * * *

(d) Owners and operators of emergency stationary CI engines with a displacement of greater than or equal to 30 liters per cylinder must meet the requirements in this section.

(1) For engines installed prior to January 1, 2012, limit the emissions of NO_X in the stationary CI internal combustion engine exhaust to the following:

(i) 17.0 g/KW-hr (12.7 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $45 \cdot n^{-0.2}$ g/KW-hr ($34 \cdot n^{-0.2}$ g/HP-hr) when maximum engine speed is 130 or more but less than 2,000 rpm, where n is maximum engine speed; and

(iii) 9.8 g/kW-hr (7.3 g/HP-hr) when maximum engine speed is 2,000 rpm or more.

(2) For engines installed on or after January 1, 2012 and before January 1, 2016, limit the emissions of NO_X in the stationary CI internal combustion engine exhaust to the following:

(i) 14.4 g/KW-hr (10.7 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $44 \cdot n^{-0.23}$ g/KW-hr ($33 \cdot n^{-0.23}$ g/HP-hr) when maximum engine speed is greater than or equal to 130 but less than 2,000 rpm and where n is maximum engine speed; and

(iii) 7.7 g/KW-hr (5.7 g/HP-hr) when maximum engine speed is greater than or equal to 2,000 rpm.

(3) Limit the emissions of PM in the stationary CI internal combustion engine exhaust to 0.40 g/KW-hr (0.30 g/HP-hr).

(e) Owners and operators of emergency stationary CI ICE with a displacement of less than 30 liters per cylinder who conduct performance tests in use must meet the NTE standards as indicated in § 60.4212.

(f) Owners and operators of any modified or reconstructed emergency stationary CI ICE subject to this subpart must meet the emission standards

applicable to the model year, maximum engine power, and displacement of the modified or reconstructed CI ICE that are specified in paragraphs (a) through (e) of this section.

8. Section 60.4206 is revised to read as follows:

§ 60.4206 How long must I meet the emission standards if I am an owner or operator of a stationary CI internal combustion engine?

Owners and operators of stationary CI ICE must operate and maintain stationary CI ICE that achieve the emission standards as required in §§ 60.4204 and 60.4205 over the entire life of the engine.

9. Section 60.4207 is amended by revising paragraph (d) to read as follows:

§ 60.4207 What fuel requirements must I meet if I am an owner or operator of a stationary CI internal combustion engine subject to this subpart?

* * * * *

(d) Beginning January 1, 2014, owners and operators of stationary CI ICE subject to this subpart with a displacement of greater than or equal to 30 liters per cylinder are not subject to the requirements of paragraph (a) of this section and must use fuel that meets a maximum per-gallon sulfur content of 1,000 ppm.

* * * * *

10. Section 60.4208 is amended by revising paragraphs (g) and (h) and adding paragraph (i) to read as follows:

§ 60.4208 What is the deadline for importing or installing stationary CI ICE produced in the previous model year?

* * * * *

(g) After December 31, 2018, owners and operators may not install non-emergency stationary CI ICE with a maximum engine power greater than or equal to 600 KW (804 HP) and less than 2,000 KW (2,680 HP) and a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder that do not meet the applicable requirements for 2017 model year non-emergency engines.

(h) In addition to the requirements specified in §§ 60.4201, 60.4202, 60.4204, and 60.4205, it is prohibited to import stationary CI ICE with a displacement of less than 30 liters per cylinder that do not meet the applicable requirements specified in paragraphs (a) through (g) of this section after the dates specified in paragraphs (a) through (g) of this section.

(i) The requirements of this section do not apply to owners or operators of stationary CI ICE that have been modified, reconstructed, and do not apply to engines that were removed from one existing location and reinstalled at a new location.

11. Section 60.4209 is amended by revising paragraph (a) to read as follows:

§ 60.4209 What are the monitoring requirements if I am an owner or operator of a stationary CI internal combustion engine?

* * * * *

(a) If you are an owner or operator of an emergency stationary CI internal combustion engine that does not meet the standards applicable to non-emergency engines, you must install a non-resettable hour meter prior to startup of the engine.

* * * * *

12. Section 60.4210 is amended by:

a. Revising paragraph (b);

b. Revising paragraph (c) introductory text;

c. Revising paragraph (c)(3)(i);

d. Revising paragraph (c)(3)(ii); and

e. Revising paragraph (d) to read as follows:

§ 60.4210 What are my compliance requirements if I am a stationary CI internal combustion engine manufacturer?

* * * * *

(b) Stationary CI internal combustion engine manufacturers must certify their stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder to the emission standards specified in § 60.4201(d) and (e) and § 60.4202(e) and (f) using the certification procedures required in 40 CFR part 94, subpart C, or 40 CFR part 1042, subpart C, as applicable, and must test their engines as specified in 40 CFR part 94 or 1042, as applicable.

(c) Stationary CI internal combustion engine manufacturers must meet the requirements of 40 CFR 1039.120, 1039.125, 1039.130, and 1039.135, and 40 CFR part 1068 for engines that are certified to the emission standards in 40 CFR part 1039. Stationary CI internal combustion engine manufacturers must meet the corresponding provisions of 40 CFR part 89, 40 CFR part 94 or 40 CFR part 1042 for engines that would be covered by that part if they were nonroad (including marine) engines. Labels on such engines must refer to stationary engines, rather than or in addition to nonroad or marine engines, as appropriate. Stationary CI internal combustion engine manufacturers must label their engines according to paragraphs (c)(1) through (3) of this section.

* * * * *

(3) * * *

(i) Stationary CI internal combustion engines that meet the requirements of this subpart and the corresponding requirements for nonroad (including marine) engines of the same model year and HP must be labeled according to the provisions in 40 CFR parts 89, 94, 1039 or 1042, as appropriate.

(ii) Stationary CI internal combustion engines that meet the requirements of this subpart, but are not certified to the standards applicable to nonroad (including marine) engines of the same model year and HP must be labeled according to the provisions in 40 CFR parts 89, 94, 1039 or 1042, as appropriate, but the words "stationary" must be included instead of "nonroad" or "marine" on the label. In addition, such engines must be labeled according to 40 CFR 1039.20.

* * * * *

(d) An engine manufacturer certifying an engine family or families to standards under this subpart that are identical to standards applicable under 40 CFR parts 89, 94, 1039 or 1042 for that model year may certify any such family that contains both nonroad (including marine) and stationary engines as a single engine family and/or may include any such family containing stationary engines in the averaging, banking and trading provisions applicable for such engines under those parts.

* * * * *

13. Section 60.4211 is amended:

a. By revising paragraph (a);

b. By revising the second sentence in paragraph (c);

c. By redesignating paragraph (e) as paragraph (f);

d. By adding a new paragraph (e);

e. By revising newly redesignated paragraph (f); and

f. By adding paragraph (g) to read as follows:

§ 60.4211 What are my compliance requirements if I am an owner or operator of a stationary CI internal combustion engine?

(a) If you are an owner or operator and must comply with the emission standards specified in this subpart, you must do all of the following, except as permitted under paragraph (f) of this section:

(1) Operate and maintain the stationary CI internal combustion engine and control device according to the manufacturer's emission-related written instructions;

(2) Change only those emission-related settings that are permitted by the manufacturer; and

(3) Meet the requirements of 40 CFR parts 89, 94 and/or 1068, as they apply to you.

* * * * *

(c) * * * The engine must be installed and configured according to the manufacturer's emission-related specifications, except as permitted in paragraph (f) of this section.

* * * * *

(e) If you are an owner or operator of a modified or reconstructed stationary CI internal combustion engine and must comply with the emission standards specified in § 60.4204(e) or § 60.4205(f), you must demonstrate compliance according to one of the methods specified in paragraphs (e)(1) or (2) of this section.

(1) Purchasing, or otherwise owning or operating, an engine certified to the emission standards in § 60.4204(e) or § 60.4205(f), as applicable.

(2) Conducting a performance test to demonstrate initial compliance with the emission standards according to the requirements specified in § 60.4212. The test must be conducted within 60 days after the engine commences operation after the modification or reconstruction.

(f) If you own or operate an emergency stationary ICE, you must operate the engine according to the conditions described in paragraphs (f)(1) through (4) of this section.

(1) For owners and operators of emergency ICE, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for 50 hours per year, as permitted in this section, is prohibited.

(2) There is no time limit on the use of emergency stationary ICE in emergency situations.

(3) You may operate your emergency stationary ICE for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by Federal, State or local government, the manufacturer, the vendor, or the insurance company associated with the engine. Maintenance checks and readiness testing of such units is limited to 100 hours per year. The owner or operator may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that Federal, State, or local standards require maintenance and testing of emergency ICE beyond 100 hours per year.

(4) You may operate your emergency stationary ICE up to 50 hours per year in non-emergency situations, but those 50 hours are counted towards the 100 hours per year provided for maintenance and testing. The 50 hours per year for non-emergency situations cannot be used for peak shaving or to generate income for a facility to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity; except that owners and operators may operate the emergency engine for a maximum of 15 hours per year as part of a demand response program if the regional transmission organization or equivalent balancing authority and transmission operator has determined there are emergency conditions that could lead to a potential electrical blackout, such as unusually low frequency, equipment overload, capacity or energy deficiency, or unacceptable voltage level. The engine may not be operated for more than 30 minutes prior to the time when the emergency condition is expected to occur, and the engine operation must be terminated immediately after the facility is notified that the emergency condition is no longer imminent. The 15 hours per year of demand response operation are counted as part of the 50 hours of operation per year provided for non-emergency situations. The supply of emergency power to another entity or entities pursuant to financial arrangement is not limited by this paragraph (f)(4), as long as the power provided by the financial arrangement is limited to emergency power.

(g) Unless you operate, maintain, install and configure your engine and control device according to the manufacturer's emission-related written instructions and change only those emission-related settings that are permitted by the manufacturer, you must demonstrate compliance as follows:

(1) If you are an owner or operator of a stationary CI internal combustion engine with maximum engine power less than 100 HP, you must keep a maintenance plan and records of conducted maintenance to demonstrate compliance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions, but performance testing is required only if you do not install and configure your engine and control device according to the manufacturer's emission-related written instructions or if you change emission-related settings in a way that is not permitted by the manufacturer, in either of which case you must conduct an initial performance test within 1 year of such action.

(2) If you are an owner or operator of a stationary CI internal combustion engine greater than or equal to 100 HP and less than or equal to 500 HP, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, you must conduct an initial performance test within 1 year of engine startup, or within 1 year following the change in emission-related settings or configuration indicated in this paragraph (g)(1)(ii), to demonstrate compliance.

(3) If you are an owner or operator of a stationary CI internal combustion engine greater than 500 HP, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, you must conduct an initial performance test within 1 year of engine startup and conduct subsequent performance testing every 8,760 hours of engine operation or 3 years, whichever comes first, thereafter to demonstrate compliance.

14. Section 60.4212 is amended by revising the introductory text and paragraph (a) and adding paragraph (e) to read as follows:

§ 60.4212 What test methods and other procedures must I use if I am an owner or operator of a stationary CI internal combustion engine with a displacement of less than 30 liters per cylinder?

