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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.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

2 CFR Part 3186

45 CFR Part 1186

RIN 3137–AA19

Institute of Museum and Library Services Implementation of OMB Guidance on Drug-Free Workplace Requirements

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The Institute of Museum and Library Services (IMLS) is removing its regulation implementing the Governmentwide common rule on drug-free workplace requirements for financial assistance, currently located within Part 1186 of Title 45 of the Code of Federal Regulations (CFR), and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance at 2 CFR part 182. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the CFR all Federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that would make no substantive change in IMLS policy or procedures for drug-free workplace.

DATES: This final rule is effective on September 7, 2010 without further action. Submit comments by August 9, 2010 on any unintended changes this action makes in IMLS policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, IMLS will revise the rule.

ADDRESSES: Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4657; Teletype (TTY/TDD) for persons with hearing difficulty: (202) 653–4614.

FOR FURTHER INFORMATION CONTACT: Calvin D. Trowbridge III, Deputy General Counsel, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: (202) 653–4675; Teletype (TTY/TDD) for persons with hearing difficulty: (202) 653–4614; Fax: (202) 653–4610; E-mail: *ctrowbridge@imls.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Drug-Free Workplace Act of 1988 [Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*] was enacted as a part of omnibus drug legislation on November 18, 1988. Federal agencies issued an interim final common rule to implement the act as it applied to grants [54 FR 4946, January 31, 1989]. The rule was a subpart of the Governmentwide common rule on nonprocurement suspension and debarment. The agencies issued a final common rule after consideration of public comments [55 FR 21681, May 25, 1990].

The agencies proposed an update to the drug-free workplace common rule in 2002 [67 FR 3266, January 23, 2002] and finalized it in 2003 [68 FR 66534, November 26, 2003]. The updated common rule was redrafted in plain language and adopted as a separate part, independent from the common rule on nonprocurement suspension and debarment. Based on an amendment to the drug-free workplace requirements in 41 U.S.C. 702 [Pub. L. 105–85, div. A, title VIII, Sec. 809, Nov. 18, 1997, 111 Stat. 1838], the update also allowed multiple enforcement options from which agencies could select, rather than requiring use of a certification in all cases.

When it established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and agreements [69 FR 26276, May 11, 2004], OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing [70 FR 51863, August 31, 2005] and finalizing [71 FR 66431, November 15, 2006] Governmentwide guidance on nonprocurement suspension and debarment in 2 CFR part 180.

As the next step in that process, OMB proposed for comment [73 FR 55776, September 26, 2008] and finalized [28 FR 28149, June 15, 2009] Governmentwide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance requires each agency to replace the common rule on drug-free workplace requirements that the agency previously issued in its own CFR title with a brief regulation in 2 CFR adopting the Governmentwide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it collocates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

The Current Regulatory Actions

As the OMB guidance requires, IMLS is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 45 CFR part 1186. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR part 3186 to adopt the Governmentwide policies and procedures in the OMB guidance.

Invitation To Comment

Taken together, these regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the common rule at 45 CFR part 1186.

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553), agencies generally propose a regulation and offer interested parties the opportunity to comment before it becomes effective. However, as described in the "Background" section of this preamble, the policies and procedures in this regulation have been proposed for comment two times—one time by Federal agencies as a common rule in 2002 and a second time by OMB as guidance in 2008—and adopted each

time after resolution of the comments received.

This direct final rule is solely an administrative simplification that would make no substantive change in IMLS policy or procedures for drug-free workplace. We therefore believe that the rule is noncontroversial and do not expect to receive adverse comments, although we are inviting comments on any unintended substantive change this rule makes.

Accordingly, we find that the solicitation of public comments on this direct final rule is unnecessary and that "good cause" exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule effective on September 7, 2010 without further action, unless we receive adverse comment by August 9, 2010. If any comment on unintended changes is received, it will be considered and, if warranted, we will publish a timely revision of the rule.

Executive Order 12866

OMB has determined this rule to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects

2 CFR Part 3186

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

45 CFR Part 1186

Administrative practice and procedure, Drug abuse, Grant programs, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, the IMLS amends the Code of Federal Regulations, Title 2, Subtitle B, Chapter XXXI, and Title 45, Chapter XI, part 1186, as follows:

Title 2—Grants and Agreements

■ 1. Add part 3186 in Subtitle B, Chapter XXXI, to read as follows:

PART 3186—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.
3186.10 What does this part do?
3186.20 Does this part apply to me?
3186.30 What policies and procedures must I follow?

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

3186.225 Whom in the IMLS does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

3186.300 Whom in the IMLS does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

3186.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of this Part and Consequences

3186.500 Who in the IMLS determines that a recipient other than an individual violated the requirements of this part?
3186.505 Who in the IMLS determines that a recipient who is an individual violated the requirements of this part?

Authority: 41 U.S.C. 701–707.

§ 3186.10 What does this part do?

This part requires that the award and administration of IMLS grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as "the Act") that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR part 182) for the IMLS's grants and cooperative agreements; and

(b) Establishes IMLS policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Governmentwide implementing regulations.

§ 3186.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of an IMLS grant or cooperative agreement; or

(b) IMLS awarding official.

§ 3186.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§ 3186.225	Whom in the IMLS a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 2 CFR 182.300(b)	§ 3186.300	Whom in the IMLS a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(3) 2 CFR 182.500	§ 3186.500	Who in the IMLS is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
(4) 2 CFR 182.505	§ 3186.505	Who in the IMLS is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, IMLS policies and procedures are the same as those in the OMB guidance.

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 3186.225 Whom in the IMLS does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify each IMLS office from which it currently has an award.

Subpart C—Requirements for Recipients Who Are Individuals

§ 3186.300 Whom in the IMLS does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each IMLS office from which it currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 3186.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 CFR part 3186, which adopts the Governmentwide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of this Part and Consequences

§ 3186.500 Who in the IMLS determines that a recipient other than an individual violated the requirements of this part?

The IMLS Chief Financial Officer is the official authorized to make the determination under 2 CFR 182.500.

§ 3186.505 Who in the IMLS determines that a recipient who is an individual violated the requirements of this part?

The IMLS Chief Financial Officer is the official authorized to make the determination under 2 CFR 182.505.

Title 45—Public Welfare

Chapter XI—National Foundation on the Arts and the Humanities

■ 2. Remove Part 1186.

Calvin D. Trowbridge III,

Deputy General Counsel.

[FR Doc. 2010–15395 Filed 7–7–10; 8:45 am]

BILLING CODE 7036–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1455

RIN 0560–AH98

Voluntary Public Access and Habitat Incentive Program

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This rule establishes the Commodity Credit Corporation (CCC) regulations for the Voluntary Public Access and Habitat Incentive Program (VPA–HIP). This is a new program authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of VPA–HIP is to provide grants to State and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting, fishing, and other compatible recreation and to improve fish and wildlife habitat on their land, under programs administered by State or tribal governments.

DATES: *Effective Date:* This interim rule is effective July 8, 2010.

Comment Date: We will consider comments that we receive by September 7, 2010.

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods, however, we strongly encourage using the first address to submit your comment through *http://www.regulations.gov:*

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Director, Conservation and Environmental Programs Division (CEPD), U.S. Department of Agriculture (USDA) FSA CEPD, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250–0513.
- *Hand Delivery or Courier:* Deliver comments to the above address.

Comments may be inspected at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the Farm Service Agency (FSA) home page at *http://www.fsa.usda.gov/.*

FOR FURTHER INFORMATION CONTACT: Robert Stephenson, Director, CEPD; telephone 202–720–6221; e-mail: *cepdmail@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at 202–720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Section 2606 (16 U.S.C. 3839bb–5) of the 2008 Farm Bill (Pub. L. 110–246) authorizes a new VPA–HIP. VPA–HIP provides a new opportunity for State and tribal governments to apply for grants to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting, fishing, and other

compatible recreation and to improve fish and wildlife habitat on their land under programs administered by State or tribal governments.

Only State and tribal governments are eligible for VPA–HIP. Grants will be awarded through a competitive Request for Applications (RFA) process. State and tribal governments may propose to use VPA–HIP grant funding to expand existing public access programs or create new public access programs, or provide incentives to improve habitat on enrolled program lands. As specified in the 2008 Farm Bill, funding priority will be given to applications that will use the grant money in a public access program to address the following program objectives:

(1) Maximize participation by landowners;

(2) Ensure that land enrolled in the program has appropriate wildlife habitat;

(3) Provide incentives to strengthen wildlife habitat improvement efforts on Conservation Reserve Enhancement Program (CREP) land;

(4) Supplement funding and services from other Federal, State, tribal government, or private resources that is provided in the form of cash or in-kind services; and

(5) Provide information to the public about the location of public access land.

CCC will evaluate how applications enhance fish and wildlife habitat on lands and waters made available for public access and use additional evaluation criteria, as specified in this rule and in the RFA, to select the applications that best support these program goals. The 2008 Farm Bill authorizes $50 million for VPA–HIP through 2012. We anticipate that more applications will be received than available funding, so this will be a competitive grant program.

Currently, 26 States have public access programs for hunting, fishing, and other related activities. These programs provide rental payments and other incentives, such as technical or conservation services to landowners who allow the public to hunt, fish or otherwise appropriately recreate on their land. An unknown number of tribal governments have similar public access programs. The majority of the existing programs have limited scope and budgets; most existing programs have an annual budget of under a million dollars per year. The goals of these existing programs include providing access for wildlife-associated recreation, wildlife management, helping local economies that depend on revenue from hunters, and encouraging conservation. The funding provided by VPA–HIP will help State and tribal governments address many issues that can greatly increase access and recreational experiences. Grant recipients will be able to use the funding to provide higher rental payments, provide technical and conservation services to landowners, and increase acreage enrolled for public access while fulfilling grant requirements under VPA–HIP. VPA–HIP will specifically give priority to applications that will use the funds to maximize landowner participation and public use, and make information about public access land widely available. Provisions requiring appropriate wildlife habitat will address concerns about limited wildlife population associated with poor or inadequate wildlife habitat. Nothing in VPA–HIP or regulation preempts liability laws that may apply to activities on any property related to grants made in this program.

Terms Used in This Rule

The 2008 Farm Bill uses the term "farm, ranch, or forest land" and only provides that the grants allowed by VPA–HIP be directed at access to "privately-held" lands. In implementing VPA–HIP, for consistency with other USDA programs, the "farmland" definition in this rule draws on the definition used in general for Farm Programs that is in 7 CFR 718.2 and which basically encompasses all land on any property that includes cropland including forest land used for the production of timber. There is no need for a separate definition for "ranch land" and hence the "ranch land" definition will simply refer back to the "farmland" definition. In this rule, the term "forest land" is given the same meaning that the USDA Forest Service uses in its Forest Inventory and Analysis Program. This definition is documented in the Forest Service General Technical Report WO–78, "Forest Resources of the United States, 2007." We are adding the definition into 7 CFR 1455.2(b). These definitions should be broad enough to cover within them all properties that are within the intended scope of the 2008 Farm Bill and of this rule. In turn, this rule defines "privately-held" land to mean land owned or operated by an individual or entity that is not a government or Tribe or subdivision or agency of a government or Tribe. For example, State and tribal governments cannot use funding from VPA–HIP to encourage public access on local government land, State-owned forest land, or land owned by a public university.

The terms "State" and "State government" as used in this rule mean any State or local government, including, but not limited to State, city, town, or county government, State Universities, and other units of State government. This is consistent with the way the term "State government" is used in other CCC programs.

The term "tribal government" refers to Federally-recognized tribes as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)). This definition is consistent with other CCC and FSA regulations.

The term "wildlife-dependent recreation" refers to activities such as hunting, fishing, wildlife observation, photography, and environmental education and interpretation.

Eligibility, Application Process

Only State and tribal governments may apply for grants under VPA–HIP.

On behalf of CCC, FSA will publish periodic VPA–HIP RFA's via *http://www.grants.gov.* Applications will be evaluated and selections made using the criteria specified in this rule and in the RFA.

The result of a successful application will be a grant for up to 3 years, consistent with the time limits in the 2008 Farm Bill and the terms of the grant. Successful applicants will be required to sign a grant agreement with CCC. The grant agreement will include reporting and recordkeeping requirements that are consistent with other FSA and CCC programs. Under the 2008 Farm Bill CCC is, to the maximum extent practicable, to make $50 million of CCC funds available under VPA–HIP through the 2012 fiscal year (which ends in September 30, 2012). This is not, however, an entitlement program, and it is possible that not all of the funds will be expended should there not be sufficient desirable applications offered. All projects are subject to the approval of CCC and the regulation reserves CCC's right to reject any and all projects for any reason deemed sufficient to the agency.

Application Selection Criteria

As discussed earlier, the 2008 Farm Bill requires that CCC give priority to applications that address five program objectives. These program objectives were used to develop the criteria that will be used to evaluate applications and select grant recipients. This section describes those evaluation criteria.

The first program objective required by the 2008 Farm Bill is that CCC give priority to applications that "maximize participation by offering a program the terms of which are likely to meet with widespread acceptance among

landowners." Maximizing voluntary participation and achieving widespread acceptance can include activities and performance goals which may include but are not limited to:

- Increasing the number of acres made available for access by the public,
- Increasing the number of acres of appropriate fish and wildlife habitat,
- Increasing the number of landowners participating in the in the State and tribal government programs.

Measuring or assessing impact of program delivery can be done by activities such as participation surveys, the number of acres enrolled, and the amount and nature of inquiry correspondence. A successful application should describe how the program will address maintaining and enhancing wildlife habitat, any foreseen enrollment barriers, as well as describing any financial incentives the program may provide to landowners. As discussed earlier, the landowners incentivized by this program must be private land owners. Incentives may include, but are not limited to compensation for public access to land, and technical and conservation services provided.

A second program objective required by the 2008 Farm Bill that will be used as an evaluation criterion is "to ensure that the land enrolled under the State or tribal government program has appropriate wildlife habitat." State and tribal governments with existing wildlife-dependent public access programs such as walk-in hunting, open fields, bird watching access, or similar programs must ensure that land enrolled in these programs have appropriate habitat for the wildlife. The application should describe how the grantee will ensure that the habitat for the wildlife on land already enrolled in the program will be maintained throughout the duration of the grant. State and tribal governments that are initiating new wildlife-dependent public access programs should demonstrate that they have the expertise to ensure that they can successfully carry out the objectives of VPA–HIP.

State and Tribal, as applicable, Wildlife Action Plans may help States and Tribes to identify likely opportunities. Congress charged each State with developing a Statewide wildlife action plan to make the best use of the Federal funds provided through certain Federal programs. These plans should provide vital information to help conserve wildlife and vital natural areas before they become more rare and more costly to protect. State fish and wildlife agencies developed these strategic action plans by working with a broad array of partners, including scientists, sportsmen, conservationists and members of the community.

The wildlife action plans were required to assess the condition of each State's wildlife and habitats, identify the problems they face, and outline the actions that are needed to be conserve them over the long term. The wildlife action plans identify a variety of actions aimed at preventing wildlife from declining to the point of becoming endangered. By focusing on conserving the natural lands and clean waters that provide habitat for wildlife, the plans have important benefits for wildlife and people.

In addition to specific conservation projects and actions, the plans describe many ways we can educate the public and private landowners about effective conservation practices. Finally, the plans also identify the information needed to improve knowledge about what kinds of wildlife are in trouble so we can decide what action to take.

A third program objective required by the 2008 Farm Bill that will be used as an evaluation criteria is "to strengthen wildlife habitat improvement efforts" on land enrolled in CREP. CREP is a CCC program that supports the Conservation Reserve Program (CRP) in some States with additional funding for specific environmental activities. Under CREP, CCC enters into an agreement with State officials who commit financial and other resources to target areas of important environmental need. Currently, 31 States have CREP agreements with CCC. VPA–HIP applications that explain in detail how their application will strengthen wildlife habitat improvement efforts on land enrolled according to a CREP agreement will, all else being equal, receive priority over applications that do not provide such detailed explanation where CREP agreements are in place. States and Tribes without CREP agreements will not be able to address this objective, but will still be eligible to apply for and receive grants based on other applicable evaluation criteria.

State and tribal governments that choose to integrate CREP with public access should describe how increased public access for the purposes of wildlife dependent recreation will benefit both VPA–HIP and CREP. Integrations of conservation activities with hunting, fishing, and wildlife viewing may allow for land management that balances game species population growth and fosters a higher quality of habitat conditions. State and tribal governments should cite the specific activities and conservation practices that they intend to target, such as increasing and improving CREP wildlife food plots, nesting areas, shallow water areas for wildlife, and wildlife habitat corridors.

Activities and practices described in the application should provide support for the healthy development and maintenance of appropriate wildlife habitat. State or tribal governments must ensure that their VPA–HIP application is consistent with the purposes and provisions of CRP and CREP when the enrolled acres coincide. State or tribal governments that consider using VPA–HIP funding as a "cost-share" as opposed to an incentive or other form of payment, need to be aware that the CRP legislative authority and the implementing regulations in 7 CFR 1410.40 require that a CRP participant refund USDA's CRP or CREP cost-share assistance if it receives any other Federal cost-share assistance. Funding provided through VPA–HIP as a cost-share would, for the purposes of 7 CFR 1410.40, be considered to be such other Federal cost-share assistance.

A fourth program objective required by the 2008 Farm Bill that will be used as an evaluation criterion is the extent to which the proposed program will "use additional Federal, State, tribal government, or private resources in carrying out the program." The application should specify how those resources will be used for various activities and planning that strengthen the feasibility of program success and help achieve intended benefits. Many programs have similar goals and intended benefits that complement the VPA–HIP goals. Applications that include combining VPA–HIP funds with other program resources that have similar goals, such as State public access programs, Natural Resource Conservation Service's Wildlife Habitat Incentive Program, wildlife and conservation non-government organizations, will, all else being equal, be given a priority over applications that do not.

These other program resources may be either monetary or in-kind services. In-kind services can aid program delivery and planning and must be quantified in units such as hours of staff time (labor value), office space (rental value), technical or conservation services (service value), equipment (product value), or the like.

For State and tribal governments that choose to include additional State or local funds in their application, commitments must be documented by an appropriate authority that will be supplying those resources.

The fifth program objective required by the 2008 Farm Bill that will be used as an evaluation criterion is "to make available to the public the location of land enrolled." A common barrier to participation in existing State public access programs is a lack of detailed information on where such land is and how to legally access it. For State and Tribal VPA–HIP programs, public disclosure of private lands enrolled in VPA–HIP may be conveyed through a variety of media including, but not limited to, Web site listings, printed listings or map books, online access maps, and recorded telephone information.

Process for Evaluation of Applications and Award of Grants

After State and tribal governments submit applications, FSA, on behalf of CCC, will conduct an initial screening of all applications to determine whether the applicant is eligible and whether the application is complete and sufficiently responsive to the requirements specified in the RFA so as to allow for an informed review. Incomplete applications will not be evaluated further. CCC will notify applicants of the status of their initial screening, if time allows. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so. FSA will appoint an inter-agency review panel to evaluate the applications. State and tribal government applications will be considered using the same selection criteria.

If the amount requested in the applications exceeds the available funding, FSA may use additional criteria for selection which could include, but not be limited to:

- The distribution of funds between State and tribal governments;
- The distribution of funds between new programs and existing programs; and
- The need to target funding to address specific types of wildlife dependent recreation and public access.

We expect interest in VPA–HIP to exceed the available funding. Through VPA–HIP, grants to any individual State or Tribe will be no more than $2 million per year and no less than $75,000 per year.

We considered allocating the funding equally across all eligible applicants, or providing funding only to applicants that already have public access programs, but decided that it would be more effective to have a fully competitive RFA process. Since the 2008 Farm Bill requires that we give "priority" to applicants that address certain VPA–HIP goals, we decided that providing funding on a competitive basis to applicants that best meet those objectives would be appropriate.

The evaluation criteria will be carefully constructed to fairly consider expected benefits from both existing and new programs so as not to favor existing programs over applications for new programs. For example, an existing program might score high on a feasibility criterion and have specific methods in place to demonstrate wildlife habitat monitoring, but a new program might be able to demonstrate greater expected benefits, since that program would be starting from a baseline of zero benefits.

Responsibilities of Participants

Successful applicants will be required to sign an agreement with CCC and provide detailed budget and schedule information. The agreement will require periodic financial and program achievement reports.

The agreement will also require compliance with other USDA regulations that apply to grants, including civil rights, restrictions on lobbying, and drug-free workplace. Grantees will be required to comply with audit requirements in 7 CFR part 3052.

During the term of the grant, the grantee will be required to obtain prior approval for any changes to the scope, objectives, or funding allocation of the approved agreement. Failure to obtain prior approval of such changes may be considered a violation and in such case the grantee may be required to return all grant funds. Funds cannot be used to pay for buildings or fixed equipment. The list of prohibited grant funding uses is specified in the rule and will be specified in the agreement.

Reductions for Inconsistent Migratory Bird Hunting Opening Dates

The 2008 Farm Bill requires that, before a grant may be awarded, FSA examine migratory bird hunting season dates for an applicant who is a State government. If a State government has different opening dates for migratory bird hunting for residents versus non-residents, the grant amount will be reduced by 25 percent. Inconsistent migratory bird hunting opening dates will not be an evaluation factor in selecting applications; it will be taken into account only after applications are selected. This reduction will not be applied to applications made by tribal governments, as specified in the 2008 Farm Bill.

This reduction will apply to all applications by State governments, even for applications when the purpose of the grant is not related to migratory bird hunting in a State. Opening dates must remain consistent throughout the term of the grant. If opening dates for migratory bird hunting are changed by a State during the term of the grant such that the dates are inconsistent for residents and non-residents, 25 percent of the grant funding must be refunded.

Relationship to Other Laws

The 2008 Farm Bill provides that VPA–HIP does not preempt a State or tribal government law including any State or tribal liability law.

The government-wide debarment and suspension (non procurement) provisions of the Federal Acquisition Regulations (FAR), as adopted in 7 CFR 3017, will apply only to contractors and subcontractors. If a grantee chooses to use grant awards to contract or sub-contract with a person or company, then that person or company must not have been suspended or debarred under the FAR prior to or during contracting.

Miscellaneous

The appeals provisions in 7 CFR parts 11 and 780 will apply to VPA–HIP. Highly erodible land and wetland conservation provisions in 7 CFR part 12 will apply to VPA–HIP. Any State or tribal government that violates highly erodible land and wetland conservation provisions will be ineligible for program benefits; if it is determined after a payment is issued for VPA–HIP that a violation occurred, then repayment of the benefit plus interest would be required.

Outreach to Tribal Governments

As part of implementing VPA–HIP, FSA will conduct outreach efforts to inform the Tribal Governments of federally-recognized tribes about VPA–HIP. Two primary mechanisms for initiating the outreach efforts will include the National Congress of American Indians (NCAI) and the contact lists of federally recognized tribes.

Notice and Comment

CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. CCC is authorized by section 2904 of the 2008 Farm Bill to issue an interim rule effective on publication with an opportunity for comment.

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget

(OMB) under Executive Order 12866. The cost benefit analysis is summarized below and is available from the contact information listed above.

Summary of Economic Impacts

The 2008 Farm Bill provides CCC funds through VPA–HIP for fiscal years 2009 through 2012; total available funding is $50 million. Based on the current number of States (at least 15) that could meet all five evaluation criteria with existing public access programs, we expect to receive applications for more than the full amount of available funding.

The benefits from a public access program stem from the value placed on hunting, fishing, and other outdoor recreation activities are a function of the number of times these activities are undertaken and the satisfaction from these opportunities. The benefits will be where landowners permit access. VPA–HIP benefits are the sum of:

- Value from increased access to hunting, fishing, and outdoor recreation opportunities;
- Savings from reduced transaction costs between landowners and outdoor recreationists;
- Enhanced wildlife populations from expanded and improved wildlife habitat; and
- Expanded economic activity such as equipment sales, and increased restaurant and motel expenditures.

VPA–HIP is expected to provide $50 million, the total authorized funding, to States and tribal governments. The expected benefits to hunters and other users of public access land due to the resulting expansions and improvements to State and tribal government public access programs are expected to exceed $51 million.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule. CCC is authorized by section 2904 of the 2008 Farm Bill to issue an interim rule effective on publication with an opportunity for comment.

Environmental Review

The State or Tribal government applying for VPA–HIP funds will be required to prepare a Programmatic Environmental Assessment (PEA) in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The PEA must assess the current public access program, if one exists, and the proposed alternative policies for implementation of the current or proposed public access program if funding is received from FSA. The purpose of the PEA is to evaluate the impacts of expanding public access, including but not limited to, those associated with general ranch maintenance, conservation efforts, weed control, fire protection, roads, fences, and parking area maintenance. Consistent with 40 CFR 1501.4(c), the PEA will be used to determine if the receipt of Federal funds will constitute a major Federal action significantly affecting the quality of the human environment and if an Environmental Impact Statement needs to be prepared.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule does not preempt State and or local laws, and regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, appeal provisions of 7 CFR parts 11 and 780 must be exhausted. As specified in the 2008 Farm Bill, this interim rule does not preempt a State or tribal government law, including any State or tribal government liability law.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

USDA will undertake, within 6 months after this rule becomes effective, a series of at least six regulation Tribal consultation sessions to gain input by Tribal officials concerning the impact of VPA–HIP on Tribal governments, communities, and individuals. These sessions will establish a baseline of consultation for future actions, should any become necessary, regarding the VPA–HIP regulations. Reports from these sessions for consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning the VPA–HIP regulation and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve VPA–HIP in Indian country.

Tribal governments will be notified of VPA–HIP by direct notification of the Tribal elected official via regular mail; by e-mail notification to the Tribal elected official; and by notifying the National Congress of American Indians and other intertribal organizations relevant to VPA–HIP. Additional notification will be given to key intertribal organizations working with individual Indian farmers and through outreach to nonprofit and community based organizations known to work the Tribal producers. FSA will also ensure that review panel membership described in this rule has appropriate representation reflecting Tribal governments and intertribal organizations knowledgeable of recreational use on Tribally-owned lands.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4). In addition, CCC is not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance, to which this rule applies, is the Voluntary Public Access and Wildlife Habitat Incentive Program—10.093.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. chapter 35), as specified in section 2904 of the 2008 Farm Bill, which provides that these regulations be promulgated

and the programs administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1455

Agriculture, Animals, Environmental protection, Fishing, Forests and forest products, Grant programs, Hunting, Indians, Indians-lands, Natural resources, Recreation and recreation areas, Rural areas, State and local governments, Wildlife.

■ For the reasons discussed above, this rule adds 7 CFR part 1455 as follows:

PART 1455—VOLUNTARY PUBLIC ACCESS AND HABITAT INCENTIVE PROGRAM

§ 1455.1 Purpose and administration.
§ 1455.2 Definitions.
§ 1455.10 Eligible grant applicants.
§ 1455.11 Application procedure.
§ 1455.20 Criteria for grant selection.
§ 1455.21 Responsibilities of grantee.
§ 1455.30 Reporting requirements.
§§ 1455.31 Miscellaneous.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839.

§ 1455.1 Purpose and administration.

(a) The purpose of this part is to specify requirements and definitions for the Voluntary Public Access and Habitat Incentive Program (VPA–HIP).

(b) VPA–HIP provides, within funding limits, grants to State and tribal governments to encourage owners and operators of privately-held farm, ranch, and forest land to voluntarily make that land available for access by the public for wildlife-dependent recreation, including hunting and fishing under programs administered by State and tribal governments. VPA–HIP is not an entitlement program and no grant will be made unless the application is acceptable to the Commodity Credit Corporation (CCC). CCC may reject a application for any reason deemed sufficient by CCC.

(c) The regulations in this part are administered under the general supervision and direction of the Executive Vice President, CCC, or a designee, or the Deputy Administrator, Farm Programs (Deputy Administrator), Farm Service Agency (FSA).

§ 1455.2 Definitions.

(a) The definitions in part 718 of this chapter apply to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions apply to this part:

Appropriate wildlife habitat means habitat that is suitable or proper, as determined by the applicable State or tribal government, to support fish and wildlife populations in the area.

Farm land means the land that meets definition of "farmland" in § 718.2 of this title.

Forest land means land at least 120 feet wide and 1 acre in size with at least 10 percent cover (or equivalent stocking) by live trees of any size, including land that formerly had such tree cover and that will be naturally or artificially regenerated. Forest land includes transition zones, such as areas between forest and nonforest lands that have at least 10 percent cover (or equivalent stocking) with live trees and forest areas adjacent to urban and built-up lands. Roadside, streamside, and shelterbelt strips of trees must have a crown width of at least 120 feet and continuous length of at least 363 feet to qualify as forest land. Unimproved roads and trails, streams, and clearings in forest areas are classified as forest if they are less than 120 feet wide or an acre in size. Tree-covered areas in agricultural production settings, such as fruit orchards, or tree-covered areas in urban settings, such as city parks, are not considered forest land.

Privately-held land means farm, ranch, or forest land that is owned or operated by an individual or entity that is not an entity of any government unit or Tribe.

Ranch land means land that meets the definition of "farmland."

State or *State government* means any State or local government, including State, city, town, or county government.

Tribal government means any Federally-recognized Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601–1629h), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Wildlife-dependent recreation means a land use involving hunting, fishing, wildlife-observation, photography, environmental education and interpretation, or other activities as determined by CCC.

§ 1455.10 Eligible grant applicants.

(a) A State or Tribal government may apply for a VPA–HIP grant.

(b) Any applications received by an individual or entity that is not a State or tribal government will not be considered.

§ 1455.11 Application procedure.

(a) *Request for applications (RFA).* CCC will issue periodic RFAs for VPA–HIP on www.grants.gov, subject to available funding. Unless otherwise specified in the applicable RFA, applicants must file an original and one hard copy of the required forms and an application.

(b) *Single application.* A State or tribal government must include all proposed activity under a single application per RFA review period. Multiple applications from an applicant during a single RFA period will not be considered. The applicant is the individual State or Tribe; any application from any unit of the State or tribal government must be coordinated for a single submission of one application from the State or Tribe.

(c) *Incomplete applications.* Incomplete applications will not be considered for funding. However, incomplete applications may be returned, and may be resubmitted, if time permits.

(d) *Providing data.* Data furnished by grant applicants will be used to determine eligibility for the VPA–HIP benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(e) *Required forms.* The following forms must be completed, signed, and submitted as part of the application; other forms may be required, as specified in the applicable RFA:

(1) Application for Federal Assistance;

(2) Budget Information—Non-Construction Programs; and

(3) Assurances—Non-Construction Programs.

(f) *Application.* Each application must contain the following elements; additional required elements may be specified in the applicable RFA:

(1) Title page;

(2) Table of contents;

(3) Executive summary, which includes;

(i) *Activities.* Provide a summary of the application that briefly describes activities proposed to be funded under the grant.

(ii) *Objectives, funding, performance, and other resources.* Include objectives and tasks to be accomplished, the amount of funding requested, how the

work will be performed, whether organizational staff, consultants or contractors will be used, and whether other resources will be used;

(4) Eligibility certification that certifies that the applicant is a State or tribal government and the individual submitting the application is acting in a representative capacity on behalf of the State or tribal government;

(5) Application narrative that must include, but is not limited to, the following:

(i) *Project Title.* The title of the proposed project must be brief (not to exceed 75 characters) yet describe the essentials of the project.

(ii) *Information sheet.* A separate one-page information sheet listing each of the evaluation criteria referenced in the RFA, followed by the page numbers of all relevant material and documentation contained in the application that address or support the criteria.

(iii) *Objectives of the project.* This section must include the following:

(A) A description of how the VPA–HIP funding will be used to encourage public access to private farm, ranch, and forest land for hunting, fishing, and other recreational purposes;

(B) A description of the methods that will be used to achieve the provisions of paragraph (f)(5)(iii)(A) of this section;

(C) A description of how and to what extent the proposed program will meet with widespread acceptance among landowners;

(D) A detailed description of how and to what extent the land enrolled will have appropriate wildlife habitat and how program funds may be used to improve those habitats;

(E) A detailed description of how and to what extent public hunting and other recreational access will be increased on land enrolled under a Conservation Reserve Enhancement Program as specified under § 1410.50 of this chapter, or if Conservation Reserve Enhancement Program land is not available, specify that there is no impact;

(F) A detailed description of how any additional Federal, State, tribal government, or private resources will be used to carry out grant activities; and

(G) A detailed description of how the public will be made aware of the location of the land enrolled.

(iv) *Work plan.* Applications must discuss the specific tasks to be completed using grant and matching funds. The work plan should show how customers will be identified, key personnel to be involved with administration of the grant, and the evaluation methods to be used to determine the success of specific tasks and overall objectives of a VPA–HIP grant. The budget must present a breakdown of the estimated costs associated with VPA–HIP activities and allocate these costs to each of the tasks to be undertaken. Additional funds from Federal, State, tribal government, or private resources as well as grant funds and resources provided in kind must be accounted for in the budget.

(v) *Performance evaluation criteria.* Applications should discuss how the State or tribal government will evaluate whether the program for which the grant is being sought will meet the stated goals for the State or tribal program, including but not limited to landowner and recreationist participation, outreach, and cost-effectiveness.

(vii) *Other similar efforts.* The applicant must describe its previous accomplishments and outcomes in public access activities, if any.

(viii) *Qualifications of personnel.* Applicants must describe the qualifications of personnel expected to perform key tasks, and whether these personnel are to be full- or part-time employees or contract personnel.

§ 1455.20 Criteria for grant selection.

(a) Incomplete or non-responsive applications will not be evaluated. Applicants may revise their applications and re-submit them prior to the published deadline if there is sufficient time to do so.

(b) After all applications have been evaluated using the evaluation criteria and scored in accordance with the point allocation specified in the RFA, a list of all applications in ranked order, together with funding level recommendations, will be submitted to the Deputy Administrator, FSA.

(c) Unless supplemented in a RFA, applications for grants for VPA–HIP will be evaluated using the criteria listed in this section. The distribution of points to be awarded per criterion will be identified in the RFA.

(1) *Benefits.* The application will be evaluated to determine whether and to what extent the project's anticipated outcomes promote improvement of public access for wildlife-dependent recreation and intended environmental benefits.

(2) *Project description and feasibility.* The application will be evaluated on the extent and quality to which the applicant demonstrates a reasonable approach to the project, sufficient resources to complete the project, and a capability to complete the project in a timely manner.

(3) *Widespread acceptance and maximizing participation of landowners.* The application will be evaluated based on the applicant's plan for encouraging the participation of owners and operators of privately-held farm, ranch, and forest land, and for engaging the public users. Additionally, the extent to which the applicant has identified and established relationships with the partners necessary to achieve the project's goals will be evaluated.

(4) *Appropriate wildlife habitat.* The application will be evaluated to determine whether the applicant demonstrates expertise in providing technical assistance with respect to establishing and maintaining appropriate wildlife habitat on public access land.

(5) *Strengthening wildlife habitat for lands under the Conservation Reserve Enhancement Program (CREP).* The application will be evaluated to determine whether the project proposes to provide incentives to increase public hunting and other recreational access on land enrolled under CREP as authorized by § 1410.50.

(6) *Additional private, Federal, State, or tribal government resources.* The application will be evaluated to determine the extent to which the support letters provided by other organizations involved with the project demonstrate specific and quantified commitments to the project. Applications that demonstrate additional resources will receive more points, all else being equal, than those that do not.

(7) *Making available the location of enrolled land.* The application will be evaluated to determine how the project proposes to make available to the public the location of the land enrolled.

(8) *Performance evaluation criteria.* The application will be evaluated to determine whether the applicant has included outcome-based performance measures.

(9) *Administrative capabilities.* The application will be evaluated to determine whether the grant applicant has a track record of administering the project or, in the absence of a track record, the capacity to administer the project. Applicants that have demonstrated capable financial systems and audit controls, personnel and program administration performance measures, and clear rules of governance will receive more points than those not evidencing this capacity.

(10) *Delivery.* The application will be evaluated to determine whether the applicant has a track record in implementing public access or similar programs or, in the absence of an actual track record, the capacity to implement a public access program. The applicant's potential for delivering an effective

public access program and the expected effects of that program will also be assessed.

(11) *Work plan and budget.* The work plan will be reviewed for detailed actions and an accompanying timetable for implementing the components of the application. Clear, logical, realistic, and efficient plans will result in a higher score. Budgets will be reviewed for completeness and whether and to what extent additional resources were committed by Federal, State, or tribal government, and private resources.

(12) *Qualifications of those performing the tasks.* The application will be reviewed to determine if key personnel have appropriate knowledge, skills, and abilities with respect to wildlife-dependent recreation including hunting or fishing on privately-held farm, ranch, and forest land, funds control, grants management, performance monitoring and evaluation, or other activities relevant to the success of the proposed public access program.

§ 1455.21 Additional Responsibilities of Grantee.

(a) Before receiving grant funding, the grantee will be required to sign an agreement similar in form and substance to the form of agreement published within or as an appendix to the RFA. The agreement will require the grantee to commit to do all of the following:

(1) Take all practicable steps to develop continuing sources of financial support from other Federal, State, tribal government, or private resources;

(2) Make arrangements for the monitoring and evaluation of the activities related to implementation of the public access program of the owners or operators that enroll farm, ranch, and forest land; and

(3) Provide an accounting for the money received by the grantee under this subpart.

(b) Grantees will be required to monitor funds or services as specified in paragraph (c) of this section, and must agree to that monitoring before grant funds are awarded.

(c) The grantee must certify that the grant funds and services will not be used for ineligible purposes. Specifically, grant funds and services may not be used to:

(1) Duplicate or replace current services; however, grant funds may be used to expand the level of effort or service beyond what is currently being provided;

(2) Pay costs of preparing the application for funding under VPA–HIP;

(3) Pay costs of the project incurred prior to the date of grant approval;

(4) Fund political activities;

(5) Pay any judgment or debt owed to the United States;

(6) Pay for the design, repair, rehabilitation, acquisition, or construction of a building or facility (including a processing facility);

(7) Purchase, rent or pay for the installation of fixed equipment, other than property identification signs;

(8) Pay for the repair of privately owned vehicles; or

(9) Pay for research and development not directly related to quantifying the performance of VPA–HIP lands enrolled with funding from VPA–HIP.

(d) Grant agreements under this part will be for a term of up to 3 years.

(e) Grantees that are States will have the grant amount reduced by 25 percent if opening dates for migratory bird hunting in the State are not consistent for residents and non-residents. This paragraph does not apply to grantees that are Tribal governments.

(f) Failure of the grantee to execute a grant agreement in a timely fashion, as determined by the CCC, will be construed to be a withdrawal from VPA–HIP.

§ 1455.30 Reporting requirements.

(a) Grantees must provide the following to FSA:

(1) A "Financial Status Report" listing expenditures according to agreed upon budget categories, on a periodic basis as specified in the grant document.

(2) Annual performance reports that compare accomplishments to the objectives stated in the application, and that also:

(i) Identify all tasks completed to date and provide documentation supporting the reported results;

(ii) If the original schedule provided in the work plan is not being met, the report must discuss the problems or delays that may affect completion of the project;

(iii) List objectives for the next reporting period; and

(iv) Discuss compliance with any special conditions on the use of award funds. Reports are due as provided in paragraph (a)(1) of this section.

(3) Final project performance reports, inclusive of supporting documentation. The final performance report is due within 90 days of the completion of the project.

(b) All reports submitted to the Agency will be held in confidence to the extent permitted by law.

§ 1455.31 Miscellaneous.

(a) *Inspection.* Grantees must permit periodic inspection of the program operations by a CCC representative, as determined by CCC.

(b) *Performance evaluation.* CCC will incorporate performance criteria in grant award documentation and will regularly evaluate the progress and performance of grant awardees.

(c) *Suspend, terminate, or require refund.* CCC may elect to suspend or terminate a grant in all or part, or funding of a particular workplan activity, and require refund of part or all of the grant, with interest, where CCC has determined:

(1) That the grantee or subrecipient of grant funds has demonstrated insufficient progress in complying with the terms of the grant agreement;

(2) The opening dates for migratory bird hunting in a State have been changed so as to be not consistent for residents and non-residents during the term of the grant;

(3) There is reasonable evidence that shows joint funding has not been or will not be forthcoming on a timely basis; or

(4) Such other cause as CCC identifies in writing to the grantee based on reasonable evidence (including but not limited to the use of Federal grant funds for ineligible purposes).

(d) *Advance or reimbursement.* Grantees must use the request for advance or reimbursement form, which will be provided by CCC, to request advances or reimbursements;

(e) *Appeals.* Appeals will be handled according to 7 CFR parts 11 and 780.

(f) *Environmental review.* All grants made under this subpart are subject to the requirements of 7 CFR part 799.

Applicants for grant funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan on the planning area, as well as the alternative planning strategies that were reviewed.

(g) *Civil rights.* CCC prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. VPA–HIP will also be administered in accordance with all other applicable civil rights law.

(h) *Other USDA regulations.* The grant program under this part is subject to the provisions of the following regulations, as applicable:

(1) 7 CFR part 3015, Uniform Federal Assistance Regulations;

(2) 7 CFR part 3016, Uniform Administrative Requirements for Grants

and Cooperative Agreements to State and Local Governments;

(3) 7 CFR part 3017, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

(4) 7 CFR part 3018, New Restrictions on Lobbying;

(5) 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations; and

(6) 7 CFR part 3052, Audits of States, Local Governments and Non-profit Organizations.

(i) *Audit.* Grantees must comply with the audit requirements of 7 CFR part 3052. The audit requirements apply to the years in which grant funds are received and years in which work is accomplished using grant funds.

(j) *Change in scope or objectives.* The Grantee must obtain prior approval from FSA for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, or recovery of grant funds.

(k) *Exceptions.* CCC may, in individual cases, make an exception to any requirement or provision of this part, provided that any such exception is not inconsistent with any applicable law or opinion of the Comptroller General, and provided further, that CCC determines that the application of the requirement or provision would adversely affect the Federal Government's interest.

(l) *Enforcement and refunds; liens and schemes or devices.* Grantees must comply with all conditions of the grant and any monies not spent or improperly spent must be returned immediately with interest to run at the normal rate for CCC obligations. Interest charges will be computed from the date of the CCC disbursement. Grantees must insure that parties that receive funds from the grantee comply with the grantee's application and return funds made available by the grantee where there is no such compliance. Any scheme or device to avoid any limits of this part will be considered to be a program violation with respect to any grant to which that scheme or device is related. Grant funds will be made available to the States or Tribes that are grantees under this part without regard to the claims of others, unless CCC determines otherwise.

Signed at Washington, DC, on June 30, 2010.

Jonathan W. Coppess,

Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.

[FR Doc. 2010–16656 Filed 7–7–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0565; Directorate Identifier 2010–SW–034–AD; Amendment 39–16357; AD 2010–14–12]

RIN 2120–AA64

Airworthiness Directives; Arrow Falcon Exporters, Inc. (previously Utah State University); AST, Inc. (previously Firefly Aviation Helicopter Services, and Erickson Air-Crane); Rotorcraft Development Corporation (previously Garlick Helicopters, Inc.); Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC (previously Western International Aviation, Inc.); International Helicopters, Inc.; Northwest Rotorcraft, LLC (previously Precision Helicopters, LLC); Robinson Air Crane, Inc.; San Joaquin Helicopters (previously Hawkins & Powers Aviation); S.M. &T. Aircraft (previously US Helicopter Inc., UNC Helicopters, Inc., Southern Aero Corporation, and Wilco Aviation); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc. (previously Mr. Jamie R. Hill and Southwest Florida Aviation, Inc.); Tamarack Helicopters, Inc. (previously Ranger Helicopter Services, Inc.); US Helicopter, Inc. (previously Williams Helicopter Tech., Southern Aero Corp., Oregon Helicopters and Lenair Corp); West Coast Fabrications; and Overseas Aircraft Support Inc. (previously Williams Helicopter Corporation, Scott Paper Company and Offshores Construction) Model AH–1G, AH–1S, HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters; and Southwest Florida Aviation Model UH–1B (SW204 and SW204HP) and UH–1H (SW205) Helicopters**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the Aeronautical Accessories, Inc. (AAI) Low Skid Landing Gear Forward Crosstube (crosstube) installed on the specified helicopters. This action requires replacing certain AAI serial-numbered crosstubes installed on these model helicopters. This amendment is prompted by the discovery of a defect in the raw material used in manufacturing certain crosstubes. The actions specified in this AD are intended to prevent failure of a crosstube and subsequent collapse of the landing gear.

DATES: Effective July 23, 2010.