Owners and operators of stationary CI ICE with a displacement of less than 30 liters per cylinder who conduct performance tests pursuant to this subpart must do so according to paragraphs (a) through (e) of this section.

(a) The performance test must be conducted according to the in-use testing procedures in 40 CFR part 1039, subpart F, for stationary CI ICE with a displacement of less than 10 liters per cylinder, and according to 40 CFR part 1042, subpart F, for stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder.

* * * * *

(e) Exhaust emissions from stationary CI ICE that are complying with the emission standards for new CI engines in 40 CFR part 1042 must not exceed the NTE standards for the same model year and maximum engine power as required in 40 CFR 1042.101(c)(i).

15. Section 60.4215 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 60.4215 What requirements must I meet for engines used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands?

(a) Stationary CI ICE with a displacement of less than 30 liters per cylinder that are used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands are required to meet the applicable emission standards in §§ 60.4202 and 60.4205.

* * * * *

(c) Stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder that are used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands are required to meet the following emission standards:

(1) For engines installed prior to January 1, 2012, limit the emissions of NO_X in the stationary CI internal combustion engine exhaust to the following:

(i) 17.0 g/KW-hr (12.7 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $45 \cdot n^{-0.2}$ g/KW-hr ($34 \cdot n^{-0.2}$ g/HP-hr) when maximum engine speed is 130 or more but less than 2,000 rpm, where n is maximum engine speed; and

(iii) 9.8 g/KW-hr (7.3 g/HP-hr) when maximum engine speed is 2,000 rpm or more.

(2) For engines installed on or after January 1, 2012, limit the emissions of NO_X in the stationary CI internal combustion engine exhaust to the following:

(i) 14.4 g/KW-hr (10.7 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $44 \cdot n^{-0.23}$ g/KW-hr ($33 \cdot n^{-0.23}$ g/HP-hr) when maximum engine speed is greater than or equal to 130 but less than 2,000 rpm and where n is maximum engine speed; and

(iii) 7.7 g/KW-hr (5.7 g/HP-hr) when maximum engine speed is greater than or equal to 2,000 rpm.

(3) Limit the emissions of PM in the stationary CI internal combustion engine exhaust to 0.40 g/KW-hr (0.30 g/HP-hr).

16. Section 60.4216 is amended by revising paragraph (b) and adding paragraphs (c) through (e) to read as follows:

§ 60.4216 What requirements must I meet for engines used in Alaska?

* * * * *

(b) Except as indicated in paragraph (c) of this section, manufacturers, owners and operators of stationary CI engines located in areas of Alaska not accessible by the Federal Aid Highway System (FAHS) with a displacement of less than 10 liters per cylinder may meet the requirements of this subpart by manufacturing and installing engines meeting the requirements of 40 CFR parts 94 or 1042, as appropriate, rather than the otherwise applicable requirements of 40 CFR parts 89 and 1039. Except as indicated in paragraph (c) of this section, the requirements of 40 CFR parts 94 and 1042 that are applicable to manufacturers, owners and operators of stationary CI engines located in areas of Alaska not accessible by the FAHS with a displacement of less than 10 liters per cylinder are the same as the requirements of 40 CFR parts 94 and 1042 indicated in this subpart that are applicable to manufacturers, owners and operators of engines with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder.

(c) Stationary CI ICE with a displacement of less than 30 liters per cylinder that are located in areas of Alaska not accessible by the FAHS may choose to meet the applicable emission standards for emergency engines in § 60.4202 and § 60.4205, and not those for non-emergency engines in § 60.4201 and § 60.4204, except that for all of the following engines, the owner or operator of any such engine that was not certified as meeting Tier 4 PM standards, must meet the applicable requirements for PM in § 60.4201 and § 60.4204 or install a PM emission control device that achieves PM emission reductions of 85 percent compared to engine-out emissions:

(1) Model year 2011 and later model year non-emergency engines with a maximum engine power greater than or equal to 130 KW (175 HP) and less than or equal to 560 KW (750 HP);

(2) Model year 2012 and later model year non-emergency engines with a maximum engine power greater than or equal to 56 KW (75 HP) and less than 130 KW (175 HP);

(3) Model year 2013 and later model year non-emergency engines with a maximum engine power greater than or equal to 19 KW (25 HP) and less than 56 KW (75 HP);

(4) Model year 2015 and later model year non-emergency engines with a maximum engine power greater than 560 KW (750 HP).

(d) The provisions of § 60.4207 do not apply to owners and operators of pre-2011 model year stationary CI ICE subject to this subpart that are located in areas of Alaska not accessible by the FAHS.

(e) The provisions of § 60.4208(a) do not apply to owners and operators of stationary CI ICE subject to this subpart that are located in areas of Alaska not accessible by the FAHS until after December 31, 2009.

17. Section 60.4217 is revised to read as follows:

§ 60.4217 What emission standards must I meet if I am an owner or operator of a stationary internal combustion engine using special fuels?

Owners and operators of stationary CI ICE that do not use diesel fuel may petition the Administrator for approval of alternative emission standards, if they can demonstrate that they use a fuel that is not the fuel on which the manufacturer of the engine certified the engine and that the engine cannot meet the applicable standards required in § 60.4204 or § 60.4205 using such fuels and that use of such fuel is appropriate and reasonably necessary, considering cost, energy, technical feasibility, human health and environmental, and other factors, for the operation of the engine.

18. Section 60.4219 is amended by:

a. Adding definitions of "Certified emissions life" and "Date of manufacture" in alphabetical order;

b. Revising the definition of "Emergency stationary internal combustion engine";

c. Adding a definition of "Freshly manufactured engine" in alphabetical order;

d. Adding a definition of "Installed" in alphabetical order;

e. Revising the definition of "Model year";

f. Adding a definition of "Reconstruct" in alphabetical order;

g. Revising the definition of "Stationary internal combustion engine"; and

h. Removing the definition of "Useful life".

The revisions and additions read as follows.

§ 60.4219 What definitions apply to this subpart?

* * * * *

Certified emissions life means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years, whichever comes first. The values for certified emissions life for stationary CI ICE with a displacement of less than 10 liters per cylinder are given in 40 CFR 1039.101(g). The values for certified emissions life for stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder are given in 40 CFR 94.9(a).

* * * * *

Date of manufacture means one of the following things:

(1) For freshly manufactured engines and modified engines, date of manufacture means the date the engine is originally produced.

(2) For reconstructed engines, date of manufacture means the date the engine was originally produced, except as specified in paragraph (3) of this definition.

(3) Reconstructed engines are assigned a new date of manufacture if the crankshaft is removed as part of the reconstruction or if the fixed capital cost of the new and refurbished components exceeds 75 percent of the fixed capital cost of a comparable new engine (*see* the definition of "reconstruct"). An engine that is produced from a previously used engine block does not retain the date of manufacture of the engine in which the engine block was previously used if the engine serial number was removed (or the engine otherwise loses its identity), or the engine is produced using all new components except for the engine block. In all these cases, the date of manufacture is the date of reconstruction or the date the new engine is produced.

* * * * *

Emergency stationary internal combustion engine means any stationary internal combustion engine whose operation is limited to emergency situations and required testing and maintenance. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, *etc.* Stationary CI ICE used for peak shaving are not considered emergency stationary ICE. Stationary CI ICE used to supply power to an electric grid or that supply non-emergency power as part of a financial arrangement with another entity are not considered to be emergency engines, except as permitted under § 60.4211(e).

* * * * *

Freshly manufactured engine means an engine that has not been placed into service. An engine becomes freshly manufactured when it is originally produced. Note that this includes an engine that is produced using some previously used parts if it does not retain its original identity.

Installed means the engine is placed and secured at the location where it is intended to be operated; piping and wiring for exhaust, fuel, controls, *etc.,* is installed and all connections are made; and the engine is capable of being started.

* * * * *

Model year means the calendar year in which an engine is manufactured (*see* "date of manufacture"), except as follows:

(1) Model year means the annual new model production period of the engine manufacturer in which an engine is manufactured (*see* "date of manufacture"), if the annual new model production period is different than the calendar year and includes January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For an engine that is converted to a stationary engine after being placed into service as a nonroad or other non-stationary engine, model year means the calendar year or new model production period in which the engine was manufactured (*see* "date of manufacture").

* * * * *

Reconstruct means to replace or refurbish components of an existing engine to such an extent that the fixed capital cost of the new and refurbished components exceeds 50 percent of the fixed capital cost of a comparable new engine. The fixed capital cost of the new and refurbished components includes the capital cost of each component plus the labor cost for the replacement or refurbishment. For purposes of reconstruction, an existing stationary engine is defined as including those components mounted to or within the cylinder block, the engine housings, and engine mounted components, but excluding ancillary components such as external cooling for fuel supply.

* * * * *

Stationary internal combustion engine means any internal combustion engine, except combustion turbines, that converts heat energy into mechanical work and is not mobile. Stationary ICE differ from mobile ICE in that a stationary internal combustion engine is not a nonroad engine as defined at 40 CFR 1068.30 (excluding paragraph (2)(ii) of that definition), and is not used to propel a motor vehicle, aircraft, or a vehicle used solely for competition. Stationary ICE include reciprocating ICE, rotary ICE, and other ICE, except combustion turbines.

* * * * *

19. Table 3 to Subpart IIII of Part 60 is revised to read as follows:

TABLE 3 TO SUBPART IIII OF PART 60—CERTIFICATION REQUIREMENTS FOR STATIONARY FIRE PUMP ENGINES

[As stated in § 60.4202(d), you must certify new stationary fire pump engines beginning with the following model years]

Engine power	Starting model year engine manufacturers must certify new stationary fire pump engines according to § 60.4202(d) [1]
KW < 75 (HP < 100)	2011
75 ≤ KW < 130 (100 ≤ HP < 175)	2010
130 ≤ KW ≤ 560(175 ≤ HP ≤ 750)	2009
KW > 560 (HP > 750)	2008

[1] Manufacturers of fire pump stationary CI ICE with a maximum engine power greater than or equal to 37 KW (50 HP) and less than 450 KW (600 HP) and a rated speed of greater than 2,650 revolutions per minute (rpm) are not required to certify such engines until three model years following the model year indicated in this Table 3 for engines in the applicable engine power category.