Comments for inclusion in the Rules Docket must be received on or before September 7, 2010.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- *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.

You may get the service information identified in this AD from Aeronautical Accessories, Inc., P. O. Box 3689, Bristol, Tennessee 37625–3689, telephone (423) 538–5151 or 1–800–251–7094, fax (423) 538–8469.

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information 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 Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Martin R. Crane, ASW–170, Aviation Safety Engineer, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5170, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the specified AAI crosstubes installed on

the specified model helicopters. This action requires replacing certain AAI serial-numbered crosstubes installed on these model helicopters. This amendment is prompted by AAI's discovery of a defect in a batch of raw material used in the manufacture of these crosstubes. Preliminary tests indicate that surface cracking to the inner wall of the tubing was introduced during the manufacturing process. There have been no failures reported in the field. The defect was discovered during the forming operation at AAI. This condition, if not corrected, could result in failure of a crosstube and subsequent collapse of the landing gear.

We have reviewed AAI Alert Service Bulletin No. AA–10012, dated March 5, 2010 (ASB), which advises of a possible defect in the material used to manufacture the crosstube, part number (P/N) 212–320–103, which is also included in AAI Low Skid Gear Assembly Kits, P/N 412–320–500 and 412–320–502. The ASB specifies locating the serial number (S/N) of each crosstube, and replacing, within 25 hours time-in-service (TIS), each crosstube within the S/N range of AA–574 through AA–628, by following the procedures contained in the Instructions for Continued Airworthiness AA–01136.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs with an affected crosstube installed. Therefore, this AD is being issued to prevent failure of a crosstube and subsequent collapse of the landing gear. This AD requires, within 25 hours TIS, replacing any affected crosstube with an airworthy crosstube.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, replacing an affected crosstube with an airworthy crosstube is required within 25 hours TIS, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 18 helicopters, and replacing each affected crosstube will take about 5 work hours at an average labor rate of $85 per work hour. Required parts will cost about $4,925 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $96,300.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2010–0565; Directorate Identifier 2010–SW–034–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light 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 with FAA personnel concerning this AD. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

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 the 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 an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2010–14–12 Arrow Falcon Exporters, Inc. (Previously Utah State University); AST, Inc. (Previously Firefly Aviation Helicopter Services, and Erickson Air-Crane); Rotorcraft Development Corporation (Previously Garlick Helicopters, Inc.); Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC (Previously Western International Aviation, Inc.); International Helicopters, Inc.; Northwest Rotorcraft, LLC (Previously Precision Helicopters, LLC); Robinson Air Crane, Inc.; San Joaquin Helicopters (Previously Hawkins & Powers Aviation); S.M. &T. Aircraft (Previously Us Helicopter Inc., UNC Helicopters, Inc., Southern Aero Corporation, and Wilco Aviation); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc. (Previously Mr. Jamie R. Hill and Southwest Florida Aviation, Inc.); Tamarack Helicopters, Inc. (Previously Ranger Helicopter Services, Inc.); Us Helicopter, Inc. (Previously Williams Helicopter Tech., Southern Aero Corp., Oregon Helicopters and Lenair Corp); West Coast Fabrications; and Overseas Aircraft Support Inc. (Previously Williams Helicopter Corporation, Scott Paper Company and

Offshores Construction): Amendment 39–16357. Docket No. FAA–2010–0565; Directorate Identifier 2010–SW–034–AD.

Applicability: Model AH–1G, AH–1S, HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters; and Southwest Florida Aviation Model UH–1B (SW204 and SW204HP) and UH–1H (SW205) helicopters, certificated in any category, with Aeronautical Accessories, Inc. (AAI), Low Skid Landing Gear Forward Crosstube (crosstube), part number (P/N) 212–320–103, with a serial number (S/N) prefix of "AA" and an S/N of 574 through 628.

Note 1: Crosstube, P/N 212–320–103, is also included as part of AAI Low Skid Gear Assembly Kits, P/N 412–320–500 and 412–320–502.

Note 2: Crosstube, P/N 212–320–103, is installed on Rotorcraft Development Corporation; S.M.T. Aircraft; Hagglund Helicopters, LLC; and Southwest Florida Aviation International, Inc., Model UH–1B and UH–1H helicopters, based on Supplemental Type Certificate No. SR01924AT.

Compliance: Required as indicated, unless done previously.

To prevent failure of a crosstube and subsequent collapse of the landing gear, do the following:

(a) Within 25 hours time-in-service, replace any affected crosstube with an airworthy crosstube.

Note 3: AAI Alert Service Bulletin ASB No. AA–10012, dated March 5, 2010, contains guidance that pertains to the subject of this AD and references AAI Instructions for Continued Airworthiness AA–01136, which contains the instructions for replacing the crosstubes.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Certification Office: *Attn:* DOT/FAA Southwest Region, Martin R. Crane, ASW–170, Aviation Safety Engineer, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5170, fax (817) 222–5783, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 3250: Landing Gear System.

(d) This amendment becomes effective on July 23, 2010.

Issued in Fort Worth, Texas, on June 25, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–16529 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0599; Airspace Docket No. 10–AWA–3]

RIN 2120–AA66

Amendment of Class C Airspace; Flint, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of the Bishop International Airport, Flint, MI, Class C airspace area by amending the airport reference point (ARP) information for the airport. This amendment is necessitated by the removal of Runway 5/23 and installation of a parallel taxiway along a portion of Runway 9/27, which changed the configuration of the airport and, consequently, changed the ARP. This action is necessary for the safety of aircraft operating in the Flint, MI, airspace area.

DATES: Effective date 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, 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:

History

In the autumn of 2009, a major construction project at Bishop International Airport, Flint, MI, was completed that entailed removing Runway 5/23, which was not an operating runway, and installing a "south parallel" taxiway along the eastern portion of Runway 9/27. Prior to construction, airport runway configuration made it possible for aircraft to mistake the 3,900 foot Runway 23 for the 7,200 foot Runway 27. There was also no capability for an aircraft to taxi to the approach end of Runway 27 from the south side of the airport without either back taxiing on the runway or crossing the runway and taxiing on the north side parallel to the approach end. As a result of the runway removal and taxiway installation, the airport layout changed enough to affect the ARP location, which defines the Class C airspace area's center point.

The Rule

This action amends Title 14 Code of Federal Regulations (CFR) part 71 by amending the ARP information contained in the legal description of the Bishop International Airport, Flint, MI, Class C airspace area to reflect current National Airspace System data. The correct ARP information, which the Class C airspace area is centered around, is latitude 42°57′56″ N., longitude 83°44′41″ W. Although the construction project affected the ARP, there are no other changes to the dimensions or altitudes of the Class C airspace area. Therefore, notice and public comment under 5 U.S.C. 553(b) are unnecessary.

Class C airspace areas are published in paragraph 4000 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 Class C airspace area listed in this document will be published subsequently in the Order.

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. Therefore, this 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 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 amends Class C airspace at Bishop International Airport, Flint, MI.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 4000 Subpart C—Class C Airspace

* * * * *

AGL MI C Flint, Bishop International Airport, MI [Amended]

Bishop International Airport, MI
(Lat. 42°57′56″ N., long. 83°44′41″ W.)

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Bishop International Airport; and that airspace extending upward from 2,100 feet MSL to and including 4,800 feet MSL within a 10-mile radius of the airport. This Class C airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, June 29, 2010.

Paul Gallant,

Acting Manager, Airspace and Rules Group.

[FR Doc. 2010–16469 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1141; Airspace Docket No. 09–AWP–12]

Amendment of Class D and E Airspace; Yuma, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will modify existing Class D and Class E airspace in the Yuma, AZ, area to accommodate aircraft arriving and departing Somerton Airport, Somerton, AZ. This action will also make a minor correction to the legal description for Somerton Airport and Yuma MCAS-Yuma International Airport and will enhance the safety and management of aircraft operations at both airports.

DATES: Effective date, 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On March 25, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify Class D and E airspace at Yuma, AZ (75 FR 14382). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000 and 6002 respectively, of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class D airspace, and Class E airspace designated as surface area in the Yuma, AZ, area. The Yuma MCAS-Yuma International Airport airspace area will be modified to ensure the containment of aircraft arriving and departing Somerton Airport, Somerton, AZ. This action enhances the safety and management of instrument flight rules operations in the Yuma, AZ, area. This action will also make a minor correction to the legal description for both Class D and E airspace to coincide FAA's National Aeronautical Charting Office.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the 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 5000 Class D airspace.

* * * * *

AWP AZ D Yuma, AZ [Modified]

Yuma MCAS-Yuma International Airport, AZ
(Lat. 32°39′24″ N., long. 114°36′22″ W.)
Somerton, Somerton Airport, AZ
(Lat. 32°36′03″ N., long. 114°39′57″ W.)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5.2-mile radius of Yuma MCAS-Yuma International Airport, excluding that airspace from the surface up to and including 300 feet above the surface from lat. 32°36′52″ N., long. 114°41′44″ W.; thence east to lat. 32°36′52″ N., long. 114°39′30″ W.; thence south to lat. 32°34′55″ N., long. 114°39′30″ W.; thence clockwise along the 5.2-mile radius to the point of beginning. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AWP AZ E2 Yuma, AZ [Modified]

Yuma MCAS-Yuma International Airport, AZ
(Lat. 32°39′24″ N., long. 114°36′22″ W.)
Somerton, Somerton Airport, AZ
(Lat. 32°36′03″ N., long. 114°39′57″ W.)

That airspace, within a 5.2-mile radius of Yuma MCAS/Yuma International Airport, excluding that airspace from the surface up to and including 300 feet above the surface from lat. 32°36′52″ N., long. 114°41′44″ W.; thence east to lat. 32°36′52″ N., long. 114°39′30″ W.; thence south to lat. 32°34′55″ N., long. 114°39′30″ W.; thence clockwise along the 5.2-mile radius to the point of beginning. The Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on June 24, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–16484 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1011; Airspace Docket No. 09–ANM–19]

Establishment of Class E Airspace; Bryce Canyon, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Bryce Canyon, UT, to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Bryce Canyon Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On November 18, 2009, the FAA published in the **Federal Register** a NPRM to establish Class E airspace extending upward from 700 feet above the surface at Bryce Canyon, UT (74 FR 59492). The comments received prompted the FAA on April 26, 2010, to publish in the **Federal Register** a supplemental notice of proposed rulemaking to establish Class E surface airspace at Bryce Canyon, UT (75 FR 21532). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received in favor of the airspace change.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface, at Bryce Canyon Airport, to accommodate IFR aircraft executing new RNAV GPS SIAPs at the airport. This action is necessary for the safety and management of IFR operations at the airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the 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 6002 Class E airspace designated as surface areas.

* * * * *

ANM UT E2 Bryce Canyon, UT [New]

Bryce Canyon Airport, UT
(Lat. 37°42′23″ N., long. 112°08′45″ W.)

Within a 4.2-mile radius of Bryce Canyon Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ANM UT E5 Bryce Canyon, UT [New]

Bryce Canyon Airport, UT
(Lat. 37°42′23″ N., long. 112°08′45″ W.)

That airspace extending upward from 700 feet above the surface within 8 miles each side of the 047° and 227° bearing from the airport, extending 18 miles northeast and 15.9 miles southwest of the airport.

Issued in Seattle, Washington, on June 24, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–16479 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1134; Airspace Docket No. 09–ANM–25]

Establishment of Class E Airspace; Lucin, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Lucin VHF Omni-Directional Radio Range Tactical Air Navigational Aid (VORTAC), Lucin, UT, to facilitate vectoring of Instrument Flight Rules (IFR) traffic from en route airspace to Salt Lake City, UT. This will improve the safety and management of IFR operations for the Salt Lake City, UT area.

DATES: Effective date, 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On March 25, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Lucin, UT (75 FR 14383). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6006 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E en route domestic airspace 1,200 feet above the surface, at the Lucin, UT VORTAC, to accommodate the management of IFR operations by vectoring IFR aircraft from en route airspace to Salt Lake City, UT. This action enhances the safety of the National Airspace System.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

ANM UT E6 Lucin, UT

Lucin VORTAC
(Lat. 41°21′47″ N., long. 113°50′26″ W.)

That airspace extending upward from 1,200 feet above the surface bounded on the west by V–269; on the east by V–484; and on the south by V–32; excluding existing controlled airspace above 8,500 feet MSL; excluding that airspace designated for federal airways; excluding the portions within Restricted Area R–6404 and Lucin MOA during their published hours of designation.

Issued in Seattle, Washington, on June 24, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–16475 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0878; Airspace Docket No. 09–ASW–7]

RIN 2120–AA66

Establishment of Low Altitude Area Navigation Route (T–284); Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; withdrawal.

SUMMARY: A final rule, published in the **Federal Register** April 1, 2010, establishing low altitude area navigation (RNAV) route T–284 for the Houston, TX, terminal area, is being withdrawn. As a result of Houston Area Air Traffic System (HAATS) Project, Phase 3C, program actions, the route is pending redesign and will be resubmitted for rulemaking at a future date.

DATES: Effective date 0901 UTC, July 8, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, 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:

History

On April 1, 2010, the FAA published in the **Federal Register** a final rule to establish RNAV route T–284 for the Houston, TX, terminal area (75 FR 16336), Docket No. FAA–2009–0878. Subsequent to publication, the Manager, Houston Air Route Traffic Control Center requested the recently published route be withdrawn pending redesign. The FAA intends to resubmit a redesigned route as a new rulemaking proposal at a future date.

Withdrawal of Final Rule

Accordingly, pursuant to the authority delegated to me, the FAA withdraws the final rule published in the **Federal Register** April 1, 2010 (75 FR 16336) [FR Doc. 2010–7245].

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

Issued in Washington, DC, on June 29, 2010.

Paul Gallant,

Acting Manager, Airspace and Rules Group.

[FR Doc. 2010–16492 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0248; Airspace Docket No. 09–AWP–2]

RIN 2120–AA66

Establishment of VOR Federal Airway V–625; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes VOR Federal Airway V–625 between the Nogales, AZ, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and the ULAPI, AZ, intersection. Specifically, the FAA is taking this action to establish a coordination point to facilitate border crossing flights between Mexico and the United States.

DATES: Effective date 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: 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.

History

On April 20, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish VOR Federal Airway V–625 in Arizona, (74 FR 17911). Interested parties were invited to participate in this rulemaking effort by submitting written comments on this proposal to the FAA. No comments were received in response to the NPRM. This amendment is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing VOR Federal Airway V–625 between the Nogales, AZ, VORTAC and the intersection of the ULAPI, AZ, fix. Mexico is establishing a new airway, and this action will establish a coordination point to facilitate border crossing flights between Mexico and the United States.

Domestic VOR Federal Airways are published in paragraph 6010(a) 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 Domestic VOR Federal Airway listed in this document will be published subsequently in the Order.

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. Therefore, this 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 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 establishes a VOR Federal Airway in Arizona.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Polices and Procedures, paragraph 311a.

This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–625 [New]

From Nogales, AZ, to int Nogales 154°, excluding that airspace in Mexico.

Issued in Washington, DC, June 25, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–16471 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30732; Amdt. No. 3381]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

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

DATES: This rule is effective July 8, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 2010.

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

For Examination

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

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

for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on June 25, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
29-Jul-10	WI	Lake Geneva	Grand Geneva Resort	0/1685	5/25/10	RNAV (GPS) Rwy 23, Orig
29-Jul-10	NE	Columbus	Columbus Muni	0/1688	6/4/10	VOR Rwy 14, Amdt 14A
29-Jul-10	NE	North Platte	North Platte Rgnl Airport Lee Bird Field.	0/1886	6/4/10	VOR Rwy 35, Amdt 18
29-Jul-10	IL	Bloomington/Normal	Central IL Rgnl Arpt at Bloomington/Normal.	0/2101	6/4/10	RNAV (GPS) Rwy 2, Orig
29-Jul-10	IA	Cherokee	Cherokee County Rgnl	0/2102	6/4/10	RNAV (GPS) Z Rwy 36, Orig
29-Jul-10	NM	Socorro	Socorro Muni	0/2103	6/4/10	RNAV (GPS) Z Rwy 33, Orig
29-Jul-10	IN	North Vernon	North Vernon	0/2108	6/4/10	RNAV (GPS) Z Rwy 23, Orig.
29-Jul-10	MO	St Louis	Lambert-St Louis Intl	0/2112	6/4/10	ILS or LOC Rwy 24, Amdt 46.
29-Jul-10	NE	Seward	Seward Municipal	0/2119	6/4/10	NDB Rwy 34, Orig.
29-Jul-10	IL	Chicago	Chicago Midway Intl	0/2125	6/4/10	ILS or LOC Rwy 4R, Orig–A.
29-Jul-10	AK	Selawik	Selawik	0/2192	6/7/10	RNAV (GPS) Z Rwy 22, Orig–A.
29-Jul-10	KY	Somerset	Lake Cumberland Rgnl	0/2447	6/4/10	RNAV (GPS) Z Rwy 5, Amdt 1.
29-Jul-10	AK	Fairbanks	Fairbanks Intl	0/2653	6/7/10	ILS or LOC Rwy 2L, Amdt 8; ILS Rwy 2L (CAT II), Amdt 8; ILS Rwy 2L (CAT III), Amdt 8.
29-Jul-10	AQ	Pago Pago	Pago Pago Intl	0/2667	6/11/10	ILS/DME Rwy 5, Amdt 13D.
29-Jul-10	IL	Chicago/Romeoville	Lewis University	0/2786	6/7/10	RNAV (GPS) Rwy 27, Orig.
29-Jul-10	OH	Delaware	Delaware Muni	0/2960	6/4/10	NDB Rwy 10, Orig.
29-Jul-10	ID	Lewiston	Lewiston-Nez Perce County	0/3139	6/11/10	ILS Rwy 26, Amdt 12.
29-Jul-10	ID	Lewiston	Lewiston-Nez Perce County	0/3141	6/11/10	RNAV (GPS) Y Rwy 12, Amdt 1A.
29-Jul-10	CO	Alamosa	San Luis Valley Regional/ Bergman Field.	0/3490	6/11/10	VOR or GPS A, Amdt 6A.
29-Jul-10	VA	South Hill	Mecklenburg-Brunswick Rgnl	0/3856	6/11/10	LOC Rwy 1, Orig.
29-Jul-10	IN	Auburn	De Kalb County	0/3941	6/10/10	VOR Rwy 9, Amdt 7A.
29-Jul-10	IN	Auburn	De Kalb County	0/3943	6/10/10	VOR or GPS A, Amdt 9.
29-Jul-10	IN	Fort Wayne	Smith Field	0/3948	6/9/10	VOR Rwy 13, Amdt 9A.
29-Jul-10	CA	Palo Alto	Palo Alto Arpt of Santa Clara Co.	0/4078	6/11/10	VOR/DME Rwy 31, Orig–B.
29-Jul-10	CA	Redding	Redding Muni	0/4087	6/10/10	LOC/DME BC Rwy 16, Amdt 7.
29-Jul-10	CA	Torrance	Zamperini Field	0/4089	6/10/10	Takeoff Minimums and Obstacle DP, Amdt 1.
29-Jul-10	FL	West Palm Beach	North Palm Beach County General Aviation.	0/4131	6/4/10	VOR Rwy 8R, Amdt 1A.
29-Jul-10	SC	Columbia	Jim Hamilton L.B. Owens	0/4237	6/15/10	LOC Rwy 31, Amdt 1.
29-Jul-10	SC	Columbia	Jim Hamilton L.B. Owens	0/4240	6/15/10	Radar–1, Amdt 2.
29-Jul-10	FL	Orlando	Orlando Intl	0/5202	6/11/10	VOR/DME Rwy 18L, Amdt 5D.
29-Jul-10	FL	Orlando	Orlando Intl	0/5204	6/11/10	VOR/DME Rwy 18R, Amdt 5D.
29-Jul-10	NJ	Newark	Newark Liberty Intl	0/9515	5/25/10	GLS Rwy 22R, Orig.
29-Jul-10	NJ	Newark	Newark Liberty Intl	0/9516	5/25/10	GLS Rwy 11, Orig.
29-Jul-10	NJ	Newark	Newark Liberty Intl	0/9517	5/25/10	GLS Rwy 22L, Orig.
29-Jul-10	NJ	Newark	Newark Liberty Intl	0/9518	5/25/10	GLS Rwy 4R, Orig.
29-Jul-10	NJ	Newark	Newark Liberty Intl	0/9519	5/25/10	GLS Rwy 4L, Orig.

[FR Doc. 2010–16250 Filed 7–7–10; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30731 ; Amdt. No. 3380]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

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

DATES: This rule is effective July 8, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 2010.