20. Table 8 to subpart IIII of part 60 is revised to read as follows:

TABLE 8 TO SUBPART IIII OF PART 60—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART IIII

[As stated in § 60.4218, you must comply with the following applicable General Provisions]

General provisions citation	Subject of citation	Applies to subpart	Explanation
§ 60.1	General applicability of the General Provisions	Yes.	
§ 60.2	Definitions	Yes	Additional terms defined in § 60.4219.
§ 60.3	Units and abbreviations	Yes.	
§ 60.4	Address	Yes.	
§ 60.5	Determination of construction or modification	Yes.	
§ 60.6	Review of plans	Yes.	
§ 60.7	Notification and Record-keeping	Yes	Except that § 60.7 only applies as specified in § 60.4214(a).
§ 60.8	Performance tests	Yes	§ 60.8 only applies to stationary CI ICE in the specific instances, and with the specific timing, that performance tests are contemplated under this subpart IIII.
§ 60.9	Availability of information	Yes.	
§ 60.10	State Authority	Yes.	
§ 60.11	Compliance with standards and maintenance requirements.	No	Requirements are specified in subpart IIII.
§ 60.12	Circumvention	Yes.	
§ 60.13	Monitoring requirements	Yes	Except that § 60.13 only applies to stationary CI ICE with a displacement of ≥30 liters per cylinder.
§ 60.14	Modification	Yes.	
§ 60.15(a)	Reconstruction	Yes.	
§ 60.15(b)–(c)	Reconstruction	No	For purposes of this subpart, reconstruct is defined in § 60.4219.
§ 60.15(d)–(g)	Reconstruction	Yes.	
§ 60.16	Priority list	Yes.	
§ 60.17	Incorporations by reference	Yes.	
§ 60.18	General control device requirements	No.	
§ 60.19	General notification and reporting requirements	Yes.	

Subpart JJJJ—[Amended]

21. Section 60.4230 is amended by revising paragraphs (a) introductory text and (a)(5) and adding paragraph (a)(6) to read as follows:

§ 60.4230 Am I subject to this subpart?

(a) The provisions of this subpart are applicable to manufacturers, owners, and operators of stationary spark ignition (SI) internal combustion engines (ICE) as specified in paragraphs (a)(1) through (6) of this section. For the purposes of this subpart, the date that construction commences is the date the engine is ordered by the owner or operator.

* * * * *

(5) Owners and operators of stationary SI ICE that are modified or reconstructed after June 12, 2006, and any person that modifies or reconstructs any stationary SI ICE after June 12, 2006.

(6) The provisions of § 60.4236 of this subpart are applicable to all owners and operators of stationary SI ICE that commence construction after June 12, 2006.

* * * * *

22. Section 60.4231 is amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 60.4231 What emissions standards must I meet if I am a manufacturer of stationary SI internal combustion engines or equipment containing such engines?

(a) Stationary SI internal combustion engine manufacturers must certify their stationary SI ICE with a maximum engine power less than or equal to 19 KW (25 HP) manufactured on or after July 1, 2008 to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 90 or 1054, as follows:

If engine displacement is . . .	And manufacturing dates are . . .	The engine must meet emission standards and related requirements for nonhandheld engines under . . .
(1) below 225 cc	July 1, 2008 to December 31, 2011	40 CFR part 90.
(2) below 225 cc	January 1, 2012 or later	40 CFR part 1054.
(3) at or above 225 cc	July 1, 2008 to December 31, 2010	40 CFR part 90.
(4) at or above 225 cc	January 1, 2011 or later	40 CFR part 1054.

* * * * *

(g) Notwithstanding the requirements in paragraphs (a) through (c) of this section, stationary SI internal combustion engine manufacturers are not required to certify reconstructed engines; however they may elect to do so. The reconstructed engine must be certified to the emission standards specified in paragraphs (a) through (e) of this section that are applicable to the model year, maximum engine power and displacement of the reconstructed stationary SI ICE.

23. Section 60.4233 is amended by revising paragraph (f) to read as follows:

§ 60.4233 What emission standards must I meet if I am an owner or operator of a stationary SI internal combustion engine?

* * * * *

(f) Owners and operators of any modified or reconstructed stationary SI ICE subject to this subpart must meet the requirements as specified in paragraphs (f)(1) through (5) of this section.

(1) Owners and operators of stationary SI ICE with a maximum engine power less than or equal to 19 KW (25 HP), that are modified or reconstructed after June 12, 2006, must comply with emission standards in § 60.4231(a) for their stationary SI ICE. Engines with a date of manufacture prior to July 1, 2008 must comply with the emission standards specified in § 60.4231(a) applicable to engines manufactured on July 1, 2008.

(2) Owners and operators of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) that are gasoline engines and are modified or reconstructed after June 12, 2006, must comply with the emission standards in § 60.4231(b) for their stationary SI ICE. Engines with a date of manufacture prior to July 1, 2008 (or January 1, 2009 for emergency engines) must comply with the emission standards specified in § 60.4231(b) applicable to engines manufactured on July 1, 2008 (or January 1, 2009 for emergency engines).

(3) Owners and operators of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) that are rich burn engines that use LPG, that are modified or reconstructed after June 12, 2006, must comply with the same emission standards as those specified in § 60.4231(c). Engines with a date of manufacture prior to July 1, 2008 (or January 1, 2009 for emergency engines) must comply with the emission standards specified in § 60.4231(c) applicable to engines manufactured on July 1, 2008 (or January 1, 2009 for emergency engines).

(4) Owners and operators of stationary SI natural gas and lean burn LPG engines with a maximum engine power greater than 19 KW (25 HP), that are modified or reconstructed after June 12, 2006, must comply with the same emission standards as those specified in paragraph (d) or (e) of this section, except that such owners and operators of non-emergency engines and emergency engines greater than or equal to 130 HP must meet a nitrogen oxides (NO_X) emission standard of 3.0 grams per HP-hour (g/HP-hr), a CO emission standard of 4.0 g/HP-hr (5.0 g/HP-hr for non-emergency engines less than 100 HP), and a volatile organic compounds (VOC) emission standard of 1.0 g/HP-hr, or a NO_X emission standard of 250 ppmvd at 15 percent oxygen (O_2), a CO emission standard 540 ppmvd at 15 percent O_2 (675 ppmvd at 15 percent O_2 for non-emergency engines less than 100 HP), and a VOC emission standard of 86 ppmvd at 15 percent O_2, where the date of manufacture of the engine is:

(i) Prior to July 1, 2007, for non-emergency engines with a maximum engine power greater than or equal to 500 HP;

(ii) Prior to July 1, 2008, for non-emergency engines with a maximum engine power less than 500 HP;

(iii) Prior to January 1, 2009, for emergency engines.

(5) Owners and operators of stationary SI landfill/digester gas ICE engines with a maximum engine power greater than 19 KW (25 HP), that are modified or reconstructed after June 12, 2006, must comply with the same emission standards as those specified in paragraph (e) of this section for stationary landfill/digester gas engines. Engines with maximum engine power less than 500 HP and a date of manufacture prior to July 1, 2008 must comply with the emission standards specified in paragraph (e) of this section for stationary landfill/digester gas ICE with a maximum engine power less than 500 HP manufactured on July 1, 2008. Engines with a maximum engine power greater than or equal to 500 HP (except lean burn engines greater than or equal to 500 HP and less than 1,350 HP) and a date of manufacture prior to July 1, 2007 must comply with the emission standards specified in paragraph (e) of this section for stationary landfill/digester gas ICE with a maximum engine power greater than or equal to 500 HP (except lean burn engines greater than or equal to 500 HP and less than 1,350 HP) manufactured on July 1, 2007. Lean burn engines greater than or equal to 500 HP and less than 1,350 HP with a date of manufacture prior to January 1, 2008 must comply with the emission standards specified in paragraph (e) of this section for stationary landfill/digester gas ICE that are lean burn engines greater than or equal to 500 HP and less than 1,350 HP and manufactured on January 1, 2008.

* * * * *

24. Section 60.4241 is amended by revising the first sentence in paragraph (b) to read as follows:

§ 60.4241 What are my compliance requirements if I am a manufacturer of stationary SI internal combustion engines participating in the voluntary certification program?

* * * * *

(b) Manufacturers of engines other than those certified to standards in 40 CFR part 90 or 40 CFR part 1054 must certify their stationary SI ICE using the certification procedures required in 40 CFR part 1048, subpart C, and must follow the same test procedures that apply to large SI nonroad engines under 40 CFR part 1048, but must use the D–1 cycle of International Organization of Standardization 8178–4: 1996(E) (incorporated by reference, *see* 40 CFR 60.17) or the test cycle requirements specified in Table 3 to 40 CFR 1048.505, except that Table 3 of 40 CFR 1048.505 applies to high load engines only. * * *

* * * * *

25. Section 60.4243 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (a)(1);

c. Revising paragraph (d); and

d. Adding paragraph (i) to read as follows:

§ 60.4243 What are my compliance requirements if I am an owner or operator of a stationary SI internal combustion engine?

(a) If you are an owner or operator of a stationary SI internal combustion engine that is manufactured after July 1, 2008, and must comply with the emission standards specified in § 60.4233(a) through (c), you must comply by purchasing an engine certified to the emission standards in § 60.4231(a) through (c), as applicable, for the same engine class and maximum engine power. In addition, you must meet one of the requirements specified in (a)(1) and (2) of this section.

(1) If you operate and maintain the certified stationary SI internal combustion engine and control device according to the manufacturer's emission-related written instructions, you must keep records of conducted maintenance to demonstrate compliance, but no performance testing is required if you are an owner or operator. You must also meet the requirements as specified in 40 CFR part 1068, subparts A through D, as they apply to you. If you adjust engine settings according to and consistent with the manufacturer's instructions, your stationary SI internal combustion engine will not be considered out of compliance.

* * * * *

(d) If you own or operate an emergency stationary ICE, you must

operate the engine according to the conditions described in paragraphs (d)(1) through (4) of this section.

(1) For owners and operators of emergency ICE, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for 50 hours per year, as permitted in this section, is prohibited.

(2) There is no time limit on the use of emergency stationary ICE in emergency situations.

(3) You may operate your emergency stationary ICE for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by Federal, State or local government, the manufacturer, the vendor, or the insurance company associated with the engine. Maintenance checks and readiness testing of such units is limited to 100 hours per year. The owner or operator may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that Federal, State, or local standards require maintenance and testing of emergency ICE beyond 100 hours per year.

(4) You may operate your emergency stationary ICE up to 50 hours per year in non-emergency situations, but those 50 hours are counted towards the 100 hours per year provided for maintenance and testing. The 50 hours per year for non-emergency situations cannot be used for peak shaving or to generate income for a facility to supply power to an electric grid or otherwise supply power as part of a financial arrangement with another entity; except that owners and operators may operate the emergency engine for a maximum of 15 hours per year as part of a demand response program if the regional transmission organization or equivalent balancing authority and transmission operator has determined there are emergency conditions that could lead to a potential electrical blackout, such as unusually low frequency, equipment overload, capacity or energy deficiency, or unacceptable voltage level. The engine may not be operated for more than 30 minutes prior to the time when the emergency condition is expected to occur, and the engine operation must be terminated immediately after the facility is notified that the emergency condition is no longer imminent. The 15 hours per year of demand response operation are counted as part of the 50 hours of operation per year provided for non-emergency situations. The supply of emergency power to another entity or entities pursuant to financial arrangement is not limited by this paragraph (d)(4), as long as the power provided by the financial arrangement is limited to emergency power.

* * * * *

(i) If you are an owner or operator of a modified or reconstructed stationary SI internal combustion engine and must comply with the emission standards specified in § 60.4233(f), you must demonstrate compliance according to one of the methods specified in paragraphs (i)(1) or (2) of this section.

(1) Purchasing, or otherwise owning or operating, an engine certified to the emission standards in § 60.4233(f), as applicable.

(2) Conducting a performance test to demonstrate initial compliance with the emission standards according to the requirements specified in § 60.4244. The test must be conducted within 60 days after the engine commences operation after the modification or reconstruction.

26. Section 60.4248 is amended by:

a. Revising the definition of "Certified emissions life";

b. Adding a definition for "Date of manufacture" in alphabetical order;

c. Revising the definition of "Emergency stationary internal combustion engine";

d. Adding a definition for "Freshly manufactured engine" in alphabetical order;

e. Adding a definition for "Installed" in alphabetical order;

f. Revising the definition of "Model year";

g. Adding a definition of "Reconstruct" in alphabetical order;

h. Revising the definition of "Stationary internal combustion engine"; and

i. Revising the definition of "Stationary internal combustion engine test cell/stand" to read as follows:

§ 60.4248 What definitions apply to this subpart?

* * * * *

Certified emissions life means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years, whichever comes first. The values for certified emissions life for stationary SI ICE with a maximum engine power less than or equal to 19 KW (25 HP) are given in 40 CFR 90.105, 40 CFR 1054.107, and 40 CFR 1060.101, as appropriate. The values for certified emissions life for stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) certified to 40 CFR part 1048 are given in 40 CFR 1048.101(g). The certified emissions life for stationary SI ICE with a maximum engine power greater than 75 KW (100 HP) certified under the voluntary manufacturer certification program of this subpart is 5,000 hours or 7 years, whichever comes first. You may request in your application for certification that we approve a shorter certified emissions life for an engine family. We may approve a shorter certified emissions life, in hours of engine operation but not in years, if we determine that these engines will rarely operate longer than the shorter certified emissions life. If engines identical to those in the engine family have already been produced and are in use, your demonstration must include documentation from such in-use engines. In other cases, your demonstration must include an engineering analysis of information equivalent to such in-use data, such as data from research engines or similar engine models that are already in production. Your demonstration must also include any overhaul interval that you recommend, any mechanical warranty that you offer for the engine or its components, and any relevant customer design specifications. Your demonstration may include any other relevant information. The certified emissions life value may not be shorter than any of the following:

(1) 1,000 hours of operation.

(2) Your recommended overhaul interval.

(3) Your mechanical warranty for the engine.

* * * * *

Date of manufacture means one of the following things:

(1) For freshly manufactured engines and modified engines, date of manufacture means the date the engine is originally produced.

(2) For reconstructed engines, date of manufacture means the date the engine was originally produced, except as specified in paragraph (3) of this definition.

(3) Reconstructed engines are assigned a new date of manufacture if the crankshaft is removed as part of the reconstruction or if the fixed capital cost of the new and refurbished components exceeds 75 percent of the fixed capital cost of a comparable new engine (*see* the definition of "reconstruct"). An engine that is produced from a previously used engine block does not retain the date of manufacture of the engine in which the engine block was previously used if the engine serial number was removed (or the engine otherwise loses its identity), or the engine is produced using all new components except for the engine block.

In all these cases, the date of manufacture is the date of reconstruction or the date the new engine is produced.

* * * * *

Emergency stationary internal combustion engine means any stationary internal combustion engine whose operation is limited to emergency situations and required testing and maintenance. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, *etc.* Stationary SI ICE used for peak shaving are not considered emergency stationary ICE. Stationary SI ICE used to supply power to an electric grid or that supply non-emergency power as part of a financial arrangement with another entity are not considered to be emergency engines, except as permitted under § 60.4243(d).

* * * * *

Freshly manufactured engine means an engine that has not been placed into service. An engine becomes freshly manufactured when it is originally produced. Note that this includes an engine that is produced using some previously used parts if it does not retain its original identity.

* * * * *

Installed means the engine is placed and secured at the location where it is intended to be operated; piping and wiring for exhaust, fuel, controls, *etc.,* is installed and all connections are made; and the engine is capable of being started.

* * * * *

Model year means the calendar year in which an engine is manufactured (*see* "date of manufacture"), except as follows:

(1) Model year means the annual new model production period of the engine manufacturer in which an engine is manufactured (*see* "date of manufacture"), if the annual new model production period is different than the calendar year and includes January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For an engine that is converted to a stationary engine after being placed into service as a nonroad or other non-stationary engine, model year means the calendar year or new model production period in which the engine was manufactured (*see* "date of manufacture").

* * * * *

Reconstruct means to replace or refurbish components of an existing engine to such an extent that the fixed capital cost of the new and refurbished components exceeds 50 percent of the fixed capital cost of a comparable new engine. The fixed capital cost of the new and refurbished components includes the capital cost of each component plus the labor cost for the replacement or refurbishment. For purposes of reconstruction, an existing stationary engine is defined as including those components mounted to or within the cylinder block, the engine housings, and engine mounted components, but excluding ancillary components such as external cooling for fuel supply.

* * * * *

Stationary internal combustion engine means any internal combustion engine, except combustion turbines, that converts heat energy into mechanical work and is not mobile. Stationary ICE differ from mobile ICE in that a stationary internal combustion engine is not a nonroad engine as defined at 40 CFR 1068.30 (excluding paragraph (2)(ii) of that definition), and is not used to propel a motor vehicle, aircraft, or a vehicle used solely for competition. Stationary ICE include reciprocating ICE, rotary ICE, and other ICE, except combustion turbines.

Stationary internal combustion engine test cell/stand means an engine test cell/stand, as defined in 40 CFR part 63 subpart PPPPP, that tests stationary ICE.

* * * * *

27. Table 2 to Subpart JJJJ of Part 60 is revised to read as follows:

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS

[As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load:]

For each	Complying with the requirement to	You must	Using	According to the following requirements
1. Stationary SI internal combustion engine demonstrating compliance according to § 60.4244.	a. Limit the concentration of NO_X in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, Appendix A or ASTM Method D6522–00(2005) [a].	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A or ASTM Method D6522–00(2005) [a].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for NO_X concentration.
		iii. Determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 19 of 40 CFR part 60.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, *see* § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for NO_X concentration.

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load:]

For each	Complying with the requirement to	You must	Using	According to the following requirements
		v. Measure NO_X at the exhaust of the stationary internal combustion engine	(5) Method 7E of 40 CFR part 60, appendix A, Method D6522–00(2005),[a] Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, *see* § 60.17).	(d) Results of this test consist of the average of the three 1-hour or longer runs.
	b. Limit the concentration of CO in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, Appendix A or ASTM Method D6522–00(2005) [a].	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A or ASTM Method D6522–00(2005) [a].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for CO concentration.
		iii. Determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 19 of 40 CFR part 60.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, *see* § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for CO concentration.
		v. Measure CO at the exhaust of the stationary internal combustion engine	(5) Method 10 of 40 CFR part 60, appendix A, ASTM Method D6522–00(2005),[a] Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, *see* § 60.17).	(d) Results of this test consist of the average of the three 1-hour or longer runs.
	c. Limit the concentration of VOC in the stationary SI internal combustion engine exhaust.	i. Select the sampling port location and the number of traverse points;	(1) Method 1 or 1A of 40 CFR part 60, Appendix A.	(a) If using a control device, the sampling site must be located at the outlet of the control device.
		ii. Determine the O_2 concentration of the stationary internal combustion engine exhaust at the sampling port location;	(2) Method 3, 3A, or 3B [b] of 40 CFR part 60, appendix A or ASTM Method D6522–00(2005) [a].	(b) Measurements to determine O_2 concentration must be made at the same time as the measurements for VOC concentration.
		iii. Determine the exhaust flowrate of the stationary internal combustion engine exhaust;	(3) Method 2 or 19 of 40 CFR part 60.	
		iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and	(4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, *see* § 60.17).	(c) Measurements to determine moisture must be made at the same time as the measurement for VOC concentration.

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

[As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load:]

For each	Complying with the requirement to	You must	Using	According to the following requirements
		v. Measure VOC at the exhaust of the stationary internal combustion engine	(5) Methods 25A and 18 of 40 CFR part 60, appendix A, Method 25A with the use of a methane cutter as described in 40 CFR 1065.265, Method 18 or 40 CFR part 60, appendix A[c d], Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, *see* § 60.17).	(d) Results of this test consist of the average of the three 1-hour or longer runs.

28. Table 3 to Subpart JJJJ of Part 60 is revised to read as follows:

TABLE 3 TO SUBPART JJJJ OF PART 60—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJJ

[As stated in § 60.4246, you must comply with the following applicable General Provisions]

General provisions citation	Subject of citation	Applies to subpart	Explanation
§ 60.1	General applicability of the General Provisions.	Yes.	
§ 60.2	Definitions	Yes	Additional terms defined in § 60.4248.
§ 60.3	Units and abbreviations	Yes.	
§ 60.4	Address	Yes.	
§ 60.5	Determination of construction or modification.	Yes.	
§ 60.6	Review of plans	Yes.	
§ 60.7	Notification and Recordkeeping	Yes	Except that § 60.7 only applies as specified in § 60.4245.
§ 60.8	Performance tests	Yes	Except that § 60.8 only applies to owners and operators who are subject to performance testing in subpart JJJJ.
§ 60.9	Availability of information	Yes.	
§ 60.10	State Authority	Yes.	
§ 60.11	Compliance with standards and maintenance requirements.	Yes	Requirements are specified in subpart JJJJ.
§ 60.12	Circumvention	Yes.	
§ 60.13	Monitoring requirements	No.	
§ 60.14	Modification	Yes.	
§ 60.15(a)	Reconstruction	Yes.	
§ 60.15(b)–(c)	Reconstruction	No	For purposes of this subpart, reconstruct is defined in § 60.4248
§ 60.15(d)–(g)	Reconstruction	Yes.	
§ 60.16	Priority list	Yes.	
§ 60.17	Incorporations by reference	Yes.	
§ 60.18	General control device requirements	No.	
§ 60.19	General notification and reporting requirements.	Yes.	

PART 1039 —[AMENDED]

29. The authority citation for part 1039 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

30. Section 1039.20 is amended by revising paragraph (a) introductory text and paragraph (c) to read as follows:

§ 1039.20 What requirements from this part apply to excluded stationary engines?

* * * * *

(a) You must add a permanent label or tag to each new engine you produce or import that is excluded under § 1039.1(c) as a stationary engine and is not required by 40 CFR part 60, subpart IIII, to meet the requirements of this part 1039, or the requirements of parts 89, 94 or 1042, that are equivalent to the requirements applicable to marine or land-based nonroad engines for the same model year. To meet labeling requirements, you must do the following things:

* * * * *

(c) Stationary engines required by 40 CFR part 60, subpart IIII, to meet the requirements of this part 1039, or part

89, 94 or 1042, must meet the labeling requirements of 40 CFR 60.4210.

PART 1042 —[AMENDED]

31. The authority citation for part 1042 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

32. Section 1042.1 is amended by adding paragraph (h) to read as follows:

§ 1042.1 Applicability

* * * * *

(h) Starting with the model years noted in Table 1 of this section, all of the subparts of this part, except subpart I, apply as specified in 40 CFR part 60, subpart IIII, to freshly manufactured stationary compression-ignition engines subject to the standards of 40 CFR part 60, subpart IIII, that have a per-cylinder displacement at or above 10 liters and below 30 liters per cylinder. Such engines are considered Category 2 engines for purposes of this part 1042.