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

For Examination

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

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

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

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

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on June 25, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 29 JUL 2010

Anchorage, AK, Ted Stevens Anchorage Intl, ILS OR LOC/DME RWY 7L, ILS RWY 7L (CAT II), Amdt 1
Jackson, AL, Jackson Muni, RNAV (GPS) RWY 1, Orig
Jackson, AL, Jackson Muni, RNAV (GPS) RWY 19, Orig
Troy, AL, Troy Muni, ILS OR LOC RWY 7, Amdt 9
Troy, AL, Troy Muni, RNAV (GPS) RWY 7, Amdt 1
Troy, AL, Troy Muni, RNAV (GPS) RWY 25, Amdt 1
Vernon, AL, Lamar County, RNAV (GPS) RWY 17, Orig
Vernon, AL, Lamar County, RNAV (GPS) RWY 35, Orig
Vernon, AL, Lamar County, VOR/DME–A, Amdt 3
Blytheville, AR, Arkansas Intl, ILS OR LOC/DME RWY 18, Amdt 1
Blytheville, AR, Arkansas Intl, RNAV (GPS) RWY 18, Amdt 2
Blytheville, AR, Arkansas Intl, RNAV (GPS) RWY 36, Amdt 2
Carlisle, AR, Carlisle Muni, RNAV (GPS) RWY 9, Amdt 1
Marianna, AR, Marianna/Lee County-Steve Edwards Field, RNAV (GPS) RWY 18, Orig
Marianna, AR, Marianna/Lee County-Steve Edwards Field, RNAV (GPS) RWY 36, Orig
Marianna, AR, Marianna/Lee County-Steve Edwards Field, Takeoff Minimums and Obstacle DP, Orig
Bakersfield, CA, Meadows Field, ILS OR LOC/DME RWY 30R, Amdt 30
Bakersfield, CA, Meadows Field, RNAV (GPS) RWY 12L, Amdt 1
Bakersfield, CA, Meadows Field, RNAV (GPS) RWY 30R, Amdt 1
Daggett, CA, Barstow-Daggett, RNAV (GPS) RWY 22, Amdt 2
Daggett, CA, Barstow-Daggett, RNAV (GPS) RWY 26, Amdt 2
Daggett, CA, Barstow-Daggett, Takeoff Minimums and Obstacle DP, Amdt 3
Daggett, CA, Barstow-Daggett, VOR OR TACAN RWY 22, Amdt 10
San Jose, CA, Reid-Hillview of Santa Clara, RNAV (GPS) RWY 13L, Orig
San Jose, CA, Reid-Hillview of Santa Clara, RNAV (GPS) Y RWY 31R, Orig
San Jose, CA, Reid-Hillview of Santa Clara, RNAV (GPS) Z RWY 31R, Amdt 1
Tulare, CA, Mefford Field, RNAV (GPS) RWY 13, Orig
Tulare, CA, Mefford Field, VOR/DME RWY 13, Amdt 1
Longmont, CO, Vance Brand, RNAV (GPS) RWY 29, Amdt 1
Washington, DC, Washington Dulles Intl, ILS OR LOC RWY 19L, Amdt 15
Washington, DC, Washington Dulles Intl, ILS OR LOC/DME RWY 1C, Amdt 2
Marianna, FL, Marianna Muni, GPS RWY 18, Amdt 1, CANCELLED
Marianna, FL, Marianna Muni, NDB–C, Amdt 4
Marianna, FL, Marianna Muni, RNAV (GPS) RWY 18, Orig
Marianna, FL, Marianna Muni, VOR–A, Amdt 12
Marianna, FL, Marianna Muni, VOR–B, Amdt 5
Titusville, FL, NASA Shuttle Landing Facility, RNAV (GPS) RWY 15, Orig
Titusville, FL, NASA Shuttle Landing Facility, RNAV (GPS) RWY 33, Orig
Titusville, FL, NASA Shuttle Landing Facility, TACAN RWY 15, Orig
Titusville, FL, NASA Shuttle Landing Facility, TACAN RWY 33, Orig
Titusville, FL, NASA Shuttle Landing Facility, Takeoff Minimums and Obstacle DP, Amdt 1
Homerville, GA, Homerville, NDB RWY 14, Amdt 2
Homerville, GA, Homerville, RNAV (GPS) RWY 14, Orig
Homerville, GA, Homerville, RNAV (GPS) RWY 32, Orig
Homerville, GA, Homerville, Takeoff Minimums and Obstacle DP, Orig
Homerville, GA, Homerville, VOR/DME–A, Amdt 4
McRae, GA, Telfair-Wheeler, RNAV (GPS) RWY 21, Amdt 1
McRae, GA, Telfair-Wheeler, Takeoff Minimums and Obstacle DP, Amdt 1
Honolulu, HI, Honolulu Intl, LOC RWY 8L, Orig-A
Council Bluffs, IA, Council Bluffs Muni, RNAV (GPS) RWY 14, Amdt 2
Council Bluffs, IA, Council Bluffs Muni, RNAV (GPS) RWY 36, Amdt 1
Casey, IL, Casey Muni, GPS RWY 22, Orig-A, CANCELLED
Casey, IL, Casey Muni, NDB RWY 4, Amdt 8
Casey, IL, Casey Muni, NDB RWY 22, Amdt 5
Casey, IL, Casey Muni, RNAV (GPS) RWY 4, Orig
Casey, IL, Casey Muni, RNAV (GPS) RWY 22, Orig
Chicago, IL, Chicago-O'Hare Intl, ILS OR LOC RWY 32L, Amdt 2B, CANCELLED
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 14R, Amdt 2
Chicago, IL, Chicago-O'Hare Intl, RNAV (GPS) RWY 32L, Amdt 2C, CANCELLED
Chicago, IL, Chicago-O'Hare Intl, Takeoff Minimums and Obstacle DP, Amdt 17
Chicago/Romeoville, IL, Lewis University, RNAV (GPS) RWY 2, Amdt 2
Kokomo, IN, Kokomo Muni, ILS OR LOC RWY 23, Amdt 9
Kokomo, IN, Kokomo Muni, RNAV (GPS) RWY 5, Orig
Kokomo, IN, Kokomo Muni, RNAV (GPS) RWY 23, Orig
Kokomo, IN, Kokomo Muni, Takeoff Minimums and Obstacle DP, Orig
Kokomo, IN, Kokomo Muni, VOR RWY 23, Amdt 20
Kokomo, IN, Kokomo Muni, VOR RWY 32, Amdt 20
Kokomo, IN, Kokomo Muni, VOR/DME RNAV OR GPS RWY 5, Amdt 5A, CANCELLED
Atwood, KS, Atwood-Rawlins County City-County, NDB RWY 16, Amdt 2
Atwood, KS, Atwood-Rawlins County City-County, RNAV (GPS) RWY 16, Orig
Coffeyville, KS, Coffeyville Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Georgetown, KY, Georgetown Scott County-Marshall Fld,, RNAV (GPS) RWY 3, Amdt 2
Georgetown, KY, Georgetown Scott County-Marshall Fld, RNAV (GPS) Y RWY 21, Orig
Georgetown, KY, Georgetown Scott County-Marshall Fld, RNAV (GPS) Z RWY 21, Amdt 2
Richmond, KY, Madison, RNAV (GPS) RWY 18, Orig
Richmond, KY, Madison, RNAV (GPS) RWY 36, Orig
Richmond, KY, Madison, Takeoff Minimums and Obstacle DP, Orig
Richmond, KY, Madison, VOR/DME RWY 18, Amdt 6
Richmond, KY, Madison, VOR/DME RNAV OR GPS RWY 36, Amdt 6, CANCELLED
Gardner, MA, Gardner Muni, RNAV (GPS)-B, Orig

Gardner, MA, Gardner Muni, VOR–A, Amdt 6
Pittsfield, MA, Pittsfield Muni, LOC RWY 26, Amdt 8
Biddeford, ME, Biddeford Muni, GPS RWY 6, Orig-A, CANCELLED
Biddeford, ME, Biddeford Muni, RNAV (GPS) RWY 6, Orig
Dowagiac, MI, Dowagiac Muni, RNAV (GPS) RWY 9, Orig
Dowagiac, MI, Dowagiac Muni, RNAV (GPS) RWY 27, Orig
Dowagiac, MI, Dowagiac Muni, VOR–A, Amdt 10
Dowagiac, MI, Dowagiac Muni, VOR/DME RNAV OR GPS RWY 27, Amdt 6, CANCELLED
Drummond Island, MI, Drummond Island, GPS RWY 8, Orig, CANCELLED
Drummond Island, MI, Drummond Island, GPS RWY 26, Orig, CANCELLED
Drummond Island, MI, Drummond Island, RNAV (GPS) RWY 8, Orig
Drummond Island, MI, Drummond Island, RNAV (GPS) RWY 26, Orig
Grayling, MI, Grayling AAF, VOR RWY 14, Amdt 2
Lansing, MI, Capital Region Intl, RNAV (GPS) RWY 6, Orig
Lansing, MI, Capital Region Intl, VOR RWY 6, Amdt 25
Newberry, MI, Luce County, RNAV (GPS) RWY 11, Orig
Newberry, MI, Luce County, RNAV (GPS) RWY 29, Orig
Newberry, MI, Luce County, VOR RWY 11, Amdt 12
Newberry, MI, Luce County, VOR RWY 29, Amdt 12
Valley City, ND, Barnes County Muni, RNAV (GPS) RWY 13, Orig
Valley City, ND, Barnes County Muni, RNAV (GPS) RWY 31, Orig
Las Vegas, NV, McCarran Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Reno, NV, Reno/Stead, RNAV (GPS) RWY 32, Amdt 1
Hamilton, NY, Hamilton Muni, RNAV (GPS) RWY 35, Orig
Ithaca, NY, Ithaca Tompkins Rgnl, ILS OR LOC RWY 32, Amdt 6
Ithaca, NY, Ithaca Tompkins Rgnl, RNAV (GPS) RWY 32, Orig
Shawnee, OK, Shawnee Rgnl, RNAV (GPS) RWY 35, Orig
Barnwell, SC, Barnwell Rgnl, RNAV (GPS) RWY 17, Amdt 2
Austin, TX, Austin Executive, RNAV (GPS) RWY 13, Orig
Austin, TX, Austin Executive, RNAV (GPS) RWY 31, Orig
Austin, TX, Austin Executive, Takeoff Minimums and Obstacle DP, Orig
Henderson, TX, Rusk County, NDB–B, Amdt 1
Odessa, TX, Odessa-Schlemeyer Field, VOR–A, Amdt 7
Louisa, VA, Louisa County/Freeman Field, LOC/DME RWY 27, Amdt 3
Louisa, VA, Louisa County/Freeman Field, RNAV (GPS) RWY 27, Amdt 1
Louisa, VA, Louisa County/Freeman Field, Takeoff Minimums and Obstacle DP, Amdt 1
East Troy, WI, East Troy Muni, Takeoff Minimums and Obstacle DP, Orig

On June 09, 2010 (75 FR 32654) the FAA published an Amendment in Docket No. 30727, Amdt 3376 to Part 97 of the Federal Aviation Regulations under section 97.23 and 97.33. The following entries, effective 29 July 2010, are hereby changed to be effective on *23 September 2010:*

Marshalltown, IA, Marshalltown Muni, GPS RWY 12, Orig-B, CANCELLED
Marshalltown, IA, Marshalltown Muni, RNAV (GPS) RWY 13, Orig
Marshalltown, IA, Marshalltown Muni, RNAV (GPS) RWY 31, Orig
Marshalltown, IA, Marshalltown Muni, Takeoff Minimum and Obstacle DP, Orig
Marshalltown, IA, Marshalltown Muni, VOR RWY 13, Amdt 2
Marshalltown, IA, Marshalltown Muni, VOR RWY 31, Amdt 2

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2008–0033]

RIN 0960–AG61

Setting the Time and Place for a Hearing Before an Administrative Law Judge

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are amending our rules to state that our agency is responsible for setting the time and place for a hearing before an administrative law judge (ALJ). This change creates a 3-year pilot program that will allow us to test this new authority. Our use of this authority, consistent with due process rights of claimants, may provide us with greater flexibility in scheduling both in-person and video hearings, lead to improved efficiency in our hearing process, and reduce the number of pending hearing requests. This change is a part of our broader commitment to maintaining a hearing process that results in accurate, high-quality decisions for claimants.

DATES: These final rules are effective August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Brent Hillman, Social Security Administration, 5107 Leesburg Pike, Falls Church, Virginia 22041–3260, (703) 605–8280, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Introduction

One of our highest priorities is to improve the efficiency of our hearing process for the Old Age, Survivors, and Disability Insurance (OASDI) programs under title II of the Social Security Act (Act) and the Supplemental Security Income (SSI) program under title XVI of the Act. The increasing workloads at the hearing level of our administrative review process have been well-publicized, and we are actively preparing for further increases in the number of hearing requests. Eliminating the hearing backlog is a "moral imperative." [1] We face significant challenges in dealing with the historically large number of pending hearing requests, and we must schedule a greater number of hearings to reduce the hearing backlog. The ALJs who conduct the hearings are dedicated, hard working professionals; they will play a central role in helping us reduce the backlog. However, some ALJs do not schedule or hold a minimally acceptable number of hearings, and our current rules are arguably unclear as to certain scheduling issues.

Therefore, we are revising our rules to state that "we" (the agency) have the authority to set the time and place for a hearing before an ALJ. We are adding this authority as a 3-year pilot program so we may test it and evaluate its effectiveness, as explained below. We will conduct this pilot to test the effect of our use of this authority, consistent with due process rights of claimants, on the timely scheduling of hearings and on reducing the hearing backlog. This change is a part of our broader commitment to maintaining a hearing process that results in accurate, high-quality decisions for claimants. Through the pilot, we hope to determine whether extending the authority to schedule hearings to other agency personnel,

[1] *See, e.g., www.socialsecurity.gov/legislation/testimony_111909.htm* and *www.socialsecurity.gov/legislation/testimony_032409.htm.*

including management officials, allows us to better manage the number of hearings held and to keep our hearing process as efficient as possible.

Under our current rules, ALJs set the time and place for hearings. In practice, each ALJ provides hearing office staff with a schedule of times that he or she is available to hold hearings. The hearing office staff then coordinates scheduling of the hearing with the claimant, the claimant's representative, medical and vocational experts, and hearing recorders. We expect that the rules changes we are making here will help us reduce the number of pending hearing requests by giving us more flexibility to set the time and place for hearings.[2] We anticipate using this pilot authority primarily in a very small number of situations where an ALJ is scheduling so few hearings that he or she is compromising our efforts to make timely and accurate decisions for people applying for benefits. One impetus for proposing these rules was a New England judge who scheduled no hearings for many years. Because we expect that virtually all ALJs will work with us to schedule hearings in a timely manner, administrative action under this regulation should be an exceptionally rare occurrence.

The United States Government Accountability Office (GAO) recognized that achieving productivity goals was critical if we are to reach our goal of eliminating the backlog by the end of fiscal year (FY) 2013.[3] Our Inspector General and the GAO reported that meeting our ALJ hiring and productivity goals will be critical in reducing the pending hearings to fewer than 466,000[4] cases by the end of FY 2013.[5]

We expect the number of hearing requests to continue to grow as the number of new applications for benefits increases. In FY 2009, we saw a 13.8 percent increase in the number of initial disability claims. We also experienced an increase in the number of requests for a hearing before an ALJ—a 5.7 percent increase over the number of requests in FY 2008. We are anticipating an even larger increase in the number of hearing requests in FY 2010, corresponding to the increase in initial claims in FY 2009.

We will consult with the appropriate Hearing Office Chief Administrative Law Judge (HOCALJ) and the ALJ before we exercise the pilot authority provided in these rules to determine if there are any reasons why we should not set the time and place of the ALJ's hearings, such as the ALJ being on leave for an extended period or insufficient staff support to prepare cases for hearings. If the HOCALJ does not state a reason that we believe justifies the limited number of hearings scheduled by an ALJ, we will then consult with the ALJ before deciding whether to exercise our authority to set the time and place for the ALJ's hearings. If the HOCALJ states a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will not exercise our authority to set the time and place for the ALJ's hearings. We will work with the HOCALJ to identify those circumstances where we can assist the ALJ and address any impediment that may affect the scheduling of hearings.

Our decision to set the time and place of a hearing in no way interferes with the ALJ's role to develop, hear, and decide cases. The ALJ will be in the best position to help us identify cases that are ready for a hearing, as well as those that need additional development before a hearing is scheduled. In making this change to our rules as a pilot, we intend only to test whether this authority improves the quality of service to claimants awaiting a hearing. We are committed to maintaining a hearing process that results in accurate, high-quality decisions for claimants. We will carefully monitor the application of these rules to ensure that the hearing process remains effective and fair.

In the rare instances where we will need to exercise this authority to schedule hearings for an ALJ, we will determine when and where an ALJ will hold a hearing. As is our practice when we schedule and hold all hearings, before we schedule a hearing, we will first consider those factors that affect scheduling, such as the availability of all parties and the development of the case file. We expect that the clarity provided by these final rules will allow issues that have arisen in the past to be quickly and effectively resolved between an ALJ and the HOCALJ.

We also expect that the changes we are making in these final rules will assist our development of an electronic scheduling initiative, which includes an automated calendaring function. Electronic hearings scheduling will improve our efficiency by integrating the schedules of ALJs, experts, claimants, claimants' representatives, and hearing recorders, and the availability of hearing rooms.

As stated above, to ensure that these rules operate as intended, we are adding a provision to these rules to explain that the authority to allow us to set the time and place of the hearing will be implemented as a temporary 3-year pilot program, so we may test the provisions of these rules and evaluate their effectiveness. By using this authority to schedule hearings, we expect that we will be able to increase productivity and help ALJs manage their caseloads. We expect these final rules will help us reduce the hearing request backlog and ensure that claimants are given timely hearings. As we work to improve the hearing process, we are committed to maintaining a system that results in accurate, high-quality decisions for claimants.

We are conducting this 3-year pilot program to evaluate the capacity of these rules to help us achieve our mission. This change is a part of our broader commitment to maintaining a hearing process that results in accurate, high-quality decisions for claimants. During the course of the pilot program, we will carefully examine ALJ productivity, caseload distribution, staffing requirements, the efficiency of the scheduling process, the efficacy of both inter- and intra-office consultation,

[2] These rule changes are only one part of our Plan to Eliminate the Hearing Backlog and Prevent its Recurrence. *See www.ssa.gov/appeals/Backlog_Reports/Annual_Backlog_Report_FY_2008–Jan.pdf* and *http://www.ssa.gov/asp*. Other initiatives to reduce the hearing backlog include final rules that allows certain attorneys in our Office of Disability Adjudication and Review (ODAR) to make fully favorable decisions, and an initiative for medical experts to screen cases and identify those claimants whose impairments are most likely to meet our disability requirements. We have streamlined folder assembly, which allows us to fill ALJ hearing dockets more efficiently, and offered overtime work to a wide variety of agency employees to assist hearing offices to prepare cases for hearing. To increase our overall adjudicatory capacity, we opened four National Hearing Centers in Falls Church, Virginia, Albuquerque, New Mexico, Chicago, Illinois, and Baltimore, Maryland. We expect to open a fifth National Hearing Center in St. Louis, Missouri, in the near future. We also anticipate opening 25 new hearing offices and 7 new satellite offices in the near future, and continue to modify and expand existing hearing offices. We also continue to increase our use of electronic folders and additional automated processes. We anticipate long-term benefits from use of these electronic applications. In sum, the rule changes we are making here are just one part of our overall plan to provide a more efficient hearings process to Social Security claimants.

[3] *http://www.gao.gov/new.items/d09398.pdf.*

[4] At the end of FY 2009, 722,822 hearings were pending in ODAR. In October 2009, the average processing time was 446 days. As outlined in the FY 2008–2013 Strategic Plan, we plan to reduce the number of pending hearings to a desired level of 466,000 and the average processing time to 270 days by the end of FY 2013. A pending level of 466,000 hearings ensures a sufficient number of cases to maximize the efficiency of the hearing process. *http://www.ssa.gov/oig/ADOBEPDF/audittxt/A–07–09–29162.htm; www.ssa.gov/asp/StrategicGoal1.pdf; https://www.socialsecurity.gov/legislation/testimony_111909.htm.*

[5] *See* Quick Response Evaluation: Office of Disability Adjudication and Review Management Information, A–07–09–29162 at pp. 1–3, Appendix C, *http://www.ssa.gov/oig/ADOBEPDF/A–07–09–29162.pdf* (Aug. 3, 2009); *http://www.gao.gov/new.items/d09398.pdf.*

and the proportional effect on the hearing request backlog.

Public Comments

In the notice of proposed rulemaking (NPRM) published at 73 FR 66564 (November 10, 2008), we provided the public with a 60-day period in which to comment on the proposed changes. That comment period ended on January 9, 2009. We received 141 comments on the proposed rules. We carefully considered all of the comments. As some of the comments were long and quite detailed, we have condensed, summarized, and paraphrased them in the following discussions. However, we have tried to present all views adequately and to carefully address all of the relevant and significant issues raised by the commenters. We generally did not address comments that are outside the scope of this rulemaking proceeding.

ALJs' Qualified Decisional Independence

Comment: The most prevalent comment we received was a concern that allowing us to schedule hearings limited an ALJ's qualified decisional independence. Many commenters believed that deciding when a claim is ready for a hearing, as well as the type and scope of development necessary prior to the hearing, should be solely within the discretion of the ALJ. Some commenters noted that the decision regarding the length of time reserved for each hearing should also be solely within the discretion of the ALJ. A number of commenters also objected to our expectation that each ALJ would process at least 500 cases per year to eliminate the backlog of claims at the hearing level. One commenter feared that we would set so many hearings for an ALJ that he or she would spend all or most of his or her time "on the bench" and would be unable to perform the other required duties.

Response: We agree that ALJs have qualified decisional independence, but we disagree with the commenters' views that these rules changes infringe on that qualified decisional independence. "Qualified decisional independence" means that ALJs must be impartial in conducting hearings. They must decide cases based on the facts in each case and in accordance with agency policy as laid out in regulations, rulings, and other policy statements. Further, because of their qualified decisional independence, ALJs make their decisions free from agency pressure or pressure by a party to decide a particular case, or a particular percentage of cases, in a particular way. The agency may not take actions that abridge the duty of impartiality owed to claimants when ALJs hear and decide claims.

Contrary to what some of the commenters seem to assume, however, qualified decisional independence does not prevent appropriate management oversight of our administrative review process. ALJs' qualified decisional independence does not prevent us from establishing administrative practices and programmatic policies that ALJs must follow, such as the rules that we are adopting here. Our authority to establish such practices and policies means that ALJs are entirely subordinate to the agency on matters of law and policy. That view has been repeatedly endorsed by the Federal courts.

Furthermore, as some of the commenters pointed out, the Federal courts also have recognized that reasonable efforts to increase the production levels of ALJs are not an infringement of qualified decisional independence and that the setting of reasonable production expectations, as opposed to fixed quotas, does not in itself violate the Administrative Procedure Act. As one court observed, "[I]n view of the significant backlog of cases, it was not unreasonable to expect ALJs to perform at minimally acceptable levels of efficiency. Simple fairness to claimants awaiting benefits required no less."[6] We included a rough figure of 500 cases per year to help provide context; to avoid misunderstanding, the figure was removed from these final rules. Contrary to the assumptions of some commenters, these final rules do not establish a "fixed quota" that will require ALJs to schedule and hear a specific number of cases. Nevertheless, we expect all of our ALJs to perform at reasonable levels of efficiency. The changes in these final rules are intended to accomplish that goal in the rare instances where we may find it necessary to exercise the authority under these rules. The changes will help us manage the hearings process more efficiently, consistent with our obligations to the public we serve, and in ways that do not impinge on an ALJ's qualified decisional independence.

We recognize the challenging job facing our ALJs: holding a sufficient number of hearings and rendering accurate, well-reasoned decisions. But the reality of the current hearing backlog and the increasing number of hearing requests require an acceptable level of production from all of our employees, including ALJs. Nothing in these rules exerts pressure on ALJs to decide claims in a particular way, precludes an ALJ from developing the evidence, or interferes with the ALJ's conduct of a hearing. These rules simply change an administrative practice to ensure the best and most prompt service to those who request a hearing.

However, we also want to ensure that these rules do not result in any unintended and unforeseen consequences. Consequently, in order to address the commenters' concerns, we have decided to make four changes to final sections 404.936 and 416.1436.

First, we have revised final sections 404.936(a) and 416.1436(a) to provide that we "may" set the time and place of the hearing. We made this change in order to clarify that we will not set the time and place of every hearing, as some of the commenters seemed to fear.

Second, we have revised final sections 404.936(c) and 416.1436(c) to clarify that we will consult with the ALJ in order to determine the status of case preparation before we set the time and place of the hearing.

Third, we have added new final sections 404.936(g) and 416.936(g) to state that we will consult with the appropriate HOCALJ and ALJ before we exercise this authority to determine if there are any reasons why we should not set the time and place of the ALJ's hearings. If the HOCALJ does not state a reason that we believe justifies the limited number of hearings scheduled by an ALJ, we will then consult with the ALJ before deciding whether to begin to exercise our authority to set the time and place for the ALJ's hearings. If the HOCALJ states a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will not exercise our authority to set the time and place for the ALJ's hearings. We will work with the HOCALJ to identify those circumstances where we can assist the ALJ and address any impediment that may affect the scheduling of hearings.

Finally, we have added new final sections 404.936(h) and 416.1436(h) to clarify that we will implement these rules as a pilot program. As a result, the provisions of the rules that authorize us to set, and, if necessary, to change, the time and place of the hearing and that require us to consult with the ALJ to determine the status of case preparation will be effective for a 3-year period from the effective date of these final rules. We may, however, terminate these final rules earlier or extend them beyond that date by notice of a final rule in the **Federal Register**. We expect that these four changes will make it clear that we will implement these final rules in a manner that does not affect the ALJs' qualified decisional independence and

[6] *Nash* v. *Bowen,* 869 F.2d 675, 681 (2d Cir.), *cert. denied,* 493 U.S. 812 (1989).

that results in a hearing process that continues to be effective and fair.

Comment: One commenter asserted that no other agency "interferes" with the authority of an ALJ to set the time and place for hearings, while another commenter sought to distinguish the work of our ALJs from ALJs in other Federal agencies where the agency has authority to schedule hearings. Other commenters suggested that our hearing process should remain different from the hearing processes in other agencies, based on the nature of the work we perform.

Response: Several Federal agencies employ ALJs, and some of those agencies have exercised their authority to schedule hearings for ALJs. There is no uniform practice among the agencies for scheduling hearings. In some agencies, the agency has specifically delegated the authority to set the time and place for a hearing to an ALJ or equivalent adjudicator. In other agencies, the agency has retained its authority to set the time and place of the hearing.[7] Although the subject matter and the format of administrative hearings may vary among agencies, we do not believe that the nature of the duties our ALJs perform requires that we specifically delegate the authority to set the time and place for the hearing to the ALJ.

Comment: Many comments suggested that these rules would result in the unwarranted denial or allowance of claims by ALJs. Several commenters believed that the result of these rules would be an increase in the issuance of favorable decisions by ALJs, based on the commenters' assertions that favorable decisions can be more quickly processed. One commenter believed this would be particularly true in cases involving more difficult factual situations or in cases requiring complicated legal analysis. Two commenters suggested the opposite—that these rules would result in an increase in *un*favorable decisions by ALJs. Several commenters stated that these rules could prevent ALJs from properly developing the administrative record and could either encourage or discourage ALJs from calling necessary medical or vocational experts to testify at the administrative hearing.

Response: Nothing in these rules either explicitly or implicitly pressures an ALJ to decide any claim in a particular manner. In order to make that clear, as noted above, we have included two consultation provisions in the final rules. First, in final sections 404.936(c) and 416.1436(c), we provide that we will consult with the ALJ in setting the time and place for the hearing, in part to determine the status of case preparation. We also have added new final sections 404.936(g) and 416.1436(g), where we explain that before we exercise the authority to set the time and place for an ALJ's hearings, we will consult with the appropriate HOCALJ to determine if there are any reasons why we should not set the time and place of the ALJ's hearings. If the HOCALJ does not state a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will then consult with the ALJ before deciding whether to begin to exercise our authority to set the time and place for the ALJ's hearings. If the HOCALJ states a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will not exercise our authority to set the time and place for the ALJ's hearings. We will work with the HOCALJ to identify those circumstances where we can assist the ALJ and address any impediment that may affect the scheduling of hearings.

We believe that these consultation provisions will enhance our goal to improve the efficiency of our hearing process. In addition to these specific provisions, we also provide in final sections 404.936(c) and 416.1436(c) that we will consult with the ALJ to determine whether the claimant or any other party will appear in person or by video teleconferencing.[8] We will also ascertain the availability of medical or vocational experts the ALJ determines are required before we schedule a hearing. Nothing in these rules will either encourage or discourage ALJs from calling any necessary experts or witnesses.

As we have stated, we will carefully monitor quality, productivity, and accuracy in those situations in which we exercise the authority in these rules. We also plan to evaluate the effectiveness of our pilot program by the end of 3 years to ensure that we properly implement these rules and that these rules do not result in any unintended and unforeseen consequences. We believe that our ALJs will continue to perform their duties in a professional manner and will decide all claims before them consistent with the applicable law, regulations, and agency policy.

Comment: Several commenters suggested the proposed changes would not help us increase the efficiency of our hearing process or reduce the number of pending hearings. Three commenters suggested these rules will not decrease the hearing backlog because allowing us to schedule hearings will merely result in a greater delay between the hearing date and issuing the ALJ decision. Many commenters suggested that scheduling additional hearings without ALJ input would result in increased rescheduling and an increased need for supplemental hearings. By contrast, another commenter felt that these rules would result in fewer supplemental hearings. Additional commenters believed that these rules will result in increased remands from the Appeals Council and Federal district courts because claims will not be fully developed before a hearing is scheduled.

Response: As previously stated, we have revised these rules to provide that we will consult with the ALJ in setting the time and place for the hearing. Thus, we do not believe that claims will proceed without proper development or need additional rescheduling. We have no interest in using the authority in these rules in a manner that would result in further delay of hearings. For the majority of ALJs, these rules will result in no change to the way their hearings are currently scheduled. We will exercise our authority to schedule hearings only where an ALJ is not scheduling a sufficient number of hearings. Finally, we will monitor the success of this regulation on an agency-wide basis to ensure that it does not produce unintended consequences, such as those suggested by the comments.

Other Options for Increasing Efficiency and Productivity

Comment: As previously stated, numerous commenters offered

[7] The National Labor Relations Board's (NLRB) regulations give authority to the regional director to schedule the hearing. 29 CFR 101.8. The NLRB's Casehandling Manual Part 1 Unfair Labor Practice Proceedings §§ 10256–10256.5 provides certain factors for consideration in the exercise of that authority. (available at *http://www.nlrb.gov/nlrb/legal/manuals/CHM1/CHM1.pdf).* The Federal Communications Commission reserves to "the Commission" the ability to specify the date and place of the hearing. 47 CFR 1.221(a)(3) and 1.253(a). The regulations for the Board of Veterans' Appeals do not expressly state who sets the time and place for hearing, but refers to "officials scheduling hearings" separately from a member of the Board. 38 CFR 20.702(a) and 20.704(a). However, the Department of Labor, the Department of Agriculture, the Department of Homeland Security, the Department of Housing and Urban Development, and the National Transportation Safety Board authorize their ALJs (or the equivalent) to set and change the date, time, and place of a hearing. 6 CFR 13.12, 13.18(b)(1); 7 CFR 1.141(b); 24 CFR 26.32(a); 29 CFR 18.27; and 49 CFR 800.23 and 821.37(a). The regulations for the Department of Health and Human Services, which are modeled on our current rules, provide that the ALJ sets the time and place for the hearing. 42 CFR 405.1016(a) and 405.1020(a).

[8] Final sections 404.936(c) and 416.1436(c).

suggestions for other actions we could take that they felt would be more effective in meeting our goals of efficiency in scheduling hearings and reducing the hearing backlog. Most prevalent among these comments was the suggestion that additional hiring, both of support staff and ALJs, would be the most effective tool in reaching our productivity goals.

Response: We agree that additional hiring will also help us meet our goal of reducing the hearings backlog. We hired a significant number of ALJs in FY 2008 and in FY 2009, and we plan to hire additional ALJs and support staff in FY 2010. However, "merely adding employees, while critical to our success, will not solve all of our problems." [9]

Viability of Centralized Scheduling

Comment: Many commenters expressed concern about our proposal to "institute nationwide centralized scheduling," noting that centralized scheduling would not take into account all variables in scheduling a hearing, including the availability of a claimant, or a claimant's representative, a hearing monitor, security personnel, and any necessary experts, as well as access to a hearing room.

Response: These commenters misinterpreted our proposed rules. We are not instituting nationwide centralized scheduling. We recognize the importance of coordinating the schedules of the hearing participants, including the ALJ. As mentioned above, our electronic scheduling initiative anticipates integrating the schedules of ALJs, experts, claimants, claimants' representatives, and hearing recorders, and the availability of hearing rooms to more efficiently set hearing times and dates.

Comment: Several commenters suggested that any centralized scheduling process, even within a hearing office, would prevent an ALJ from using "creative" measures to schedule hearings when circumstances change unexpectedly or at the last minute.

Response: Nothing in these final rules is meant to curtail efforts by ALJs who currently schedule a sufficient number of hearings from maintaining that high level of production, including the use of measures that will allow the scheduling of additional hearings. We encourage those persons who schedule the hearings, whether the ALJ or another person in the hearing office, to avail themselves of those measures which allow for the most efficient scheduling of hearings.

Comment: Several commenters expressed fear that the agency would not consider an ALJ's personal schedule (vacation time, significant personal events, illness, etc.) when it sets the time and place for the hearing.

Response: We clearly state in the rules that we will consult with the ALJ when we set the time and place for the hearing.[10] It would serve no purpose to schedule a hearing when the required ALJ is unavailable and would certainly not meet our goal of increasing the number of scheduled hearings. These final rules will not impinge on any employees' ability to use properly requested leave. We will continue to comply with all of our obligations regarding the use of leave by ALJs and other employees.

Implementation of These Rules

Comment: Several commenters expressed concern over the practicalities of implementing these rules. Some commenters stated the rules did not indicate which specific persons would exercise the authority to set the time and place for a hearing. Other commenters noted that although the preamble limited application of these rules to ALJs with low production, the rules language itself was not so limited. Additional comments were concerned with the "fairness" of the scheduling of hearings and of choosing certain ALJs for application of these rules.

Response: In many cases, the person who sets the time and place will continue to be the ALJ. In those cases where the agency sets the time and place for a hearing, the employee actually scheduling the hearing will be determined by the make-up of the hearing office, the particular situation leading to the exercise of this authority, and other factors. We anticipate that an agency management official will exercise this authority.

For those ALJs who are already setting a sufficient number of claims for hearing, there is no need for the agency to schedule hearings. Our goal is to increase productivity and ensure that we meet the needs of the public. Productive ALJs will continue to use whatever scheduling method they currently use. As noted above, we will use the authority in this pilot to schedule hearings only for those ALJs who do not schedule a sufficient number of hearings. The decision to have the agency schedule hearings will be based solely on productivity and efficiency.

As explained above, these rules clarify our procedures for exercising our authority to set the time and place of an ALJ's hearing. We will consult with the appropriate HOCALJ and the ALJ to determine if there are any reasons why we should not set the time and place of the ALJ's hearings, such as the ALJ being on leave for an extended period or insufficient staff support to prepare cases for hearings. If the HOCALJ does not state a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will then consult with the ALJ before deciding whether to begin to exercise our authority to set the time and place for the ALJ's hearings. If the HOCALJ states a reason that we believe justifies the limited number of hearings scheduled by the ALJ, we will not exercise our authority to set the time and place for the ALJ's hearings. We will work with the HOCALJ to identify those circumstances where we can assist the ALJ and address any impediment that may affect the scheduling of hearings.

Comment: A few commenters expressed concern regarding an ALJ's ability to reschedule hearings. One commenter suggested that these rules did not allow an ALJ to postpone or reschedule a hearing once it had been set by the agency. Several commenters recognized the ALJ's continued ability to reschedule hearings, but believed that this ability would defeat the purpose of the rules, as an ALJ could merely reschedule the hearing in any claim.

Response: We did not propose to make any changes to those portions of 20 CFR 404.936(a) and 416.1436(a), which address adjourning the hearing or reopening it to receive additional evidence, nor do we make any changes to those clauses in these final rules. Determining the need to postpone or adjourn a hearing remains within the discretion of an ALJ. Further, we did not propose any changes to the rules regarding the ALJ's authority to determine whether a claimant has good cause for objecting to the time or place of the hearing. We expect ALJs to act as ethical and responsible adjudicators. An ALJ who repeatedly and systematically reschedules hearings scheduled for him or her without reasonable cause would not meet that expectation.

Other Comments

Comment: A few commenters suggested that we proposed these rules as a way of demonstrating "discriminatory animus" to force the resignation or retirement of older judges, those with poor health, or "women judges, who, more than men,

[9] *www.socialsecurity.gov/legislation/testimony_111909.htm.*

[10] Final sections 404.936(c) and 416.1436(c).

will have scheduling issues revolving around child care."

Response: We absolutely reject these comments. Nothing in these rules can be reasonably interpreted to demonstrate discriminatory animus. It is our policy to ensure that "every employee enjoys a non-hostile work environment free of discrimination or harassment of any kind" and that "[a]ll employment decisions * * * will be made exclusively on the basis of job-related criteria * * *."[11] Nothing in these rules suggests we are, in any way, altering our commitment to a workplace free of discrimination, and, in fact, our ALJ corps has become significantly more diverse since we were able to hire from candidates certified by the Office of Personnel Management in 2008.

Comment: Numerous commenters suggested that if there are ALJs who are not fully performing their duties, then we already have tools for discipline and reprimand of those ALJs without the need for changing our existing rules. These commenters suggested that dealing with certain ALJs in the broader manner of these rules decreases both morale and productivity.

Response: We agree that we have the administrative authority to discipline ALJs who are not performing their duties, and we will continue to use those tools as necessary. However, our current rules, which state that the ALJ has the sole responsibility for setting the time and place for a hearing, unnecessarily impede our ability to schedule a sufficient number of hearings. We believe that a more uniform distribution of the hearing workload in each hearing office will result in an increase in morale, particularly for those ALJs already conducting a sufficient number of hearings.

Comment: One commenter suggested we delay implementation of these final rules pending a report by the GAO on the number of cases currently awaiting hearing. The commenter stated that we should allow supplemental comments on the proposed rules upon receipt of the GAO report.

Response: The GAO issued its report, "Social Security Disability: Additional Performance Measures and Better Cost Estimates Could Help Improve SSA's Efforts to Eliminate Its Hearings Backlog," in September 2009. We agreed with the GAO's conclusion that ALJ productivity is a critical factor in meeting our goal of eliminating the hearing backlog. We are well aware of the critical nature of the backlog of pending hearings and do not believe that any further delay before implementing these rules is warranted.

How long will these final rules be effective?

These final rules will no longer be effective 3 years after the date on which they become effective, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

The Office of the Chief Actuary estimates that these final rules will increase the program costs of the OASDI and SSI programs by $20 million. This revised estimate is significantly lower than the $1,225 billion estimate in the NPRM. The revised estimate is based on the 3-year pilot program and a new assumption that the scheduling revision would be much more limited and only used in rare circumstances.

We assumed the change would result in scheduling for only one ALJ in FY 2011 plus one additional ALJ each year thereafter. This assumption would result in an annual increase of 50 decisions for each ALJ in that year and subsequent years. Thus, in 2013 there would be 150 extra decisions. We assume that the total number of decisions will continue beyond the expiration of the 3-year pilot program, but that the effects decline gradually over the 2014–20 period. The initial projection assumed about 1,000 additional ALJ dispositions in 2010 rising to about 10,000 additional dispositions in 2015 and later.

The table below presents our estimates of the increases in OASDI benefit payments and Federal SSI payments during the 3-year pilot program over the fiscal year period 2011–20 resulting from the increases in ALJ dispositions assumed to occur as a result of the rules changes. The estimates are consistent with the assumptions underlying the President's FY 2011 Budget, and they assume that the final rules will be effective on October 1, 2010.

TABLE 1—ESTIMATED INCREASES IN OASDI BENEFITS AND FEDERAL SSI PAYMENTS

[In millions]

Fiscal year (FY)	OASDI	SSI	Total
2011	$1	*	$1
2012	1	*	2
2013	2	$1	2
2014	2	1	2
2015	2	*	2
2016	2	*	2
2017	2	*	2
2018	2	*	2
2019	2	*	2
2020	1	*	2
Totals:			
2011–15	8	2	10
2011–20	16	4	20

* Increase of less than $500,000.

Notes: 1. (Totals may not equal the sum of components due to rounding.)

2. SSI payments due on October 1st in FY 2012, 2017 and 2018 are included in payments for the prior FY.

Regulatory Flexibility Act

We certify that these final rules would not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These rules does not create any new, or affect any existing, collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program No 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart J of

[11] *The Social Security Administration's Policy Prohibiting Discrimination Against Employees and Applicants for Employment.*

part 404 and subpart N of part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. In § 404.932, revise the second sentence of paragraph (b) to read as follows:

§ 404.932 Parties to a hearing before an administrative law judge.

* * * * *

(b) * * * In addition, any other person may be made a party to the hearing if his or her rights may be adversely affected by the decision, and we notify the person to appear at the hearing or to present evidence supporting his or her interest.

■ 3. In § 404.936, revise the first and second sentences of paragraph (a), paragraphs (c) and (d), and the introductory text of paragraph (e), and add paragraphs (g) and (h), to read as follows:

§ 404.936 Time and place for a hearing before an administrative law judge.

(a) *General.* We may set the time and place for any hearing. We may change the time and place, if it is necessary. * * *

* * * * *

(c) *Determining how appearances will be made.* In setting the time and place of the hearing, we will consult with the administrative law judge in order to determine the status of case preparation and to determine whether your appearance or that of any other party who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will determine that the appearance of a person be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge determines that there is no circumstance in the particular case that prevents the use of video teleconferencing to conduct the appearance. Section 404.950 sets forth procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

(d) *Objecting to the time or place of the hearing.* If you object to the time or place of your hearing, you must notify us at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. If at all possible, the request should be in writing. We will change the time or place of the hearing if the administrative law judge finds you have good cause, as determined under paragraphs (e) and (f) of this section. Section 404.938 provides procedures we will follow when you do not respond to a notice of hearing.

(e) *Good cause for changing the time or place.* If you have been scheduled to appear for your hearing by video teleconferencing and you notify us as provided in paragraph (d) of this section that you object to appearing in that way, the administrative law judge will find your wish not to appear by video teleconferencing to be a good reason for changing the time or place of your scheduled hearing and we will reschedule your hearing for a time and place at which you may make your appearance before the administrative law judge in person. The administrative law judge will also find good cause for changing the time or place of your scheduled hearing, and we will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

* * * * *

(g) *Consultation procedures.* Before we exercise the authority to set the time and place for an administrative law judge's hearings, we will consult with the appropriate hearing office chief administrative law judge to determine if there are any reasons why we should not set the time and place of the administrative law judge's hearings. If the hearing office chief administrative law judge does not state a reason that we believe justifies the limited number of hearings scheduled by the administrative law judge, we will then consult with the administrative law judge before deciding whether to begin to exercise our authority to set the time and place for the administrative law judge's hearings. If the hearing office chief administrative law judge states a reason that we believe justifies the limited number of hearings scheduled by the administrative law judge, we will not exercise our authority to set the time and place for the administrative law judge's hearings. We will work with the hearing office chief administrative law judge to identify those circumstances where we can assist the administrative law judge and address any impediment that may affect the scheduling of hearings.

(h) *Pilot program.* The provisions of the first and second sentences of paragraph (a), the first sentence of paragraph (c), and paragraph (g) of this section are a pilot program. These provisions will no longer be effective on August 9, 2013, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

■ 4. In § 404.938, revise the first sentence of paragraph (a) to read as follows:

§ 404.938 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After we set the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice. * * *

* * * * *

■ 5. In § 404.950, revise the third sentence of paragraph (b) to read as follows:

§ 404.950 Presenting evidence at a hearing before an administrative law judge.

* * * * *

(b) * * * Even if all of the parties waive their right to appear at a hearing, we may notify them of a time and a place for an oral hearing, if the administrative law judge believes that a personal appearance and testimony by you or any other party is necessary to decide the case.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart N—[Amended]

■ 6. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 7. In § 416.1432, revise the second sentence of paragraph (b) to read as follows:

§ 416.1432 Parties to a hearing before an administrative law judge.

* * * * *

(b) * * * In addition, any other person may be made a party to the hearing if his or her rights may be

adversely affected by the decision, and we notify the person to appear at the hearing or to present evidence supporting his or her interest.

■ 8. In § 416.1436, revise the first and second sentences of paragraph (a), paragraphs (c) and (d), and the introductory text of paragraph (e), and add paragraphs (g) and (h), to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

(a) *General.* We may set the time and place for any hearing. We may change the time and place, if it is necessary. * * *

* * * * *

(c) *Determining how appearances will be made.* In setting the time and place of the hearing, we will consult with the administrative law judge in order to determine the status of case preparation and to determine whether your appearance or that of any other party who is to appear at the hearing will be made in person or by video teleconferencing. The administrative law judge will determine that the appearance of a person be conducted by video teleconferencing if video teleconferencing technology is available to conduct the appearance, use of video teleconferencing to conduct the appearance would be more efficient than conducting the appearance in person, and the administrative law judge determines that there is no circumstance in the particular case that prevents the use of video teleconferencing to conduct the appearance. Section 416.1450 sets forth procedures under which parties to the hearing and witnesses appear and present evidence at hearings.

(d) *Objecting to the time or place of the hearing.* If you object to the time or place of your hearing, you must notify us at the earliest possible opportunity before the time set for the hearing. You must state the reason for your objection and state the time and place you want the hearing to be held. If at all possible, the request should be in writing. We will change the time or place of the hearing if the administrative law judge finds you have good cause, as determined under paragraphs (e) and (f) of this section. Section 416.1438 provides procedures we will follow when you do not respond to a notice of hearing.