PART 1065—[AMENDED]

33. The authority citation for part 1065 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

34. Section 1065.1 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 1065.1 Applicability

(a) * * *

(3) Nonroad diesel engines we regulate under 40 CFR part 1039 and stationary compression-ignition engines that are certified to the standards in 40 CFR part 1039, as specified in 40 CFR part 60, subpart IIII. For earlier model years, manufacturers may use the test procedures in this part or those specified in 40 CFR part 89 according to § 1065.10.

(4) Marine diesel engines we regulate under 40 CFR part 1042 and stationary compression-ignition engines that are certified to the standards in 40 CFR part 1042, as specified in 40 CFR part 60, subpart IIII. For earlier model years, manufacturers may use the test procedures in this part or those specified in 40 CFR part 94 according to § 1065.10.

* * * * *

PART 1068—[AMENDED]

35. The authority citation for part 1068 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

36. Section 1068.1 is amended by revising paragraph (a)(3) to read as follows:

§ 1068.1 Does this part apply to me?

(a) * * *

(3) Stationary compression-ignition engines certified using the provisions of 40 CFR parts 1039 or 1042, as indicated in 40 CFR part 60, subpart IIII.

* * * * *

[FR Doc. 2010–12911 Filed 6–7–10; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
June 8, 2010

Part IV

Department of Defense

Defense Acquisition Regulations System

48 CFR Part 216, 217, 225, et al.
Defense Federal Acquisition Regulation Supplements; Proposed Rules and Rules

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AG60

Defense Acquisition Regulations System; Defense Federal Acquisition Regulation Supplement; Balance of Payments Program Exemption for Commercial Information Technology—Construction Material (DFARS Case 2009–D041)

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

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the exemption from the Balance of Payments Program for construction material that is commercial information technology.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 9, 2010, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D041, using any of the following methods:

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

E-mail: dfars@osd.mil. Include DFARS Case 2009–D041 in the subject line of the message.

Fax: (703) 602–0350.

Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

DoD is proposing to amend the DFARS to implement in the clauses at 252.225–7044, Balance of Payments Program—Construction Material, and 252.225–7045, Balance of Payments Program—Construction Material under Trade Agreements, the exemption from the Balance of Payments Program for construction material that is commercial information technology. This exemption was added to the policy at DFARS 225.7501(a)(2)(vi) under FAR Case 2005–D011, to correspond to the exemption from the Buy American Act provided in annual appropriations acts since fiscal year 2004, because the Balance of Payments Program is an extension of the requirements of the Buy American Act to supplies or construction material to be used overseas. However, although the policy stated that it could apply to supplies or construction material, it was only implemented with regard to acquisition of supplies. This rule proposes to make the Balance of Payments Program construction clauses consistent with the stated policy.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule does not impose economic burdens on contractors. The purpose and effect of this rule is to clarify the use of several terms. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D041) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the proposed rule contains no information collection requirements.

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 252 as follows:

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Amend section 252.225–7044 by revising the clause date, redesignating paragraph (b)(2) as paragraph (b)(3), and adding new paragraph (b)(2) to read as follows:

252.225–7044 Balance of Payments Program—Construction Material.

* * * * *

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL (DATE)

* * * * *

(b) * * *

(2) Information technology that is a commercial item; or

* * * * *

3. Amend section 252.225–7045 by revising the clause date; redesignating paragraph (c)(2) as paragraph (c)(3); adding new paragraph (c)(2); revising the date of ALTERNATE I; redesignating paragraph (c)(2) of ALTERNATE I as paragraph (c)(3); and adding new paragraph (c)(2) to ALTERNATE I to read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (DATE)

* * * * *

(c) * * *

(2) Information technology that is a commercial item; or

* * * * *

ALTERNATE I (DATE). * * *

* * * * *

(c) * * *

(2) Information technology that is a commercial item; or

* * * * *

[FR Doc. 2010–13522 Filed 6–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750–AG59

Defense Federal Acquisition Regulation Supplement; Trade Agreements Thresholds (DFARS Case 2009–D040)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: *Effective Date:* June 8, 2010.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 9, 2010 to be considered in the formulation of the final rule.

ADDRESSSES: You may submit comments, identified by DFARS Case 2009–D040, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *E-mail:* dfars@osd.mil. Include DFARS Case 2009–D040 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the clause prescriptions at DFARS 225.1101 and 225.7503 to reflect increased thresholds for application of the trade agreements. Every two years, the trade agreements thresholds are escalated according to a pre-determined formula set forth in the agreements. The United States Trade Representative has specified the following new thresholds (74 FR 68907, December 29, 2009):

Trade Agreement	Supply contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$203,000	$7,804,000
FTAs:		
Australia FTA	70,079	7,804,000
Bahrain FTA	203,000	9,110,318
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	70,079	7,804,000
Chile FTA	70,079	7,804,000
Morocco FTA	203,000	7,804,000
NAFTA:		
—Canada	25,000	9,110,318
—Mexico	70,079	9,110,318
Peru FTA	203,000	7,804,000
Singapore FTA	70,079	7,804,000

This rule was subject to Office of Management and Budget review under Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the dollar threshold changes are designed to keep pace with inflation and thus maintain the status quo. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D040) in correspondence.

C. Paperwork Reduction Act

This interim rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229. However, there is no impact on the estimated burden hours. The dollar threshold changes are in line with inflation and maintain the status quo.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule incorporates increased dollar thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. This action is necessary because the increased thresholds were effective January 1, 2010. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 225

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN CONTRACTING

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

225.1101 [Amended]

■ 2. Section 225.1101 is amended in paragraph (11)(i) introductory text by removing "$194,000" and adding in its place "$203,000"; and in paragraphs (11)(i)(A) and (11)(i)(B) by removing "$67,826" and adding in its place "$70,079".

225.7503 [Amended]

■ 3. Section 225.7503 is amended in paragraph (a) by removing "$7,443,000" and adding in its place "$7,804,000"; and in paragraph (b) by removing "$7,443,000" and adding in its place "$7,804,000", and by removing "$8,817,449" and adding in its place "$9,110,318".

[FR Doc. 2010–13523 Filed 6–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 217 and 234

Defense Federal Acquisition Regulation Supplement; Contract Authority for Advanced Component Development or Prototype Units (DFARS Case 2009–D034)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 819 of the National Defense Authorization Act for Fiscal Year 2010. Section 819 places limitations on certain types of line items and contract options that may be included in contracts initially awarded pursuant to competitive solicitations. When the prohibition applies, it limits the dollar value, period of performance, and time for exercise of such contract line items or contract options.

DATES: *Effective Date:* June 8, 2010.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 9, 2010, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2009–D034, using any of the following methods:

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

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2009–D034 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 703–602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

This DFARS case implements section 819 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84, enacted October 28, 2009). Section 819 is entitled "Contract Authority for Advanced Component Development or Prototype Units."

Section 819 is intended to prevent a contract for new technology that is initially awarded as a result of competition from becoming a noncompetitive effort for the development of advanced components or the procurement of prototype units. To do so, section 819 places limitations on the (a) Dollar value, (b) period of performance, and (c) time for exercise of contract line items or contract options for advanced component development or procurement of prototype items. Specifically, the contract line item or contract option must be limited to the minimal amount of initial or additional prototype items that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items. The term of the contract line item or contract option cannot be for a period longer than 12 months, and the dollar value of the work to be performed pursuant to the contract line item or contract option may not exceed the lesser of the amount that is three times the dollar value of the work previously performed under the contract or $20 million.

Because the coverage is most likely to apply to major systems acquisitions, it has been added as a new DFARS subsection 234.005–1, entitled "Competition." However, because the language applies to the exercise and content of certain contract options, a reference to 234.005–1 has been added to DFARS 217.202, entitled "Use of Options."

This is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

DoD does not expect that this interim rule will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional requirements on small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D034) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C., *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD) that urgent and compelling circumstances exist to promulgate this interim rule without prior opportunity for public comments. This action is necessary because section 819 of the National Defense Authorization Act for Fiscal Year 2010 became effective upon enactment on October 28, 2009. Section 819 places limitations on certain types of line items and contract options that may be included in contracts initially awarded pursuant to competitive solicitations. In order to prevent a contract for new technology that is initially awarded as a result of competition from becoming a noncompetitive effort for the development of advanced components or procurement of prototype units, it is necessary to publish this rule as an interim rule prior to affording the public an opportunity to comment. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 217 and 234

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 217 and 234 are amended as follows:

■ 1. The authority citation for 48 CFR parts 217 and 234 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

■ 2. Section 217.202 is revised as follows:

217.202 Use of options.

(1) See PGI 217.202 for guidance on the use of options.

(2) See 234.005–1 for limitations on the use of contract options for the provision of advanced component development or prototype of technology developed under the contract or the delivery of initial or additional prototype items.

PART 234—MAJOR SYSTEM ACQUISITION

■ 3. Section 234.005–1 is added to read as follows:

234.005–1 Competition.

(1) A contract that is initially awarded from the competitive selection of a proposal resulting from a general solicitation may contain a contract line item or contract option for the provision of advanced component development or prototype of technology developed under the contract or the delivery of initial or additional prototype items if the item or a prototype thereof is created as the result of work performed under the contract only when it adheres to the following limitations:

(i) The contract line item or contract option shall be limited to the minimal amount of initial or additional prototype items that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items.

(ii) The term of the contract line item or contract option shall be for not more than 12 months.

(iii) The dollar value of the work to be performed pursuant to the contract line item or contract option shall not exceed the lesser of—

(A) The amount that is three times the dollar value of the work previously performed under the contract; or

(B) $20 million.

(2) A contract line item or contract option may not be exercised under this authority after September 30, 2014.

[FR Doc. 2010–13524 Filed 6–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

RIN 0750–AG67

Defense Federal Acquisition Regulation Supplement; Limitations on Procurements With Non-Defense Agencies (DFARS Case 2009–D027)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD is issuing an interim rule to implement section 806 of the National Defense Authorization Act for Fiscal Year 2010 authorizing the placing of contracts for property and services in excess of the simplified acquisition threshold by certain non-DoD agencies for the performance of a joint program conducted to meet the needs of DoD and the non-DoD agency.

DATES: *Effective Date:* June 8, 2010.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before August 9, 2010, to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by DFARS Case 2009–D027, using any of the following methods:

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

○ *E-mail: dfars@osd.mil*. Include DFARS Case 2009–D027 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Meredith Murphy, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Telephone 703–602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375) prescribed policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies. Section 801(b) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) authorized a DoD acquisition official to procure property and services in excess of the simplified acquisition threshold through a non-DoD agency only if: (1) The non-DoD agency agreed to adhere to defense procurement requirements; or (2) the Under Secretary of Defense (AT&L) certified that the procurement is in the best interest of DoD.