(e) *Good cause for changing the time or place.* If you have been scheduled to appear for your hearing by video teleconferencing and you notify us as provided in paragraph (d) of this section that you object to appearing in that way, the administrative law judge will find your wish not to appear by video teleconferencing to be a good reason for changing the time or place of your scheduled hearing and we will reschedule your hearing for a time and place at which you may make your appearance before the administrative law judge in person. The administrative law judge will also find good cause for changing the time or place of your scheduled hearing, and we will reschedule your hearing, if your reason is one of the following circumstances and is supported by the evidence:

* * * * *

(g) *Consultation procedures.* Before we exercise the authority to set the time and place for an administrative law judge's hearings, we will consult with the appropriate hearing office chief administrative law judge to determine if there are any reasons why we should not set the time and place of the administrative law judge's hearings. If the hearing office chief administrative law judge does not state a reason that we believe justifies the limited number of hearings scheduled by the administrative law judge, we will then consult with the administrative law judge before deciding whether to begin to exercise our authority to set the time and place for the administrative law judge's hearings. If the hearing office chief administrative law judge states a reason that we believe justifies the limited number of hearings scheduled by the administrative law judge, we will not exercise our authority to set the time and place for the administrative law judge's hearings. We will work with the hearing office chief administrative law judge to identify those circumstances where we can assist the administrative law judge and address any impediment that may affect the scheduling of hearings.

(h) *Pilot program.* The provisions of the first and second sentences of paragraph (a), the first sentence of paragraph (c), and paragraph (g) of this section are a pilot program. These provisions will no longer be effective on August 9, 2013, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

■ 9. In § 416.1438, revise the first sentence of paragraph (a) to read as follows:

§ 416.1438 Notice of a hearing before an administrative law judge.

(a) *Issuing the notice.* After we set the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service, unless you have indicated in writing that you do not wish to receive this notice. * * *

* * * * *

■ 10. In § 416.1450, revise the third sentence of paragraph (b) to read as follows:

§ 416.1450 Presenting evidence at a hearing before an administrative law judge.

* * * * *

(b) * * * Even if all of the parties waive their right to appear at a hearing, we may notify them of a time and a place for an oral hearing, if the administrative law judge believes that a personal appearance and testimony by you or any other party is necessary to decide the case.

* * * * *

[FR Doc. 2010–16549 Filed 7–7–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0295]

RIN 1625–AA08

Special Local Regulation for Marine Events; Mattaponi River, Wakema, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish special local regulations during the Mattaponi Madness Drag Boat Event, a series of power boat races to be held on the waters of the Mattaponi River, near Wakema, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic during the power boat races on the Mattaponi River immediately adjacent to the Rainbow Acres Campground, located in King and Queen County, near Wakema, Virginia.

DATES: This rule is effective from 9 a.m. on August 28, 2010 until 7 p.m. on August 29, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–0295 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0295 in the "Keyword" box, and then clicking "Search." This material is 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 email LT Tiffany Duffy, Chief Waterways Management Division, Sector Hampton Roads, Coast Guard; telephone (757)668–5580, e-mail *Tiffany.A.Duffy@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:

Regulatory Information

On May 11, 2010, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation for Marine Events; Mattaponi River, Wakema, VA in the **Federal Register** (75 FR 90). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The Mattaponi Volunteer Rescue Squad will be sponsoring a series of power boat racing events titled the "Mattaponi Madness Drag Boat Event." This section will be effective on the following dates: August 28, 2010 through August 29, 2010. The Coast Guard anticipates that this section will only be enforced between 9 a.m. to 7 p.m. on August 28, 2010. If the event is postponed due to inclement weather, then this section will be enforced on August 29, 2010 between 9 a.m. and 7 p.m. The races will be held on the Mattaponi River immediately adjacent to the Rainbow Acres Campground, King and Queen County, Virginia. The power boat races will consist of approximately 45 vessels conducting high speed straight line runs along the river and parallel to the shoreline. A fleet of spectator vessels is expected to gather near the event site to view the competition. Due to the high speed of 45 vessels, the regulation is necessary to provide for the safety of participants, spectators and other transiting vessels by temporarily restricting vessel traffic in the event area during the power boat races.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

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. Although this regulation will prevent traffic from transiting a portion of the Mattaponi River during the events, the effect of this regulation will not be significant due to the limited duration that the regulation will be in effect and the advance notification that will be made to the maritime community via marine information broadcast so mariners can adjust their plans accordingly. Additionally, the regulated area has been designed to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats and when the Coast Guard Patrol Commander deems it is safe to do so.

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: owners or operators of vessels intending to transit this section of the Mattaponi River from 9 a.m. to 7 p.m. on August 28, 2010 or on August 29, 2010. This rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Although the regulated area will apply to a three-quarter mile segment of the Mattaponi River, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander between races; (ii) in the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course; (iii) before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could 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 which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233

■ 2. Add temporary § 100.35T05–0295 to read as follows:

§ 100.35T05–0295 Mattaponi River, Wakema, Virginia.

(a) *Regulated Area.* The regulated area includes all waters of Mattaponi River immediately adjacent to Rainbow Acres Campground, King and Queen County, Virginia. The regulated area includes a section of the Mattaponi River approximately three-quarter mile long and bounded in width by each shoreline, bounded to the east by a line that runs parallel along longitude 076°52′43″ W, near the mouth of Mitchell Hill Creek, and bounded to the west by a line that runs parallel along longitude 076°53′41″ W just north of Wakema, Virginia. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Hampton Roads.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Hampton Roads with a commissioned, warrant or petty officer on board and displaying a Coast Guard ensign.

(c) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by an Official Patrol.

(ii) Proceed as directed by any official patrol.

(d) *Enforcement Period.* This regulation will be enforced from 9 a.m. to 7 p.m. on August 28, 2010. In the case of inclement weather, this regulation will be enforced from 9 a.m. to 7 p.m. on August 29, 2010.

Dated: June 21, 2010.

M.S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2010–16587 Filed 7–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0472]

RIN 1625–AA00

Safety Zone; Illinois River, Mile 119.7 to 120.3

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for

all waters of the Illinois River, Mile 119.7 to 120.3, extending the entire width of the river. This safety zone is needed to protect persons and vessels from safety hazards associated with a high speed boat race occurring on a portion of the Illinois River. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Upper Mississippi River or a designated representative.

DATES: This rule is effective from 10 a.m. on July 17 until 7 p.m. on July 18, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0472 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0472 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 Lieutenant (LT) Rob McCaskey, Sector Upper Mississippi River Response Department at telephone 314–269–2541, e-mail *Rob.E.McCaskey@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. Publication of an NPRM would be impracticable because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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**. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event, which will occur less than 30 days after the publication of this rule.

Background and Purpose

On July 17 & 18, 2010, the Havana Chamber of Commerce will be conducting a high speed boat race between mile 119.7 and mile 120.3 on the Illinois River. This event presents safety hazards to the navigation of vessels between mile 119.7 and mile 120.3, extending the entire width of the river. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area.

Discussion of Rule

The Coast Guard is establishing a safety zone for all waters of the Illinois River, Mile 119.7 to 120.3, extending the entire width of the river. Entry into this zone is prohibited to all vessels and persons except participants and those persons and vessels specifically authorized by the Captain of the Port Upper Mississippi River. This rule will be enforced from 10 a.m. until 7 p.m. CDT on July 17 & 18, 2010. The Captain of the Port Upper Mississippi River will inform the public through local notice to mariners of all safety zone changes and enforcement periods.

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 considered significant because it will only be in effect for a limited time period. Furthermore, advance notifications to the marine community will be made through local notice to mariners and the River Industry Bulletin Board (RIBB) at *http://www.ribb.com.*

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 the Illinois River, Mile 119.7 to 120.3 after 10 a.m. until 7 p.m. CDT on July 17 & 18, 2010. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for a limited period of time.

If you are a small business entity and are significantly affected by this regulation, please contact LT Rob McCaskey, Sector Upper Mississippi River at 314–269–2541.

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 businesses. 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 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 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 concluded that 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. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, 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. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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.T08–0472 to read as follows:

§ 165.T08–0472 Safety Zone; Illinois River, Mile 119.7 to 120.3.

(a) *Location.* The following area is a safety zone: all waters of the Illinois River, Mile 119.7 to 120.3 extending the entire width of the waterway.

(b) *Effective date.* This rule is effective from 10 a.m. on July 17 until 7 p.m. on July 18, 2010.

(c) *Periods of Enforcement.* This rule will be enforced from 10 a.m. until 7 p.m. each day, on July 17 & 18, 2010. The Captain of the Port Upper Mississippi River will inform the public through local notice to mariners of all safety zone changes and enforcement periods.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River representative may be contacted at (314) 269–2332.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Upper Mississippi River or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 18, 2010.

S. L. Hudson,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

[FR Doc. 2010–16586 Filed 7–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0547]

RIN 1625–AA00

Safety Zone; San Francisco Giants Baseball Game Promotion, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of McCovey Cove in San Francisco Bay off San Francisco, CA in support of the San Francisco Giants Baseball Game Promotion. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons and vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission from the Captain of the Port or his designated representative.

DATES: This rule is effective from 10:45 a.m. through 10:30 p.m. on July 16, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0547 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0547 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 Lieutenant Junior Grade Allison Natcher, U.S. Coast Guard Sector San Francisco; telephone 415–399–7440, e-mail *D11-PF-MarineEvents@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. Publication of an NPRM would be impracticable because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Basis and Purpose

The San Francisco Giants will sponsor the San Francisco Giants Baseball Game Promotion on July 16, 2010, on the navigable waters of McCovey Cove, in San Francisco Bay, off of San Francisco, CA. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area on the waters surrounding the fireworks launch site during loading of the pyrotechnics, and during the fireworks display. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barges. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone centered at the fireworks launch site, which will be located in position 37°46′38.46″ N, 122°23′1.67″ W (NAD 83). During the set up of the fireworks and until the start of the fireworks display, the temporary safety zone applies to the navigable waters around the fireworks site within a radius of 100 feet. From 10:00 p.m. until 10:15 p.m., the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site within a radius of 1,000 feet. From 10:15 p.m. until 10:30 p.m., the safety zone will only apply to the navigable waters around the fireworks site within a radius of 100 feet.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site while the fireworks are set up, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

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 and 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.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. Additionally, vessel traffic can pass safely around the area, and the safety zone will encompass only a small portion of the waterway for a limited period of time. The entities most likely to be affected are pleasure craft engaged in recreational activities.

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 may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant

economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of the areas off San Francisco, CA to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via 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 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. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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.T11–336 to read as follows:

§ 165.T11–336 Safety zone; San Francisco Giants Baseball Game Promotion, San Francisco, CA.

(a) *Location.* This temporary safety zone is established for the waters of

Lake Tahoe off of Glenbrook, NV. The fireworks launch site will be located in position 37°46′38.46″ N, 122°23′1.67″ W (NAD 83). From 10:45 a.m. to 10:00 p.m., the temporary safety zone applies to the navigable waters around the fireworks site within a radius of 100 feet. From 10 p.m. until 10:15 p.m. on July 16, 2010, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site within a radius of 1,000 feet. From 10:15 p.m. until 10:30 p.m., the safety zone will only apply to the navigable waters around the fireworks site within a radius of 100 feet.

(b) *Definitions.* As used in this section, "designated representative" means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.*

(1) Under the general regulations in § 165.23 of this title, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or through the 24-hour Command Center at telephone 415–399–3547.

(d) *Effective period.* This section is effective from 10:45 a.m. on through 10:30 p.m. on July 16, 2010.

Dated: June 26, 2010.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010–16584 Filed 7–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD79

Special Regulations; Areas of the National Park System

AGENCY: National Park Service.

ACTION: Final Rule.

SUMMARY: The National Park Service (NPS) is removing the regulation that closed the Harry S Truman Home to all public use until June 1, 2010. The closure was necessary because of serious health and safety hazards to visitors during the repair and restoration work and the potential for damage to irreplaceable artifacts. Closure could not be avoided without compromising the quality and cost of renovation of the Truman Home. It was necessary to become effective upon publication to allow major repair and restoration activities scheduled to proceed. The projects have been completed and the Truman Home has been reopened as scheduled.

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

FOR FURTHER INFORMATION CONTACT: Superintendent Larry Villalva, at Harry S Truman National Historic Site. Telephone 816–254–2720.

SUPPLEMENTARY INFORMATION:

Background

The projects to repair and restore the Truman Home are part of the National Park Service Centennial Initiative, which was introduced in May 2007. The initiative is a nine year plan to improve facilities and services in the National Park Service for the 100th anniversary of the agency in 2016. One of the main goals is stewardship of natural and cultural resources in our National Parks, including rehabilitation, restoration and maintenance of treasured cultural resources such as the Truman Home. The home is a Victorian-style mansion which was built in 1867 and became part of the National Park System in 1983. It served as the residence of Harry S Truman, 33rd President of the United States from 1919 until his death in 1972.

During the closure, we completed four projects: installation of a new HVAC system, installation of a fire suppression system, repair of structural deficiencies, and rehabilitation of walls, ceilings and historic wall covering materials. Before these construction projects, we removed and stored the historic furnishings to protect them from accidental damage from fine dust caused by construction activities.

We removed historic wallpaper from the dining room and upstairs bedroom areas for cleaning, repairing, and reinstallation by a paper conservator. Plaster located in many areas throughout the home failed as a result of deterioration and exposure to moisture which caused ceilings to buckle, and walls to either bulge or crack.

The existing HVAC system installed in 1985 failed to maintain a stable environment in the Truman Home. This compromised the longevity of not only the home's infrastructure, but also the thousands of artifacts on exhibit and in storage within the home. We installed three HVAC units to stabilize the interior environment. Since the project required removal of flooring on the second floor and attic to install ductwork, we used the opportunity for access to the floor cavities to install a fire suppression system.

Administrative Procedure Act

The temporary closure of the Truman Home to visitors ended on June 1, 2010, making it possible for the public to again visit this historic property (36 CFR 7.94; 70 FR 51239). The regulation is no longer necessary and should be removed. Since accepting public comment on this rule would be unnecessary and contrary to the public interest, we find under the Administrative Procedure Act that it is not necessary to publish a proposed rule. For the same reasons, we find that the rule can become effective immediately under the criteria in the Administrative Procedure Act.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. We have made the assessments required by E.O. 12866 and the results are given below.

(1) This rule will not have an effect of $100 million or more on the economy. It will 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. The area restricted through the rulemaking was closed only during the Truman Home repair, preservation and protection construction activities stabilizing the structure, replacing the HVAC systems and adding a fire suppression system, and is now safe for access by the public.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by

another agency. The closure was confined to one building located within a unit of the National Park System, which is neither managed nor occupied by any other agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The rule was confined to the closure for public safety and protection of the historic resource, does not regulate any financial programs or matters and is being removed.

(4) This rule does not raise novel legal or policy issues. Closure of a historic structure for restoration is a normal procedure for assuring public safety, minimizing interruption of the restoration process, and protection of the building and contents while construction is ongoing, and the needed restoration has been accomplished.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will 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.*). The economic effects of this rule are local in nature and negligible in scope. The primary purpose of this rule is to close the Truman Home during preparation and completion of necessary construction activities. Removal of the restriction is necessary in order to allow public access once again.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. This rule will allow the public to visit the interior of the Truman Home during the closure.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. There were no costs associated with the removal of this section of the CFR.

c. Does 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. The primary purpose of the interim rule was to implement a closure to allow necessary construction activities to proceed safely and efficiently in order to carry out the protection and preservation of the Truman Home structure. This rule will not change the ability of United States based enterprises to compete in any way.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The restrictions under this regulation do not have a significant effect or impose an unfunded mandate on any agency or on the private sector. This rule applies only to federal parkland administered by the National Park Service at Truman Home, and no costs will be incurred by any non-federal parties.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. This rule does not apply to private property, or cause a compensable taking, so there are no takings implications.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This regulation will not have a substantial direct effect on the states, or on the distribution of power and responsibilities among the various levels of government. The rule addresses public access to the Truman Home structure at Harry S Truman National Monument. The affected land is under the administrative jurisdiction of the National Park Service.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets 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) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards

National Environmental Policy Act

The Handbook for NPS Director's Order 12 contains a listing of Categorical Exclusions. Section 3.4 D(2) of the Director's Order 12 Handbook provides that "minor changes in programs and regulations pertaining to visitor activities" may be categorically excluded under NEPA. The revision will have no effect on use, adjacent land ownerships or land uses, or adjacent owners or occupants. Visitor access has already resumed, and the only effect of this rule is to remove an obsolete regulation. Completion of the environmental screening form shows that the adoption of this regulation to remove the closure of the Truman house would result in no measurable adverse environmental effects.

We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under the National Environmental Policy Act. As such, a categorical exclusion is the appropriate form of NEPA compliance for this regulatory action.

Government-to-Government Relationship With Tribes

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This interim rule is temporary, is limited to the closure of the Truman house, does not affect any other area of the park, and does not involve items or interests of federally recognized Indian tribes.

Information Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Drafting Information

The following persons participated in the writing of this regulation: Larry Villalva, Superintendent, Harry S Truman National Historic Site, Carol Dage, Curator, Harry S Truman National Historic Site, James Loach, Associate Regional Director, Midwest Regional Office, Omaha, Nebraska; and Philip A. Selleck, Chief, Regulations and Special Park Uses, Washington, DC.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under D.C. Code 10–137 (2001) and D.C. Code 50–2201 (2001).

§ 7.94 [Removed and reserved]

■ 2. Remove and reserve § 7.94.

Dated: June 29, 2010.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–16600 Filed 7–7–10; 8:45 am]

BILLING CODE 4312–BA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907211158–0265–02]

RIN 0648–AY04

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2010

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

ACTION: Final rule.

SUMMARY: NMFS implements recreational management measures for the 2010 summer flounder, scup, and black sea bass fisheries. These actions are necessary to comply with regulations implementing the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Effective August 9, 2010.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and EA/RIR/IRFA Addendum are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 800 N. State Street, Suite 201, Dover, DE 19901. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.noaa.gov*. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide and EA/RIR/IRFA document and addendum are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930–2276.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The FMP and its implementing regulations, which are found at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational management measures that apply in the Exclusive Economic Zone (EEZ). The state from North Carolina to Maine manage these fisheries within 3 nautical miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern fishing activity in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The 2010 coastwide recreational harvest limits, after deduction of research set-aside (RSA), are 8,586,440 lb (3,896 mt) for summer flounder; 3,011,074 lb (1,366 mt) for scup; and 1,830,390 lb (830 mt) for black sea bass. The final 2010 quota specifications, inclusive of the recreational harvest limits, were previously implemented by NMFS effective January 1, 2010 (74 FR 67978; December 22, 2009), for summer flounder and scup, and effective February 2, 2010, for black sea bass (75 FR 6586).

The proposed rule to implement annual Federal recreational measures for the 2010 summer flounder, scup, and black sea bass fisheries was published on April 27, 2010 (75 FR 22087), along with proposed management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits.

2010 Recreational Management Measures

Additional discussion on the development of the recreational management measures appeared in the preamble of the proposed rule and is not repeated here. All minimum fish sizes discussed below are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person.

Summer Flounder Management Measures

The Commission notified the NMFS Northeast Regional Administrator by letter dated April 6, 2010, that the 2010 summer flounder recreational fishery management programs (i.e., minimum fish size, possession limit, and fishing seasons) implemented by the states from Massachusetts to North Carolina have been reviewed by the Commission's Technical Committee and approved by the Commission's Summer Flounder Management Board (SF Board). The correspondence indicates that the Commission-approved management programs are projected to restrict 2010 recreational summer flounder coastwide landings consistent with the state-specific requirements established by the Technical Committee and SF Board through the Commission process.

Based on the recommendation of the Commission, the NMFS Northeast Regional Administrator finds that the recreational summer flounder fishing measures proposed to be implemented by the individual states for 2010 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. According to § 648.107(a)(1), vessels subject to the recreational fishing measures of this part and landing summer flounder in a state with an approved conservation equivalency program shall not be subject to Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) has been amended to recognize state-implemented measures as conservation equivalent of the coastwide recreational management measures for 2010. For clarity, the 2010

summer flounder management measures adopted by the individual states vary according to the state of landing, as specified in the following table:

TABLE 1—2010 COMMISSION APPROVED STATE-BY-STATE CONSERVATION EQUIVALENT RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum Fish Size		Possession Limit (number of fish)	Fishing Season
	inches	cm		
MA	18.5	46.99	5	May 22–September 6
RI	19.5	49.53	6	May 1–December 31
CT	19.5	49.53	3	May 15–August 25
NY	21.0	53.34	2	May 15–September 6
NJ	18.0	45.72	6	May 29–September 6
DE	18.5	46.99	4	January 1–October 13
MD	19.0	48.26	3	April 17 through November 22
VA	18.5	46.99	4	January 1 through December 31
NC[1]	15.0	38.10	8	January 1 through December 31

[1] *Pamlico Sound, NC*—No person may possess flounder less than 14.0 in (35.56 cm) total length (TL) taken from internal waters for recreational purposes west of a line beginning at a point on Point of Marsh in Carteret County at 35°04.6166′N lat.-76°27.8000′W long., then running northeasterly to a point at Bluff Point in Hyde County at 35°19.7000′N lat.-76°09.8500′W long. In Core and Clubfoot creeks, the Highway 101 Bridge constitutes the boundary north of which flounder must be at least 14.0 (35.56 cm) in TL.

Albemarle Sound, NC—No person may possess flounder less than 14.0 in (35.56 cm) TL taken from internal waters for recreational purposes west of a line beginning at a point 35°57.3950′N lat.- 76°00.8166′W long. on Long Shoal Point; running easterly to a point 35°56.7316′N lat.-75°59.3000′ W long. near Marker "5" in Alligator River; running northeasterly along the Intracoastal Waterway to a point 36°09.3033′N lat.-75°53.4916′W long. near Marker "171" at the mouth of North River; running northwesterly to a point 36°09.9093′N lat.-75°54.6601′W long. on Camden Point.

Browns Inlet South, NC—No person may possess flounder less than 14.0 in (35.56 cm) TL in internal and Atlantic Ocean fishing waters for recreational purposes west and south of a line beginning at a point 34°37.0000′N lat.-77°15.000′W long.; running southeasterly to a point 34°32.0000′N lat.-77°10.0000′W long.

Scup Management Measures

This rule implements the measures contained in the April 27, 2010, proposed rule: A 10.5–in (26.67–cm) minimum fish size, a 10–fish per person possession limit, and an open season of June 6 through September 26.

TABLE 2—2010 SCUP RECREATIONAL MANAGEMENT MEASURES

Fishery	Minimum Fish Size		Possession Limit	Fishing Season
	inches	cm		
Scup	10.5	26.674	10 fish	June 6 through September 26

The scup fishery in state waters will be managed under a regional conservation equivalency system developed by the Commission over the last 8 years. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures, the Federal and state recreational scup management measures will differ for 2010. In accordance with § 648.4(b)(1)(i), when Federal, state, and local requirements differ, federally permitted scup vessels are required to adhere to the most restrictive requirement regardless of where the vessel fishes.

Black Sea Bass Management Measures

This rule implements the black sea bass measures adopted by the Commission for 2010: A 12.5–in (31.75–cm) minimum fish size, a 25–fish per person possession limit and fishing seasons from May 22–October 11 and November 1–December 31.

Changes from the Proposed Rule

NMFS had proposed in the April 27, 2010 (75 FR 22087), rule to implement the Council-preferred measures (12.5–in (31.75–cm) minimum fish size, 25–fish possession limit, and fishing seasons of May 22–August 8 and September 4–October 4) for the 2010 black sea bass recreational fishery. NMFS anticipated additional data that might permit liberalization of the 2010 measures would become available in the interim between publication of the proposed and final rules. These data, from the

Marine Recreational Fisheries Statistics Survey (MRFSS), became available in late April.

The final MRFSS data indicated that 2009 landings of black sea bass were 2.31 million lb (1,048 mt). Prior to the release of these data, black sea bass landing estimates were used for the months of September and October 2009. At the time of the proposed rule, the best available information, which included estimates for September and October, indicated that 2009 recreational black sea bass landings were approximately 3.31 million lb (1,501 mt). The Council's originally preferred measures contained in the proposed rule would have reduced 2010 landings by 44 percent from 2009 levels, consistent with the assumption that 2009 landings were 3.31 million lb (1,501 mt). However, given the final 2009 landings data, a 21–percent reduction in 2010 landings from 2009 levels is necessary.

Many had expressed concern during the management measures development process that actual landings from the 2-month time period in 2009 would be significantly different from any generated estimates, owing in part to the 108-day closure of the black sea bass recreational fishery in the Federal waters of the EEZ that was implemented by NMFS effective October 5, 2009 (74 FR 51092). Because of the timing for Council and Commission meetings and the proposed rule 30 day comment period, NMFS provided a contextual framework for the likelihood that additional data would be available for analysis and solicited specific comments on alternative management measures in the proposed rule (75 FR 22087; April 27, 2010).

The Commission had an opportunity to analyze the final 2009 MRIP landings data prior to its May 2010 meeting. During this meeting, the Commission adopted the measures now implemented through this final rule. These measures are projected to reduce landings by 26 percent from 2009 levels. The Commission adopted measures that were slightly more precautionary (i.e., greater than a 21–percent reduction in 2010 landings from 2009 levels) to allow for a reasonable conservation buffer to account for management uncertainty in the harvest estimates and the effectiveness of the regulations. The Council, as well as members of the public and recreational fishing advocacy groups, provided written comment fully supporting implementation of the less restrictive management measures adopted by the Commission. NMFS finds the measures make use of the best available information in as timely a fashion as the development, review, and implementation process will permit. In addition, NMFS finds that the measures implemented in this final rule provide some buffer to offset management-related uncertainty and mitigate foregone recreational opportunity, thereby reducing adverse socio-economic impacts. Thus, NMFS is implementing these measures for the 2010 fishing season, even though they were not contained in the proposed rule.

TABLE 3—2010 BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

Fishery	Minimum Fish Size		Pos-session Limit	Fishing Season
	inches	cm		
Black Sea Bass	12.5	31.75	25 fish	May 22–October 11 and November 1–December 31

Comments and Responses

Eight comment letters were received regarding the proposed recreational management measures. The Commission's Black Sea Bass Management Board provided the revised 2010 black sea bass measures adopted for state waters as comments on the proposed rule and recommended similar measures be adopted for Federal waters. Five comment letters, including one from the Council, spoke in support of the Commission's revised 2010 black sea bass measures and urged NMFS to adopt similar measures for Federal waters. For clarity, NMFS is implementing, through this rule, the identical black sea bass measures adopted by the Commission and with the full support of the Council for the 2010 black sea bass recreational fishery in Federal waters.

One recreational fishery advocacy group wrote in favor of the summer flounder conservation equivalency system being implemented through this rule.

Comments that require responses are addressed below. Similar comments were consolidated for NMFS's responses:

Comment 1: One commenter asked why commercial summer flounder fishermen can keep fish smaller than most recreational minimum fish sizes implemented by states through conservation equivalency. This commenter stated that most large summer flounder are female and the utilization of high recreational minimum fish sizes will catch a disproportionately high number of female fish and could negatively impact stock rebuilding efforts.

Response: The issue of different minimum fish sizes between commercial and recreational fisheries is often raised. Minimum fish sizes for both sectors are implemented by NMFS based on recommendations received from the Council. In regards to summer flounder, the minimum commercial fish size has been set at 14 in (35.56 cm) since the late 1990s. The minimum commercial size was established following mesh size selectivity studies conducted for implementation of the original Summer Flounder FMP. These mesh studies considered the capabilities of certain mesh sizes to not encounter fish of certain sizes.

The Council has recommended the 14–in (35.56–cm) minimum commercial summer flounder size to address National Standard 9 of the Magnuson-Stevens Act. National Standard 9 requires that conservation and management measures shall, to the extent practicable, minimize bycatch and, when bycatch cannot be avoided, minimize the mortality of such bycatch. Commercial fishing conducted with bottom tending mobile gear, such as trawl nets, is less discriminating than recreational hook-and-line fishing gear. Thus, commercial fishing operations tend to capture a wider size range and higher numbers of summer flounder than do recreational fishermen. The 14–in (35.56–cm) size strikes a balance between converting potential discards to landings and ensuring summer flounder have an opportunity to spawn before becoming legal minimum commercial

size. The current mesh size required for most summer flounder trawl gear is 5.5 in (13.97 cm) and is engineered to catch fish 14 in (35.56 cm) and larger.

Recreational minimum fish size has been used as a tool to constrain landings in the recreational fishery. Recreationally captured summer flounder have a lower associated mortality than do those captured by bottom-tending mobile commercial gear such as trawl nets and scallop dredges. Eighty percent of commercially discarded summer flounder are assumed to be dead or will die after release. By contrast, the most recent assessment for summer flounder used recent research information that indicated the mortality rate for recreationally caught and released summer flounder was 10 percent.

The concept that recreational fisheries target larger, typically female fish has been discussed and examined in recent stock assessments. Additional research on stock sex ratios, natural and fishing mortality by sex and size, and potentially different growth and maturity rates by sex needs further examination for definitive conclusions on potential impacts of the management strategy that has been employed; however, current stock projections indicate that the summer flounder stock will be rebuilt prior to the January 1, 2013, rebuilding deadline.

Comment 2: One comment suggested that summer flounder management measures should be two fish in the 14 to18–in (35.56 to 45.72–cm) size range and four fish over 18 in (45.72 cm).

Response: The Council-conducted analysis for the 2010 summer flounder recreational management measure coastwide alternatives indicated a 19–in (48.26–cm) minimum fish size, 2–fish possession limit, and coastwide season from May 1 to September 30 was predicted to constrain 2010 landings to the 8.85–million-lb (3,896–mt) recreational harvest limit. The commenter's recommended management measures are substantially more liberal than this, the most liberal coastwide measures analyzed and considered by the Council. Thus, the commenter's suggested measures would likely result in landings well above the recreational harvest limit. Because such measures would not adequately constrain the 2010 recreational summer flounder fishery and would likely exceed the established recreational harvest limit, NMFS finds that such measures would be inconsistent with the goals and objectives of the FMP and the Magnuson-Stevens Act.

NMFS is implementing, through this final rule, conservation equivalency wherein individual state measures approved through the Commission process are found to be equivalent to the coastwide measures. In the conservation equivalency process, individual states have the ability to modify the minimum fish size, possession limits, and fishing season consistent with Commission-imposed requirements before NMFS ultimately elects to implement conservation equivalency or coastwide measures for the fishery. States have some ability to adjust management measures in a manner that best suits the needs of the anglers and fisheries prosecuted in the waters adjacent to their respective state. Some states have developed and implemented, through the Commission process, minimum fish sizes similar to those suggested by the commenter. NMFS has, in turn, adopted through this rule, conservation equivalency for Federal waters.

Comment 3: One recreational fishery angling group opposed the proposed scup recreational management measures stating that (1) the scup stock is rebuilt, (2) annual catch limits (ACLs) and accountability measures (AMs) are not yet a statutory requirement for the scup fishery, (3) that the 10–fish per person possession limit will dissuade potential party/charter anglers from booking trips, and (4) that there is no conservation or legal requirement to reduce recreational scup landings for 2010. The commenter did not suggest any alternative measures and did acknowledge that a very small percentage of annual recreational scup landings occur in Federally-managed waters under the jurisdiction of NMFS.

Response: In response, NMFS agrees that the best available scientific information does indicate that the scup stock has been rebuilt, thereby satisfying the rebuilding requirements for the previously overfished stock.

NMFS notified the Council on April 22, 2009, that the results of a 2008 externally peer reviewed Data Poor Stocks Working Group (DPSWG) assessment of scup had found that the stock had achieved and exceeded the required rebuilding biomass target. In that same correspondence, NMFS further relayed that the peer-review panel from the DPSWG indicated that the assessment contained a high degree of uncertainty. In its final report, the peer review panel recommended:

"...that rapid increases in quota to meet the revised MSY [Maximum Sustained Yield] would be unwarranted given uncertainties in recent [scup] recruitments. A more gradual increase in quotas is a preferred approach reflective of the uncertainty in the [scup] model estimates and stock status."

The Council's SSC has adhered to the peer review panel's recommendation in setting scup catch levels. For 2010, the SSC recommended a 10–percent increase in Total Allowable Catch (TAC) as the ABC level from the 2009 levels. The recreational harvest limit is a derivative of the overall TAC.

While the perception of the scup stock has changed and is more favorable than recent years and the statutory requirements for stock rebuilding have been satisfied, the catch recommendations from the Council's scientific advisory body, the SSC, has remained precautionary in light of uncertainty associated with the revised stock assessment. NMFS, in turn, has implemented the Council's recommendation for catch levels as guided by the SSC's ABC recommendation. The SSC and Council's Scup Monitoring Committee will review updated stock assessment information in June 2010 before making catch level recommendation for the 2011 fishing year.

While the requirement for stocks not subject to overfishing to have in place ACLs and AMs, as required by the Magnuson-Stevens Act, does not take effect until 2011, the Council has put into practice the utilization of its SSC for catch level advice. Utilization of the SSC in catch level recommendations did not result in a delayed implementation phase-in period when the Magnuson-Stevens Act was reauthorized in 2006. The SSC has been involved in making ABC recommendations since 2008 for the 2009 fishing year.

The SSC brings to bear considerable scientific expertise in making catch level recommendations. As such, the ABC recommended by the SSC sets the standard for scientifically justifiable catch levels. For the Council or NMFS to deviate from the SSC-recommended ABC would require sufficient justification to explain why an alternate catch level was the more appropriate and a better use of the best available scientific information. In the case of scup, the SSC expressed reservations about the information provided by the most recent stock assessment and recommended an ABC that, relative to the estimated total biomass of scup, is risk averse.

The Council may further reduce the ABC recommended by the SSC for additional considerations, consistent with the requirements of National Standard 1 of the Magnuson-Stevens Act to achieve Optimal Yield (OY) on a continuing basis. NMFS provided a detailed response to similar comments that ACLs and AMs are not yet requirements and that the 2010 scup catch level had been set too low to achieve OY on a continuing basis in the

2010 specifications final rule (74 FR 67978, December 22, 2009). Those responses are not repeated here, but are instead incorporated by reference. NMFS acknowledges the commenter's concern that the scup stock status and catch level recommendations appear to be at odds with one another; however, as explained, the SSC and Council have taken a precautionary approach in managing the scup stock, consistent with assessment-related advice to do so. This approach continues to be supported by NMFS.

As part of the regulatory impact review and general economic impact analyses performed for the 2010 recreational management measures, the Council provided an analysis of the potential impacts of a 10–fish per person possession limit for scup. The analysis concluded that up to 2.24 percent of party/charter vessels could be impacted by the 10–fish possession limit. While this would suggest that the impact is low, the analysis indicated that predicting year-to-year angler behavior in response to numerous influential factors, including regulatory changes, is difficult. The Council performed an analysis of all potential combination of summer flounder, scup, and black sea bass alternatives with a hypothetical 25- and 50–percent reduction in fishing trips. The range of impacts varies considerably from a low of $399 per vessel in Delaware to up to $44,000 per vessel in North Carolina. These are total impacts, inclusive of all potential changes for summer flounder, scup, and black sea bass management measures and up to a 50–percent reduction in angler trips.

Furthermore, the majority of scup party/charter landings occur in state waters and may occur on vessels without Federal permits. In such situations, the data necessary to quantify potential impacts are unavailable as permit data are utilized as the basis for impact assessment. See the Council's EA/RIR/IRFA document for additional detail; information on obtaining a copy of the document is provided under the **ADDRESSES** section of the preamble.

Given the minor magnitude of recreational scup fishing in Federal waters, the economic impacts associated with the implemented measures are expected to be equally minor relative to the entire scup recreational fishery.

Under the recreational fishery management methods utilized by the Council's Scup Monitoring Committee to develop measures designed to constrain recreational landings to the recreational harvest limit, the level of landings in the preceding year are used as a basis for calculating the effectiveness of measures for the upcoming fishing year relative to the catch level. More simply stated, when landings in the previous year exceed the recreational harvest limit for the current year, measures are adjusted. The amount of adjustment necessary is dependent on the level of recreational landings that are allowed under the recreational harvest limit. In years where the recreational harvest limit increases from the previous year, it may not be necessary to adjust measures even if the previous year recreational harvest limit had been exceeded if the amount of the overage is less than the increase in the limit. This process occurs regardless of stock status or other imposed statutory requirements. The underlying reason for such adjustments is to constrain the recreational sector landings within the recreational harvest limit which, in turn, is part of the total fishing mortality permitted for the stock in any given year. As previously discussed, the annual level of fishing mortality established for the stock is established through a Council process that includes a scientifically-based recommendation for ABC from the SSC. The entirety of the catch level process considers both scientific and management uncertainty and other potential issues and is designed to ensure that the stock is not overfished. For scup, while the stock status would suggest that overfishing is unlikely, the DPSWG peer review panel and SSC have indicated that sufficient uncertainty exists within the new assessment and catch levels should proceed cautiously rather than be increased rapidly.

Comment 4: A recreational fishing advocacy group wrote in support of extending the black sea bass fishing season but objected to the Commission's approach of providing additional buffering to account for management uncertainty. The commenters state that such buffering is arbitrary and inconsistent with science-based management. Furthermore, the commenter states that there is insufficient technical information in the Commission's decision to explain the additional buffer.

Response: The additional buffer the comment refers to is the percent reduction in 2010 black sea bass landings from 2009 levels required to constrain recreational harvest below the established RHL. Based on the 2009 landings data and the 2010 black sea bass recreational harvest limit, a minimum of a 21.4–percent reduction in landings is required to ensure that landings do not exceed the established limit. However, in selecting measures for 2010, the Commission elected to adopt measures (i.e., minimum fish size, possession limit, and fishing season) that provide an estimated 26–percent reduction in landings. In their letter to NMFS recommending adoption of identical measures for Federal waters, the Commission's Black Sea Bass Management Board indicated that the additional 4.6–percent reduction in landings was

> selected to, "allow for a reasonable conservation buffer to account for management uncertainty in the harvest estimates and the effectiveness of the regulations."

NMFS has determined that this in an appropriate application of management uncertainty, consistent with the revised National Standard 1 Guidance (NS 1 Guidance (74 FR 3178; January 16, 2009)). NMFS is implementing, through this rule, measures identical to the Commission-adopted black sea bass recreational management measures because the additional offset in landings provides a greater likelihood of constraining landings below the established 2010 recreational harvest limit. These measures were fully supported and also recommended by the Council, which also agreed that some buffering was advisable given the uncertainty of harvest estimates and unknown effectiveness of the regulations being implemented. NMFS does not find the application of an additional 4.6–percent calculated reduction in landings as arbitrary; rather, it represents a substantive attempt by the Commission and Council to quantify and buffer against issues that led the 2009 black sea bass fishery to exceed the established recreational harvest limit for that year. In the NS 1 Guidance, NMFS recommends that in situations where both scientific and management-related uncertainty exist for a particular fishery, both should be addressed. While these requirements are not yet effective for the FMP, the action taken by the Commission, supported by the Council, and implemented by NMFS is consistent with the tenants of the NS 1 Guidance. The additional offset is not, as the commenter suggests, an offset for scientific uncertainty. Rather, it is as previously indicated a buffer to account for management uncertainty designed to help ensure that 2010 recreational black sea bass landings do not exceed the established recreational harvest limit.

Comment 5: A recreational fishing advocacy group supported including January and February in the black sea bass fishing season in addition to the May 22–October 11 and November 1–December 31 season implemented by

this rule. The comment states that Fishing Vessel Trip Reports (VTRs) provided by charter/party vessels would indicate that black sea bass landings during these months are minimal and that closing the season in January and February provides no contribution to the calculated reduction in landings.

Response: NMFS disagrees with the comment that January and February should be open for the 2010 fishing season. What is at issue is actually the 2011 fishing year. January and February 2010 have already passed; however, the rulemaking for 2011 black sea bass management measures begins with a Council meeting in December 2010. The 2010 black sea bass management measures remain effective until superseded by revised measures. If the Council were to recommend a 2011 black sea bass fishing season that included January and February, there would be insufficient time to implement such a season through the rulemaking process.

There is a substantial issue that if NMFS opened Federal waters in January and February, effectively opening those months retroactively for 2010 and for 2011 for the reasons previously explained, state waters would not be open unless the Commission implemented comparable measures. In a situation such as this wherein Federal waters are open but state waters are closed, Federally permitted vessels are required to adhere to the more restrictive set of measures. The net effect of different fishing seasons in this instance, barring comparable Commission action, would prohibit Federally permitted vessels from fishing in either state or Federal waters.

NMFS has analyzed party/charter VTR data from 2000–2009. These data indicate that 58 unique vessels reported landing or discarding recreationally captured black sea bass within those years. Reported landings totaled 260,442 lb (118 mt) and reported discards totaled 26,073 lb (12 mt) for the time period, averaging 26,044 landed lb per year (12 mt). The average annual landings are less than 1.5 percent of the 2010 black sea bass recreational harvest limit. The commenters suggest that landings of this magnitude be considered *de minimis* and the fishery opened. No de minimis provision is included in the FMP and all mortality on the stock must be considered when establishing recreational management measures. In addition, no recommendation to open January and February was forwarded by either the Council or Commission.

VTRs are wholly self-reported by party and charter vessel operators and, unlike commercial fisheries which have vessel-by-vessel landing data to validate the self-reported information, recreational party/charter vessels have no independent data validation mechanism. The For-Hire Survey (FHS) component of MRFSS does not yield a vessel-by-vessel independent assessment that is analogous to commercial landing weighouts. As a result, party/charter VTRs are not utilized in stock assessments or as a data source for management decisionmaking. They are informative to verify that there is indeed a January and February black sea bass fishery by Federally permitted vessels and the magnitude of the fishery would appear to be small. However, without a means to independently verify the information contained in the VTRs, there is no way to know how representative or accurate the reported data might be.

The reference to "no effective reduction" made by the commenter addresses a sampling deficiency in the current MRFSS design. Landings in MRFSS Wave 1 (January-February) are not monitored on a coastwide basis. However, pilot projects are underway to address this deficiency by sampling within Wave 1 as well as pilot studies to examine the efficacy of estimation procedures for when only small sample sizes can be obtained by the MRFSS survey. Both of these pilot projects may lead to additional fishery-independent information regarding Northeast Region recreational fishing in January and February. Because no sampling currently occurs, when calculating reduction or liberalization of landings for an upcoming fishing year is performed, the disposition of fishing in January and February contribute no net effect regardless of if the fishery is open or closed because of the lack of estimates for that time period.

Because the FMP does not provide for a *de minimis* season and there are clearly some magnitude of landings that occur in January and February, NMFS is disinclined to include those months in the 2010 black sea bass fishing season. The result of so doing would effectively ensure that those months would be open in 2011. No such recommendation was forwarded by either the Commission or Council. There is also the previously mentioned issue about creating a different set of measures for state and Federal waters.

Comment 6: One comment stated that NMFS uses MRFSS data inconsistently: Using the data to indicate overages and impose more restrictive measures, but dismissing the data when liberalization of measures can be implemented.

Response: NMFS has taken a consistent approach to utilization of MRFSS data as the best available information on recreational landings and effort. Through this rule, NMFS is implementing liberalized measures for black sea bass, consistent with the updated MRFSS data that indicate a lower percent reduction in 2010 landings are needed relative to 2009.

Classification

The Administrator, Northeast Region, NMFS, determined that this final rule implementing the 2010 summer flounder, scup, and black sea bass recreational management measures is necessary for the conservation and management of the summer flounder, scup, and black sea bass fisheries, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts described in the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. Copies of the EA/RIR/IRFA and supplement are available from the Council and NMFS (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule, and are not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

A summary of the comments received and NMFS's responses thereto is contained in the preamble of this rule. None of those comments addressed specific information contained in the IRFA economic analysis or the economic impacts of the rule more generally. As outlined in the preamble, the black sea bass measures implemented by this rule were changed from those previously proposed. The change in measures was a direct result of comments received from the Commission, Council, and interested public.

Description and Estimate of Number of Small Entities to Which This Rule Will Apply

The Council estimated that the management measures could affect any of the 948 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2009, the most recent year for which complete permit data are available. However, only 328 vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2008, the most recent year for which complete fishing vessel trip reports (i.e., logbooks) are available.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

No-action alternatives. The economic analysis conducted in support of this action assessed the impacts of the various management alternatives. In the EA, the no action alternative for each species is defined as the continuation of the management measures as codified for the 2009 fishing season. The no-action measures were analyzed in Alternative 2 for each species in the Council's EA/RIR/IRFA.