Section 806 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) amended the limitations placed on procurements by non-DoD agencies by exempting such procurements that are (a) entered into by a non-DoD agency that is an element of the intelligence community and (b) when the procurement is for the performance of a joint program conducted to meet the needs of DoD and the non-DoD agency. Section 806 referred to section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) to identify non-DoD agencies that are an element of the intelligence community.

B. Discussion

The National Security Act of 1947 defines the term "intelligence community" to include a number of defense and non-defense agencies and portions of such agencies. The definition of "non-DoD agency that is an element of the intelligence community" replicates the statutory list, absent the DoD agencies.

DFARS subpart 217.78 is amended by adding the definition at 217.7801 and excluding such agencies from the requirements of 217.7802(a) when the procurement is for performance of a joint program conducted to meet the needs of DoD and the non-DoD agency.

This is not a significant regulatory action, and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 604.

C. Regulatory Flexibility Act

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because section 806 affects only internal

government operations and procedures. The interim rule does not impose any additional requirements on small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009–D027) in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the DFARS do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the statute became effective upon enactment, and it is imperative that DoD contracting officers be aware of the limitations on interagency procurements and the circumstances under which certain programs need not be delayed by such limitations. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 217

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 217 is amended as follows:

PART 217—SPECIAL CONTRACTING METHODS

■ 1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

■ 2. Section 217.7800 is amended by revising paragraph (a) to read as follows:

217.7800 Scope of subpart.

* * * * *

(a) Implements section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375), section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), and section 806 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84); and

* * * * *

■ 3. Section 217.7801 is amended by adding the following definition in appropriate alphabetical order:

217.7801 Definitions.

* * * * *

Non-DoD agency that is an element of the intelligence community means the Office of the Director of National Intelligence; the Central Intelligence Agency; the intelligence elements of the Federal Bureau of Investigation; the intelligence elements of the Department of Energy; the Bureau of Intelligence and Research of the Department of State; the Office of Intelligence and Analysis of the Department of the Treasury; and the elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

■ 4. Section 217.7802 is amended by adding paragraph (a)(3) to read as follows:

217.7802 Policy.

(a) * * *

(3) The limitation in paragraph (a) of this section does not apply to contracts entered into by a non-DoD agency that is an element of the intelligence community for the performance of a joint program conducted to meet the needs of DoD and the non-DoD agency.

* * * * *

[FR Doc. 2010–13525 filed 6–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[DFARS Case 2009–D022]

Defense Federal Acquisition Regulation Supplement; Finland—Public Interest Exception to the Buy American Act

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

ACTION: Final rule.

SUMMARY: DoD is issuing this final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect a determination of the Secretary of Defense that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of articles, materials, and supplies produced or manufactured in Finland.

DATES: *Effective Date:* June 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

A reciprocal defense procurement memorandum of understanding (RDP MOU) between the government of Finland and the Government of the United States has been in effect since 1991. The governments have negotiated and concluded a new RDP MOU to provide an updated basis for continued cooperation in defense procurement. The RDP MOU provides that, in relation to defense procurement, each country will accord to the industries of the other country treatment no less favorable than that accorded to its own industries, to the extent consistent with its laws, regulations, and international obligations.

The reciprocal opportunities that the RDP MOU affords to the governments and their defense industries enhances mutual military readiness and promotes standardization and interoperability of equipment between the armed forces of the two countries. Therefore, DoD has made a blanket determination that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of articles, materials, and supplies produced or manufactured in Finland.

DoD is issuing this rule as a final rule because this rule does not have a significant effect beyond the internal operating procedures of DoD and does not have a significant cost or administrative impact on contractors or offerors. Therefore, public comment is not required in accordance with 41 U.S.C. 418b(a).

"Qualifying country" is defined at 225.003(10). The status as a qualifying country entitles these countries to various benefits, both as a matter of DoD policy and as legislated by Congress. The evaluation procedures at DFARS subpart 225.5 treat all qualifying country end products equally. Finland is a qualifying country, as listed at 225.003(10), entitled to all these benefits. However, at DFARS 225.872–1, the qualifying countries are divided into two lists. Most are listed in paragraph (a), but a few are listed in paragraph (b). For the countries in paragraph (a), DoD has already made a blanket

determination of the inapplicability of the Buy American Act to the acquisition of end products from that country. There is only one effect of a country being listed in paragraph (b). Although the evaluation procedures are the same, regardless of which paragraph a country is listed in, if an end product is from a country listed in paragraph (b), when purchasing the end product, the contracting officer has to prepare an individual determination and finding that the end product is exempt from application of the Buy American Act. Over time, the qualifying countries in paragraph (b) are moved to paragraph (a) when all the conditions for arriving at a blanket determination are met.

This final rule implements the recent blanket determination by USD(AT&L) at DFARS 225.872–1 by removing Finland from the list of qualifying countries in paragraph (b) and adding Finland to the list of qualifying countries in paragraph (a). This means that the contracting officer no longer needs to prepare an individual determination and findings when making an award to an offeror of an end product from Finland. However, since Finland is a qualifying country, this was a routine paperwork requirement, and the removal of this requirement only impacts the internal operating procedures of the Government.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and public comment is not required in accordance with 41 U.S.C. 418b(a).

C. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 225

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

■ 2. Section 225.872–1 is amended by revising paragraphs (a) and (b) to read as follows:

225.872–1 General.

(a) As a result of memoranda of understanding and other international agreements, DoD has determined it inconsistent with the public interest to apply restrictions of the Buy American Act or the Balance of Payments Program to the acquisition of qualifying country end products from the following qualifying countries:

Australia
Belgium
Canada
Denmark
Egypt
Federal Republic of Germany
Finland
France
Greece
Israel
Italy
Luxembourg
Netherlands
Norway
Portugal
Spain
Sweden
Switzerland
Turkey
United Kingdom of Great Britain and Northern Ireland.

(b) Individual acquisitions of qualifying country end products from the following qualifying country may, on a purchase-by-purchase basis (see 225.872–4), be exempted from application of the Buy American Act and the Balance of Payments Program as inconsistent with the public interest:
Austria

* * * * *

[FR Doc. 2010–13526 Filed 6–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

Defense Federal Acquisition Regulation Supplement; Letter Contract Definitization Schedule (DFARS Case 2007–D011)

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

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, a proposed rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements regarding definitization of letter contracts. The rule specifies that DoD letter contracts will be definitized using the DFARS procedures applicable to all other undefinitized contract actions.

DATES: *Effective Date:* June 8, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD(AT&L) DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060. Telephone 703–602–8383; facsimile 703–602–0350. Please cite DFARS Case 2007–D011.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published a proposed rule at 74 FR 34292 on July 15, 2009, to clarify requirements regarding definitization of letter contracts. The period for public comment closed on September 14, 2009. The differences between section 16.603 of the Federal Acquisition Regulation (FAR) and DFARS subpart 217.74 definitization requirements confused the acquisition community. This final rule clarifies at DFARS 216.603–2(c)(3) that the definitization requirements at DFARS 217.7404–3(a) apply to DoD letter contracts instead of the requirements at FAR 16.603–2(c)(3). This approach provides consistency in the manner in which DoD manages its undefinitized contract actions, and is in line with the specific provisions of 10 U.S.C. 2326 relating to DoD use of undefinitized contract actions.

DoD received no comments on the proposed rule. Therefore, DoD is finalizing the proposed rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule.

B. Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it clarifies existing requirements pertaining to undefinitized contract actions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 216

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 216 is amended as follows:

PART 216—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR part 216 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

■ 2. Section 216.603–2 is added to read as follows:

216.603–2 Application.

(c)(3) In accordance with 10 U.S.C. 2326, establish definitization schedules for letter contracts following the requirements at 217.7404–3(a) instead of the requirements at FAR 16.603–2(c)(3).

[FR Doc. 2010–13527 Filed 6–7–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 228, 231, and 252

RIN 0750–AF72

Defense Federal Acquisition Regulation Supplement; Ground and Flight Risk Clause (DFARS Case 2007–D009)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise and combine contract clauses addressing assumption of risk of loss under contracts that furnish aircraft to the Government. The final rule establishes requirements that apply consistently to all contract types.

DATES: *Effective Date:* June 8, 2010.

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

SUPPLEMENTARY INFORMATION:

A. Background

The DFARS clauses at 252.228–7001, Ground and Flight Risk, and 252.228–7002, Aircraft Flight Risk, are presently used in contracts that involve the furnishing of aircraft to the Government. The clause at 252.228–7001 is used in negotiated fixed-price contracts, and the clause at 252.228–7002 is used in cost-reimbursement contracts. A proposed rule was published in the **Federal Register** at 72 FR 69177 on December 7, 2007. This final rule revises and combines the two clauses into a single ground and flight risk clause, applying requirements consistently to all contract types. In addition, a new subsection is added at DFARS 231.205–19 to explain the treatment of insurance costs under the new clause and all similar clauses.

The final rule changes include—

○ Applying the clause to all contracts for the purchase, development, production, maintenance, repair, flight, or overhaul of aircraft, with exceptions for contracts for activities incidental to the normal operations of aircraft, FAR Part 12 contracts, and contracts where a non-DoD customer has declined to accept the risk of loss for its aircraft asset;

○ Adding a requirement for inclusion of the clause in subcontracts at all tiers;

○ Adding a statement that the Government property clause is not applicable if the Government withdraws its self-insurance coverage;

○ Adding a statement that commercial insurance costs or self-insurance charges that duplicate the Government's self- insurance are unallowable; and

○ Establishing a share of loss for the contractor that is the lesser of $100,000 or twenty percent of the estimated contract cost or price. This is consistent with the contractor's share of loss presently specified in the clause at 252.228–7002. The clause at 252.228–7001 presently prescribes a share of loss of $25,000 for the contractor.

B. Public Comments

Three respondents submitted comments on the proposed rule. Specific comments received are addressed in paragraphs 1 through 8 of this section.

1. Applicability

Comment: The respondent recommended adding an additional exception to the requirement for inclusion of the Ground and Flight Risk clause by inserting a new paragraph (b)(1)(iv) in DFARS 228.370 to read: "For Commercial Derivative Aircraft that continue to be maintained to FAA Airworthiness Standards and the work will be conducted at a licensed FAA Repair Station."

Response: Commercial Derivative Aircraft are militarized versions of commercial aircraft platforms. Their repair at FAA repair stations most often denotes a commercial services contract. Normal commercial terms and conditions would apply and, thus, payment for insurance and acceptance of FAA standards is appropriate. In addition to adding the recommended new exception, DoD is changing DFARS 228.370(b)(1)(ii) to read: "Awarded under FAR Part 12 for the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft, or otherwise involving the furnishing of aircraft."

2. Compliance

Comment: Two comments addressed potentially confusing language on compliance and the cost of compliance. One respondent indicated that paragraph (b)(2)(iii) of DFARS 228.370 was confusing as to intent and purpose. The respondent was concerned that, when a contracting officer expressly defines "contractor premises," the contractor might be able to avoid compliance with DCMAI 8210.1 (the Joint Instruction) by moving performance to a different location. Another respondent commented that DFARS 228.370 appears to require the Ground and Flight Risk clause for all aircraft, including unmanned aerial vehicles, without taking into account significant variations in size, cost, or vehicle ceiling. The respondent expressed concern that use of the clause constitutes costly overkill in cases of small/micro unmanned aerial vehicles (UAVs).

Response: DoD believes the language is clear and unambiguous as is, and it presents no meaningful basis for a contractor to avoid compliance with the DCMAI 8210.1. The definition of "contractor premises" is applicable solely to the determination of the Government's acceptance of the risk of loss. DFARS 252.228–7001(b) requires the contractor to assure compliance with DCMAI 8210.1 regardless of the location of the aircraft.

With regard to the cost of compliance, DFARS 228.370(b)(2)(i) allows tailoring of the definition of "aircraft" to appropriately cover atypical and "nonconventional" aircraft. If contracting officers wish to omit small/micro UAVs, the clause allows that flexibility. The contracting officer is required to make this determination on a case-by-case basis in coordination with the program office. While the respondent's concerns could be legitimate in some cases, these concerns should be addressed during the preaward phase on an individual contract basis. There is sufficient flexibility in the approval process for the clause to recognize unique requirements or the absence of standard

ground and flight operation requirements for small/micro UAVs.

3. Definitions

Comment: Two respondents expressed concerns in this area. One requested inclusion of a new definition for "temporarily removed," as follows: "Those items removed for the duration of the contracted work with the intent to add the item back to the same aircraft." Another respondent recommended revising the definition of "in the open" so that it includes "located on the Contractor's premises or other places described in the Schedule."

Response: DoD does not believe that it is necessary to define "temporarily removed" because, as long as a removed item retains its relationship with a particular tail number or aircraft, the clause covers the method for determining risk of loss. If an item intended for reinstallation is found to be unsuitable for re-introduction onto the aircraft, it loses its relationship with the aircraft; it will be handled under the property clause from that point forward. DoD declines to revise the definition of "in the open," which is substantially unchanged from prior versions. The respondent's recommended language would significantly expand the Government's acceptance of risk for new production aircraft. It would shift the triggering event for Government liability to the production line and potentially expose the Government to claims for the cost of rework and production mishaps.

4. Conditions Under Which the Government Retains Risk

Comment: Three comments were submitted on this topic. One respondent recommended revising DFARS 252–228.7001(e)(5) to read "Consists of wear and tear; deterioration (including rust and corrosion) * * * (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, *damage caused by or relating to wear and tear or deterioration,* or results from inherent vice (*e.g.,* a known condition or design defect in the property)." As an example of "damage caused by or relating to wear and tear or deterioration," the respondent refers to a situation where a defect in the aircraft allows rain water to enter the aircraft and damage its electronic systems.

In a similar vein, another comment was to change DFARS 252.228–7001(f)(1)(i) to read as follows: "The first $100,000 of loss or damage to aircraft in the open, during operation in flight resulting from each separate event, except for reasonable wear and tear or *deterioration, damage caused by or relating to wear and tear or deterioration, or* to the extent the loss or damage is caused by negligence of Government Personnel." A third comment suggested that the language at DFARS 252.228–7001(e)(6), which provides that the Government does not accept the risk for losses that occur as a result of work on the aircraft unless such losses would have been covered by commercial insurance in the absence of the Ground and Flight Risk clause, is confusing and a source of frequent disputes.

Response: While the contractor should not be liable for reasonable wear and tear, handling of the aircraft to prevent damage related to wear and tear is something within the contractor's control. If rain water is allowed to damage electronics, the contractor has failed to take necessary precautions to store the aircraft under reasonable conditions. The damage may have been avoided via closer intake inspection, storing the aircraft indoors, or covering certain areas to avoid water damage. The recommended change would diminish the contractor's incentive to take timely and appropriate action to protect Government assets, and therefore neither paragraph (e) nor (f) of the clause is changed. DoD also disagrees that the language at paragraph (e)(6) of the clause is confusing; it is unchanged from previous versions of the Ground and Flight Risk clause, and DoD is unaware of any disputes arising from the language.

5. Avoidance of Liability

Comment: Three comments were received on this subject. One respondent expressed concern that the frequent necessity for Government Flight Representatives to approve flight crew members via telephone call or e-mail message may violate the DFARS 252.228–7001(e)(2) requirement for approval "in writing." Also, DFARS 252.228–7001(e)(4) provides that the Government will not accept the liability for losses covered by insurance. The respondent expressed concern that contractors could avoid application of the clause's requirements by purchasing insurance. The respondent recommended inclusion of the following language currently found in DFARS 252.228.7002: "The Contractor shall not be reimbursed for liability to third persons for loss or damage to property, or for death or bodily injury, caused by aircraft during flight unless the flight crew members previously have been approved in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled 'Contractor's Flight and Ground Operations'."

Response: DoD believes that telephonic and e-mail approvals are adequate as long as the Government Flight Representative follows up with a formal written approval as soon as practicable. The language at 252.228–7001(e)(4) is included to prevent a duplicate recovery for a single loss. In no case does the purchase of insurance relieve the contractor of its obligation to comply with the clause requirements. While DoD agrees that contractors should not be reimbursed for third-party liability if the Government Flight Representative had not approved the flight crew members, it does not concur in the respondent's assumption that Government acceptance of third-party liability arises from the cited language in DFARS 252.228–7002, Aircraft Flight Risk. The current language merely establishes a condition precedent to the Government's express acceptance of third-party liability under other provisions of the contract (*e.g.,* FAR 52.228–7, Insurance—Liability to Third Persons). DoD has added a paragraph to the Ground and Flight Risk clause as follows: "To the extent that the Government has accepted such liability under other provisions of this contract, the Contractor shall not be reimbursed for liability to third persons for loss or damage to property, or for death or bodily injury caused by aircraft during flight, unless the flight crew members previously have been approved for this flight in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled 'Contractor's Flight and Ground Operations'."

6. Contractor's Share of Loss

Comment: One respondent recommended revising DFARS 252.228–7001(f) to reduce the maximum share of loss to $50,000 for all contracts. The respondent suggested that the increase may negatively impact small businesses that do not have the resources to absorb an increased share of loss. The respondent also recommended separate language addressing the contractor's share of loss on firm-fixed price contracts and flexibly-priced contracts. Another respondent cited concerns that the use of the phrase "twenty percent of the estimated price or cost of this contract" creates confusion because prices on firm fixed-price contracts are not usually "estimated." The respondent recommended that the language in the current DFARS clause defining the contractor's share of loss on cost-type

contracts as "Twenty percent of the estimated cost of the contract" remain unchanged.

Response: While DoD's review indicates a fairly even split between fixed-price and flexibly-priced aircraft contracts, there is a decided weighting toward flexibly-priced contracts for aircraft repair, overhaul, and maintenance. Such contracts are typically where the bulk of damage arises that results in liability assessments. Therefore, the majority of contracts where liability arises already contain a $100,000 maximum share of loss, consistent with the previous DFARS 252.228–7002 language. Lowering the share of loss on all contracts to $50,000 would produce an inequitable and counter-productive result. Further, DoD disagrees that raising the liability to $100,000 will disproportionately disadvantage small businesses. Most of the small businesses participating in these contracts do so as repair, overhaul, and maintenance prime contractors or as commercial subcontractors.

DoD does not agree that separate language is necessary to address firm- and flexibly-priced contracts. However, DoD is revising the proposed language of DFARS 252.228–7001(f) to clarify the language cited by the respondent and provide guidance for determination of the contractor's share of loss on task or delivery order contracts. The recommended revision defines the contractor's share of loss as the lesser of "(i) the first $100,000 * * *, or (ii) twenty percent of the price or estimated cost of the contract" and adds a statement that "for task order and delivery order contracts, the DoD's share of loss shall be the lesser of $100,000 or twenty percent of the combined total price or estimated cost of those orders to which the clause applies."

7. Compliance With DCMA Regulation

Comment: The respondent expressed concern that DFARS 252.228–7001(b) imposes an absolute requirement for contractor compliance with DCMAI 8210.1, Combined Regulation/Instruction. Under certain circumstances, the respondent claims that imposition of this requirement is inappropriate. The respondent recommends modifying the initial sentence of the paragraph to provide some flexibility, as follows: "Unless specified otherwise in the contract Schedule, the Contractor shall be bound * * *"

Response: The requirement to comply with the Joint Instruction is not a substantive change; paragraph (k) of the existing clause imposes the identical requirement. The Joint Instruction itself provides adequate flexibility to address the commenter's concern. With few exceptions, the Instruction's standard for contractor procedures is simply that they be "safe and effective."

8. Flowdown

Comment: One respondent recommended revising DFARS 252.228–7001(g) to add: "The Contractor is required to ensure that each of its subcontractors also complies with the combined regulation/instruction entitled "Contractor's Flight and Ground Operations." Another respondent, noting that DFARS 228.252–7001(l) requires contractors to assure that subcontractors at all tiers comply with the clause, recommended that the clause provide some flexibility in the imposition of flowdown requirements.

Response: The addition recommended by the first respondent is unnecessary because the effect of the suggested change is already provided for at DFARS 252.228–7001(b), Combined Regulation/Instruction, which requires flowdown to subcontracts at all tiers.

As to providing flexibility in the flowdown requirement, DoD considers the Joint Instruction itself to provide adequate flexibility to address the commenter's concern. With few exceptions, the Instruction's standard for contractor procedures is simply that they be "safe and effective." Any subcontractor in possession or control of a Government aircraft should have "safe and effective" procedures in place.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the individual specified in the contact-information section of this notice. The analysis is summarized as follows:

The objective of the rule is to clearly and consistently address the responsibilities of the Government and the contractor with regard to incidents that may occur under contracts involving the furnishing of aircraft to the Government. The rule applies to DoD contractors and their subcontractors under contracts for the acquisition, development, production, or servicing of aircraft. Excluded are contracts for activities strictly incidental to the normal operations of an aircraft; contracts awarded under FAR Part 12, Acquisition of Commercial Items; and contracts where a non-DoD customer does not assume risk for loss of or damage to the aircraft. The impact on small entities is expected to be minimal based on the fact that most contractors engaged in this type of business have historically been large businesses.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 228, 231, and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 228, 231, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 228, 231, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 228—BONDS AND INSURANCE

■ 2. Section 228.370 is amended as follows:

■ a. By revising paragraph (b);

■ b. By removing paragraph (c); and

■ c. By redesignating paragraphs (d) through (f) as paragraphs (c) through (e) respectively.

The revised text reads as follows:

228.370 Additional clauses.

* * * * *

(b)(1) Use the clause at 252.228–7001, Ground and Flight Risk, in all solicitations and contracts for the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft, except those solicitations and contracts—

(i) That are strictly for activities incidental to the normal operations of the aircraft (*e.g.,* refueling operations, minor non-structural actions not requiring towing such as replacing aircraft tires due to wear and tear);

(ii) That are awarded under FAR Part 12 procedures and are for the development, production, modification, maintenance, repair, flight, or overhaul of aircraft; or otherwise involving the furnishing of aircraft;

(iii) For which a non-DoD customer (including a foreign military sales customer) has not agreed to assume the risk for loss or destruction of, or damages to, the aircraft; or

(iv) For commercial derivative aircraft that are to be maintained to Federal

Aviation Administration (FAA) airworthiness when the work will be performed at a licensed FAA repair station.

(2) The clause at 252.228–7001 may be modified only as follows:

(i) Include a modified definition of "aircraft" if the contract covers other than conventional types of winged aircraft, *i.e.,* helicopters, vertical take-off or landing aircraft, lighter-than-air airships, unmanned aerial vehicles, or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.

(ii) Modify "in the open" to include "hush houses," test hangars and comparable structures, and other designated areas.

(iii) Expressly define the "contractor's premises" where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned or leased by the contractor or subcontractor, or premises where the contractor or subcontractor is a permittee or licensee or has a right to use, including Government airfields.

(iv) Revise paragraph (e)(3) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—

(A) Limited to the vicinity of contractor premises; and

(B) Incidental to work performed under the contract.

(3) Follow the procedures at PGI 228.370(b) when using the clause at 252.228–7001.

* * * * *

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Section 231.205–19 is added to read as follows:

231.205–19 Insurance and indemnification.

(e) In addition to the cost limitations in FAR 31.205–19(e), self-insurance and purchased insurance costs are subject to the requirements of the clauses at 252.217–7012, Liability and Insurance, and 252.228–7001, Ground and Flight Risk.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.228–7001 is revised to read as follows:

252.228–7001 Ground and flight risk.

As prescribed in 228.370(b), use the following clause:

GROUND AND FLIGHT RISK (JUN 2010)

(a) *Definitions.* As used in this clause—

(1) *Aircraft,* unless otherwise provided in the contract

Schedule, means—

(i) Aircraft to be delivered to the Government under this contract (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing, or a wing is attached to a fuselage of the aircraft;

(ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all Government property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement;

(iii) Aircraft furnished by the Contractor under this contract (either before or after Government acceptance); or

(iv) Conventional winged aircraft, as well as helicopters, vertical take-off or landing aircraft, lighter-than-air airships, unmanned aerial vehicles, or other nonconventional aircraft specified in this contract.

(2) *Contractor's managerial personnel* means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant or separate location; or

(iii) A separate and complete major industrial operation.

(3) *Contractor's premises* means those premises, including subcontractors' premises, designated in the Schedule or in writing by the Contracting Officer, and any other place the aircraft is moved for safeguarding.

(4) *Flight* means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.

(i) For land-based aircraft, "flight" begins with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises.

(ii) For seaplanes, "flight" begins with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Contractor's premises.

(iii) For helicopters, "flight" begins upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.

(iv) For vertical take-off or landing aircraft, "flight" begins upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been engaged to any launching platform or device on the Contractor's premises.

(v) All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of this contract, or landings approved in writing by the Contracting Officer.

(5) *Flight crew member* means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor. It also includes any pilot or operator of an unmanned aerial vehicle. If required, a defense systems operator may also be assigned as a flight crew member.

(6) *In the open* means located wholly outside of buildings on the Contractor's premises or other places described in the Schedule as being "in the open." Government-furnished aircraft shall be considered to be located "in the open" at all times while in the Contractor's possession, care, custody, or control.

(7) *Operation* means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.

(b) *Combined regulation/instruction.* The Contractor shall be bound by the operating procedures contained in the combined regulation/instruction entitled "Contractor's Flight and Ground Operations" (Air Force Instruction 10–220, Army Regulation 95–20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3, and Defense Contract Management Agency Instruction 8210.1) in effect on the date of contract award.

(c) *Government as self-insurer.* Subject to the conditions in paragraph (d) of this clause, the Government self-insures and assumes the risk of damage to, or loss or destruction of aircraft "in the open," during "operation," and in "flight," except as may be specifically provided in the Schedule as an exception to this clause. The Contractor shall not be liable to the Government for such damage, loss, or destruction beyond the Contractor's share of loss amount under the Government's self-insurance.

(d) *Conditions for Government's self-insurance.* The Government's assumption of risk for aircraft in the open shall continue unless the Contracting Officer finds that the Contractor has failed to comply with paragraph (b) of this clause, or that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.

(1) The Contracting Officer, when finding that the Contractor has failed to comply with paragraph (b) of this clause or that the aircraft is in the open under unreasonable conditions, shall notify the Contractor in writing and shall require the Contractor to make corrections within a reasonable time.

(2) Upon receipt of the notice, the Contractor shall promptly correct the cited

conditions, regardless of whether there is agreement that the conditions are unreasonable.

(i) If the Contracting Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions.

(ii) Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 a.m. on the fifteenth day following the day the written notice is received by the Contractor.

(i) If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk.

(ii) Any dispute as to the timeliness of the Contractor's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.

(4) If the Government terminates its assumption of risk pursuant to the terms of this clause—

(i) The Contractor shall thereafter assume the entire risk for damage, loss, or destruction of the affected aircraft;

(ii) Any costs incurred by the Contractor (including the costs of the Contractor's self-insurance, insurance premiums paid to insure the Contractor's assumption of risk, deductibles associated with such purchased insurance, etc.) to mitigate its assumption of risk are unallowable costs; and

(iii) The liability provisions of the Government Property clause of this contract are not applicable to the affected aircraft.

(5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions have been corrected.

(i) If, upon receipt of the Contractor's notice of the correction of the unreasonable conditions, the Government elects to again assume the risk of loss and relieve the Contractor of its liability for damage, loss, or destruction of the aircraft, the Contracting Officer will notify the Contractor of the Contracting Officer's decision to resume the Government's risk of loss. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after the Government's receipt of the Contractor's notice of correction until the Contractor is notified that the Government will resume the risk of loss.

(ii) If the Government does not again assume the risk of loss and the unreasonable conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day after the Government's receipt of the Contractor's notice of correction.

(6) The Government's termination of its assumption of risk of loss does not relieve the Contractor of its obligation to comply with all other provisions of this clause, including the combined regulation/instruction entitled "Contractor's Flight and Ground Operations."

(e) *Exclusions from the Government's assumption of risk.* The Government's assumption of risk shall not extend to damage, loss, or destruction of aircraft which—

(1) Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice, including oversight of a subcontractor's program;

(2) Is sustained during flight if either the flight or the flight crew members have not been approved in advance of any flight in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation/instruction entitled "Contractor's Flight and Ground Operations";

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(4) Is covered by insurance;

(5) Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice, *e.g.,* a known condition or design defect in the property); or

(6) Is sustained while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government's assumption of risk.

(f) *Contractor's share of loss and Contractor's deductible under the Government's self-insurance.*

(1) The Contractor assumes the risk of loss and shall be responsible for the Contractor's share of loss under the Government's self-insurance. That share is the lesser of—

(i) The first $100,000 of loss or damage to aircraft in the open, during operation, or in flight resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel; or

(ii) Twenty percent of the price or estimated cost of this contract.

(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (j) of this clause shall not include the dollar amount of the risk assumed by the Contractor.

(3) In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government, as directed by the Contracting Officer, the lesser of—

(i) $100,000;

(ii) Twenty percent of the price or estimated cost of this contract; or

(iii) The amount of the loss.

(4) For task order and delivery order contracts, the Contractor's share of the loss shall be the lesser of $100,000 or twenty percent of the combined total price or total estimated cost of those orders issued to date to which the clause applies.

(5) The costs incurred by the Contractor for its share of the loss and for insuring against that loss are unallowable costs, including but not limited to—

(i) The Contractor's share of loss under the Government's self-insurance;

(ii) The costs of the Contractor's self-insurance;

(iii) The deductible for any Contractor-purchased insurance;

(iv) Insurance premiums paid for Contractor-purchased insurance; and

(v) Costs associated with determining, litigating, and defending against the Contractor's liability.

(g) *Subcontractor possession or control.* The Contractor shall not be relieved from liability for damage, loss, or destruction of aircraft while such aircraft is in the possession or control of its subcontractors, except to the extent that the subcontract, with the written approval of the Contracting Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract.

(h) *Contractor's exclusion of insurance costs.* The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government, including the Contractor share of loss in this clause, even if the assumption may be terminated for aircraft in the open.

(i) *Procedures in the event of loss.*

(1) In the event of damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, and to put all aircraft in the best possible order. Except in cases covered by paragraph (f)(2) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering the interest in commingled property.

(2) The Contracting Officer will make an equitable adjustment for expenditures made

by the Contractor in performing the obligations under this paragraph.

(j) *Loss prior to delivery.*

(1) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(i) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(ii) Terminate this contract with respect to the aircraft. Notwithstanding the provisions in any other termination clause under this contract, in the event of termination, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

(A) It would have cost the Contractor to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and

(B) Would be the value of the damaged aircraft or any salvage retained by the Contractor.

(2) The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause of this contract.

(k) *Reimbursement from a third party.* In the event the Contractor is reimbursed or compensated by a third party for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation) in obtaining recovery.

(l) *Government acceptance of liability.* To the extent the Government has accepted such liability under other provisions of this contract, the Contractor shall not be reimbursed for liability to third persons for loss or damage to property or for death or bodily injury caused by aircraft during flight unless the flight crew members previously have been approved for this flight in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled "Contractor's Flight and Ground Operations".

(m) *Subcontracts.* The Contractor shall incorporate the requirements of this clause, including this paragraph (m), in all subcontracts.

(End of clause)

252.228–7002 [Removed and Reserved]

■ 5. Section 252.228–7002 is removed and reserved.

252.228–7003 [Amended]

■ 6. Section 252.228–7003 is amended in the introductory text by removing "228.370(d)" and adding in its place "228.370(c)".

252.228–7005 [Amended]

■ 7. Section 252.228–7005 is amended in the introductory text by removing "228.370(e)" and adding in its place "228.370(d)".

252.228–7006 [Amended]

■ 8. Section 252.228–7006 is amended in the introductory text by removing "228.370(f)" and adding in its place "228.370(e)".

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H.R. 1442/P.L. 111–168
To provide for the sale of the Federal Government's reversionary interest in approximately 60 acres of land in Salt Lake City, Utah, originally conveyed to the Mount Olivet Cemetery Association under the Act of January 23, 1909. (May 24, 2010; 124 Stat. 1190)

H.R. 2802/P.L. 111–169
To provide for an extension of the legislative authority of the Adams Memorial Foundation to establish a commemorative work in honor of former President John Adams and his legacy, and for other purposes. (May 24, 2010; 124 Stat. 1192)

H.R. 5148/P.L. 111–170
To amend title 39, United States Code, to clarify the instances in which the term ''census'' may appear on mailable matter. (May 24, 2010; 124 Stat. 1193)

H.R. 5160/P.L. 111–171
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Lord's Resistance Army Disarmament and Northern Uganda Recovery Act of 2009 (May 24, 2010; 124 Stat. 1209)

H.R. 5014/P.L. 111–173
To clarify the health care provided by the Secretary of Veterans Affairs that constitutes minimum essential coverage. (May 27, 2010; 124 Stat. 1215)

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