For summer flounder, the no-action (coastwide) alternative of a 19.5–inch (49.53–cm) minimum fish size, a two-fish possession limit, and a May 1–September 30 fishing season would achieve the mortality objectives required but would be more restrictive than necessary for most states.

The no-action alternative for scup, a 10.5–inch (26.67–cm) minimum fish size, a 15–fish possession limit, and open seasons of January 1 through February 28 and October 1 through October 31, is not expected to reduce landings from 2009 levels. If scup Alternative 2 were adopted for 2010, landings would be expected to be in the 4.0–million-lb (1,814–mt) range, thereby exceeding the 3.01–million-lb (1,366–mt) recreational harvest limit. This is inconsistent with the objectives of the FMP.

The no-action alternative for black sea bass (a 12.5–in (31.75–cm) minimum fish size, a 25–fish possession limit, and no closed fishing season) would result landings that exceed the 1.83–million lb (830–mt) recreational harvest limit for 2010 and, therefore, cannot be continued for the 2010 fishing season.

Summer flounder alternatives. In seeking to minimize the impact of recreational management measures (minimum fish size, possession limit, and fishing season) on small entities (i.e., Federal party/charter permit holders), NMFS is constrained to implementing measures that meet the conservation objectives of the FMP and Magnuson-Stevens Act.

The alternatives examined by the Council and forwarded for consideration by NMFS consisted of the preferred alternative of state-by-state conservation equivalency with a precautionary default backstop, and the non-preferred alternative of coastwide measures. These were alternatives 1 and 2, respectively, in the Council's EA/RIR/IRFA. These two alternatives were determined by the Council analyses to satisfy the 2010 conservation objectives for the recreational fishery, i.e., analysis indicated that implementation of either would constrain recreational landings within the 2010 recreational harvest limit. Therefore, either alternative recreational management system could be considered for implementation by NMFS, as the critical metric of satisfying the regulatory and statutory requirements would be met by either.

Next, NMFS considered the recommendation of both the Council and Commission. Both groups recommended implementation of state-by-state conservation equivalency, with a precautionary default backstop. The recommendations of both groups were not unanimous: Some Council and Commission members objected to the use of conservation equivalency. In fact, the State of New York filed litigation seeking relief from conservation equivalency implemented for both the 2008 and 2009 recreational summer flounder fisheries. The litigation for those cases, *State of New York et al.* v. *Locke et al. Civil Action Nos. 08–cv–2503 and 09–cv–3196*, remain unresolved by the U.S. District Court Eastern District of New York.

For NMFS to disapprove the Council's recommendation for conservation equivalency and substitute coastwide management measures, NMFS must reasonably demonstrate that the recommended measures are either inconsistent with applicable law or demonstrate that the conservation objectives of the FMP will not be achieved by implementing conservation equivalency. NMFS does not find the Council and Commission's recommendation to be inconsistent with the implementing regulations of the FMP found at § 648.100 or the Magnuson-Stevens Act.

The additional metric for consideration applicable to the FRFA is examination of the economic impacts of the alternatives on small entities consistent with the stated objectives of applicable statutes. As previously stated, both conservation equivalency (alternative 1) and coastwide measures (alternative 2) are projected to achieve the conservation objectives in place for the 2010 summer flounder recreational fishery. However, the economic impacts of the two alternatives are not equal: The economic impacts on small entities under the coastwide measures management system would vary in comparison to the conservation equivalency system dependent on the specific state wherein the small entities operate.

Quantitative analysis of the economic impacts associated with conservation equivalency measures are not available. Because the development of the individual state measures occurs concurrent to the NMFS rulemaking process to ensure timely implementation of final measures for the 2010 recreational fishery, the specific measures implemented by states are not available for economic impact analyses. Instead, qualitative methods are utilized. The Council analysis concluded, and NMFS agrees, that conservation equivalency is expected to minimize impacts on small entities because individual states can develop specific summer flounder management measures that allow the fishery to operate during each state's critical fishing periods while still achieving conservation goals. To be clear, there are individual states whose conservation equivalency measures may have a more adverse impact to some small entities, dependent on the restrictions imposed by the Commission, than would coastwide measures. New York stands out as such a state. However, the one-size-fits-all approach of coastwide measures would impact a broader distribution of states and small entities.

NMFS is implementing the Council and Commission's recommended state-by-state conservation equivalency measures because: (1) NMFS finds no compelling reason to disapprove the Council and Commission's recommended 2010 management system, as the management measures contained in conservation equivalency are projected to provide the necessary restriction on recreational landings to prevent the recreational harvest limit from being exceeded; and (2) the net economic impact to small entities on a

coastwide basis are expected to be mitigated, to the extent practicable, for a much larger percentage of small entities. Data provided by the Council indicates that 328 federally permitted party/charter vessels landed some combination of summer flounder, scup, and black sea bass in 2008, the most recent year of available data. Within this total, 49 vessels, or 15 percent, were from New York. By inference, 85 percent of the small entities engaged in recreational fishing would be impacted less by the implementation of conservation equivalency, assuming that the impacts to New York small entities are indeed greater under conservation equivalency.

Scup alternatives. The options available for scup recreational fisheries management are constrained to a suite of minimum fish size, possession limit, and fishing season that achieves the annual conservation objective expressed through a recreational harvest limit on landings. As outlined in the preamble, the individual states have elected to implement a state-waters conservation equivalency system for the 2010 scup recreational fishery that has no comparable regulations for use in Federal waters. The Commission-adopted measures are not expected to constrain landings to the 2010 scup recreational harvest limit. Thus, the conservation objectives and the recreational harvest limit are likely to be compromised regardless of action taken for Federal waters. Very little of the scup recreational fishery occurs in Federal waters. Rather than close Federal waters to scup recreational fishing, NMFS is implementing the following measures: A 10.5–inch (26.67–cm) minimum fish size; a 10–fish per person possession limit; and an open season of June 6–September 26. These measures were not the most conservative proposed by the Council as they are projected to reduce 2010 landings by 29 percent from 2009 levels if comparable measures had been implemented in state waters.

Implementation of these measures offers an alternative to outright closure of Federal waters wherein all scup encountered would be required to be discarded. Instead, the limited amount of scup recreational fishing that occurs in Federal waters will have some overlap with the measures implemented for state waters by the Commission and fish that would have been discarded may be landed in limited numbers. These minor landings are not expected to add a substantial amount of recreational fishing mortality to the stock in 2010, nor is overfishing expected to occur as a result of either the Federal or state measures implemented for 2010. Estimates from MRFSS indicate that the amount of scup recreationally harvested in Federal waters is typically 5 percent or less of the total annual take.

The measures of alternative 1 were also considered by NMFS. This would have resulted in an 11–inch (27.94–cm) minimum fish size, a longer season, and identical possession limit when compared to alternative 3. These measures did not synchronize well with the Commission measures and, while more conservative--achieving a projected 35 percent reduction in landings from 2009 levels if similar measures had been enacted in state waters--NMFS found that the minimal conservation benefit was outweighed by the lack of consistency with measures adopted for state waters. The impacts to charter and party vessels were similar between alternative 1 and 3 in the Council's analysis. Alternative 2 was not considered for implementation as it was not expected to effect any reduction in 2010 scup landing levels.

Black sea bass alternatives. Similar to both summer flounder and scup, the options available for black sea bass recreational management measures are constrained to selecting a suite of minimum fish size, possession limit, and fishing season measures that achieve the annual conservation objectives. In this case, this final rule is implementing measures that differ from those originally proposed. This rule implements the measures of alternative 4 (modified) contained in the EA/RIR/IRFA addendum: A 12.5–inch (31.75–cm) minimum fish size; a 25–fish possession limit; and May 22–October 11 and November 1–December 31 fishing seasons. This alternative provides the lowest associated economic impacts to small entities. Alternatives 1, 3, and 4 (unmodified) were projected to achieve the conservation objectives for the 2010 black sea bass fishery; however, given the evolution of increasingly improved data available during the recreational management measures development, these alternatives are now more conservative than necessary relative to the conservation objectives and have higher associated economic impacts than the measure being implemented through this rule.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide was prepared and will be sent to all holders of Federal party/charter permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and the small entity compliance guide are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.nero.noaa.gov*.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 1, 2010

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 19.5 inch (49.53 cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

* * * * *

■ 3. In § 648.107, paragraph (a) introductory text and paragraph (b) are revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2010 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a),

respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season - May 1 through September 30; minimum size - 21.5 inches (54.61 cm); and possession limit - two fish.

■ 4. In § 648.122, paragraph (g) is revised to read as follows:

§ 648.122 Season and area restrictions.

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit specified in § 648.125(a), may not possess scup, except from June 6 through September 27. This time period may be adjusted pursuant to the procedures in § 648.120.

■ 5. In § 648.125, the first sentence of paragraph (a) is revised to read as follows:

§ 648.122 Possession limit.

(a) No person shall possess more than 10 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit.***

* * * * *

■ 6. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may possess black sea bass from May 22 through October 11 and November 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.140.

[FR Doc. 2010–16651 Filed 7–7–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100617272–0271–02]

RIN 0648–AY94

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures

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

ACTION: Final rule; harvest specifications; correction.

SUMMARY: This final rule revises the optimum yields in the 2010 Specifications for darkblotched rockfish, cowcod, and yelloweye rockfish. The U.S. District Court for the Northern District of California issued an Order on April 29, 2010, vacating the 2009–2010 specifications for those three species, and replaced the Specifications with the most recent optimum yields that were specified for 2007–2008. This rule amends the regulatory requirements for these three species in accordance with the court's order. This rule also corrects a technical error in a table establishing the 2010 canary rockfish optimum yield.

DATES: Effective July 2, 2010.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew (Northwest Region, NMFS), phone: 206–526–6147, fax: 206–526–6736 and e-mail: *gretchen.hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register**'s Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/.* Background information and documents are also available at the NMFS Northwest Region Web site at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm.*

Copies of the final environmental impact statement (FEIS) for the 2009–2010 Groundfish Specifications and Management Measures are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE. Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Copies of additional reports referred to in this document may also be obtained from the Council. Copies of the Record of Decision (ROD), final regulatory flexibility analysis (FRFA), and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070.

Background

On December 31, 2008, NMFS published a proposed rule to implement the 2009–2010 specifications and management measures for the Pacific Coast groundfish fishery (73 FR 80516), including, among other species, darkblotched rockfish, cowcod, and yelloweye rockfish. A final rule was published on March 6, 2009 (74 FR 9874), which codified the specifications and management measures in the CFR (50 CFR part 660, subpart G). That action set the 2009–2010 harvest specifications and management measures for groundfish taken in the U.S. Exclusive Economic Zone (EEZ) off the coasts of Washington, Oregon, and California, and revised rebuilding plans for four of seven overfished species, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Pacific Coast Groundfish Fishery Management Plan (FMP). The existing and revised rebuilding plans were consistent with Amendment 16–4 to the FMP, and were designed to comply with the rebuilding requirements of the MSA.

In response to the latest in a series of complaints filed in *Natural Resources Defense Council* v. *Locke,* Civil Action No. C 01–0421 JL, challenging the rebuilding provisions in the FMP, the U.S. District Court for the Northern District of California vacated the 2009 and 2010 specifications for darkblotched rockfish, cowcod, and yelloweye rockfish. Order on Remedy, Dkt. No. 342 (April 29, 2010) (Opinion). The Court held that NMFS violated National Standard 2 of the MSA by "failing to use the best scientific information available on the economic status of fishing communities in their 2009–2010 Biennial specifications and Management Measures for the Pacific Coast Groundfish Fishery (2009–2010 Specifications)." Further, the Court held that NMFS established "rebuilding plans for darkblotched rockfish, cowcod, and yelloweye rockfish in the 2009–2010 Specifications that do not rebuild those species in time periods that are 'as short

as possible' within the meaning of section 304(e)(4)(A)(i)" of the MSA.

The Court remanded the 2009–2010 specifications and ordered the agency "within one year of the date of issuance of the Order on Remedy," to establish new specifications for the Pacific Coast Groundfish Fishery that "are based on the 'best scientific information available' within the meaning of MSA National Standard 2, 16 U.S.C. 1851(a)(2); and establish rebuilding periods for darkblotched rockfish, cowcod, and yelloweye rockfish that are 'as short as possible' within the meaning of MSA section 304(e)(4)(A)(i), 16 U.S.C. 1854 (e)(4)(A)(i)."

In response, NMFS is considering the extent to which the current development of the 2011–2012 specifications for all species managed under the FMP must be modified to comply with the Court's Order. The Pacific Fishery Management Council (Council) is near the end of the two-year development of the new specifications and management measures. Under the current schedule, the Council would adopt its preferred alternatives at its June 2010 meeting and submit them to NMFS for consideration and, following additional public comment, possible adoption and implementation by January 1, 2011.

The Court's Order also vacated the 2009–2010 specifications for darkblotched rockfish, cowcod and yelloweye rockfish, stating that "for the remainder of 2010, the most recent annual harvest levels (also known as optimum yields, or 'OYs') that NMFS specified for darkblotched rockfish, cowcod, and yelloweye rockfish in its 2007–2008 Biennial Specifications and Managements for the Pacific Coast Groundfish Fishery are in effect. For yelloweye rockfish, the OY in 2010 is 14 metric tons."

In order to implement the Court's Order, NMFS is taking the following actions with respect to the 2010 groundfish regulations and management. This rule specifies that the 2010 OYs for three species are: darkblotched rockfish, 330 metric tons; cowcod, 4 metric tons; and yelloweye rockfish, 14 metric tons. The agency has requested that the Council, through its inseason management process, review the anticipated catch of these species and recommend to the agency the appropriate management measures, including modifications to set asides or harvest guidelines, to manage the fishery within the OY levels set by the Court, consistent with the following guidance.

These OY amounts are based on a strict reading of the Court's Opinion and the subsequent Order on Remedy, Dkt. No. 342 (April 29, 2010). For darkblotched rockfish, NMFS notes that modifying the current 2010 OY of 291 mt by increasing it to the 2008 OY of 330 mt, as required by the Order, does not appear to be consistent with the Court's underlying reasoning in its Opinion. Thus, although NMFS is modifying the 2010 OY to be consistent with the Court's Order (an OY of 330 mt), NMFS is recommending that the Council's management measures be designed to keep the 2010 fishery within 290 mt, which is equivalent to the 2007 OY level for darkblotched rockfish. The 2010 OY for cowcod remains 4 mt, which is the same OY specified in 2008. The 2010 OY for yelloweye rockfish is reduced from 17 mt to 14 mt.

At its June meeting, the Council recommended the management measures to keep the fishery within the necessary levels published in this rule. These measures were published on July 1, 2010 (75 FR 38030).

This rule also corrects the 2010 OY in Table 2a to 660 Subpart G for canary rockfish. In the final rule for the 2009–2010 groundfish harvest specifications and management measures (74 FR 9874, March 6, 2009), NMFS established a 2010 OY for canary rockfish of 105 mt. In June 2009, after receiving some updated stock assessments, the Council recommended consideration of lowering the OYs for 2010 for both canary rockfish and petrale sole. In response, NMFS issued a proposed rule (74 FR 46714, September 11, 2009) with a proposed canary rockfish OY for 2010 that ranged from 44 mt to 105 mt. After review of the canary rockfish rebuilding analyses at its November 2009 meeting, the Council recommended no change to the existing canary rockfish OY of 105 mt. The preamble of the final rule (74 FR 65480, December 10, 2009), which implemented a change in the petrale sole OY, explained that the 2010 canary rockfish OY was not being changed and remained at 105 mt. The final rule did not change preexisting trip limits for the fishery implementing the 105 mt OY, nor did it change a footnote to the 2010 ABC/OY Table, Table 2a to Part 660, Subpart G–2010, that described the canary rockfish OY as being 105 mt. However, Table 2a still indicated the canary rockfish OY range of 44–105 from the proposed rule. This was a mistake. Therefore, in this action, NMFS is revising the OY table to be consistent with the decision announced in the December 10, 2009, final rule.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the April 29, 2010, Court Order and the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.,* and other applicable laws.

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

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive notice and public procedure on this action because it is unnecessary and contrary to the public interest, as provided by 5 U.S.C. 553(b)(B). This action ensures that regulatory text provides accurate information to the regulated public consistent with a duly issued court order. For darkblotched rockfish, cowcod, and yelloweye rockfish, NMFS does not have discretion to take other action, as there is no alternative to complying with the court order. With regard to canary rockfish, correction of the OY number in the table is a minor, merely technical amendment, thus prior notice and comment is unnecessary. The December 10, 2009, final rule did not change preexisting trip limits implementing the 105 mt OY, and these trip limits are the basis for regulation of the fishery. Clarifying in the table that the canary rockfish OY is 105 mt as opposed to 44–105 mt does not affect regulation of the fishery. Providing for public comment on this action is contrary to the public interest. It would have no effect other than to slow the process of making the affected regulations consistent with the court order. The public would be best served by having accurate information in regulatory text immediately. Furthermore, the Assistant Administrator for Fisheries waives the 30-day delayed effectiveness period, as provided by 5 U.S.C. 553(d)(3), for the reasons stated above. In addition, the impacts of this action (the change in the 2010 OYs for three rockfish species) is already effective based on the court order, and this will bring the codified regulations into compliance with currently effective harvest levels.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: July 2, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 is amended to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 7001 *et seq.*

■ 2. Table 2a to Part 660, Subpart G, and footnotes "y/", "z/" and "aa/" following Tables 2a through 2c to Part 660, Subpart G are revised to read as follows:

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Table 2a. To Part 660, Subpart G - 2010, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC			
	Vancouver a/	Columbia	Eureka	Monterey	Conception			Commercial	Recreation-al
ROUNDFISH:									
Lingcod c/ N of 42 N. lat.	4,058		771			4,829	4,829		
S of 42 N. lat.									
Pacific Cod e/	3,200		d/			3,200	1,600		
Pacific Whiting f/	336,560					336,560	193,935		
Sablefish g/ N of 36 N. lat.	9,217					9,217	6,471		
S of 36 N. lat.							1,258		
Cabezon h/ S of 42 N. lat.	d/		86		25	111	79		
FLATFISH:									
Dover sole	28,582					28,582	16,500		
English sole j/	9,745					9,745	9,745	-	
Petrale sole k/	1,514		1,237			2,751	1,200	-	
Arrowtooth flounder l/	10,112					10,112	10,112	-	
Starry Flounder m/	1,578					1,578	1,077		
Other flatfish n/	6,731					6,731	4,884	-	
ROCKFISH:									
Pacific Ocean Perch o/	1,173					1,173	200	198	

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreation-al
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Shortbelly p/	6,950					6,950	6,950		
Widow q/	6,937					6,937	509	447.4	7.2
Canary r/	940					940	105		
Chilipepper s/	d/			2,576		2,576	2,447	2,447	
Bocaccio t/	d/			793		793	288	206.4	67.3
Splitnose u/	d/			615		615	461		
Yellowtail v/	4,562			d/		4,562	4,562		
Shortspine thornyhead w/ N of 34 27' N. lat.	2,411					2,411	1,591	1,591	
S of 34 27' N. lat.							410		
Longspine thornyhead x/ N of 34 27' N. lat.	3,671					3,671	2,175		
S of 34 27' N. lat.							385		
Cowcod y/	d/			14		14	4		
Darkblotched z/	440					440	330	288.05	
Yelloweye aa/						32	14	1.9	7.6
California Scorpionfish bb/					155	155	155		
Black cc/ N of 46 16' N. lat.	464					464	464		
S of 46 16' N. lat.			1,317			1,317	1,000		

Species	ABC Specifications						OY	HG b/	
	ABC Contributions by Area					ABC		Commercial	Recreation-al
	Vancouver a/	Columbia	Eureka	Monterey	Conception				
Minor Rockfish dd/ N of 40 10' N. lat.	3,678			--		3,678	2,283		
Minor Rockfish ee/ S of 40 10' N. lat.	--			3,382		3,382	1,990		
Remaining	1,640			1,318					
bank ff/	d/			350					
blackgill gg/	d/			292					
blue	28			211					
bocaccio north	318			--					
chilipepper north	32			--					
redstripe	576			d/					
sharpchin	307			45					
silvergrey	38			d/					
splitnose north	242			--					
yellowmouth	99			d/					
yellowtail	--			116					
gopher	d/			302					
Other rockfish hh/	2,038			2,066					
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Longnose Skate ii/	3,269					3,269	1,349		
Other fish jj/	11,200					11,200	5,600		

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* * * * *

y/Cowcod in the Conception area was assessed in 2007 and the stock was estimated to be between 3.4 to 16.3 percent of its unfished biomass. The ABC for the Monterey and Conception areas is 14 mt and is based on the 2007 rebuilding analysis in which the Conception area stock assessment projection was doubled to account for both areas. A single OY of 4 mt is being set for both areas. The OY of 4 mt is based on the need to conform the 2010 cowcod harvest specifications to the Court's Order in *Natural Resources Defense Council* v. *Locke*, Civil Action No. C 01–0421 JL. The amount anticipated to be taken during scientific research activity is 0.2 mt and the amount expected to be taken during EFP activity is 0.24 mt.

z/Darkblotched rockfish was assessed in 2007 and a rebuilding analysis was

prepared. The new stock assessment estimated the stock to be at 22.4 percent of its unfished biomass in 2007. The ABC is projected to be 440 mt and is based on the 2007 stock assessment with an F_{MSY} proxy of $F^{50\%}$. The OY of 330 mt is based on the need to conform the 2010 darkblotched rockfish harvest specifications to the Court's Order in *Natural Resources Defense Council* v. *Locke,* Civil Action No. C 01–0421 JL. The amount anticipated to be taken during scientific research activity is 2.0 mt and the amount anticipated to be taken during EFP activity is 0.95 mt.

[aa]/Yelloweye rockfish was fully assessed in 2006 and an assessment update was completed in 2007. The 2007 stock assessment update estimated the spawning stock biomass in 2006 to be at 14 percent of its unfished biomass coastwide. The 32 mt coastwide ABC was derived from the base model in the new stock assessment with an F_{MSY} proxy of $F^{50\%}$. The 14 mt OY is based on the need to conform the 2010 yelloweye rockfish harvest specifications to the Court's Order in *Natural Resources Defense Council* v. *Locke,* Civil Action No. C 01–0421 JL. The amount anticipated to be taken during scientific research activity is 1.3 mt, the amount anticipated to be taken in the tribal fisheries is 2.3 mt, and the amount anticipated to be taken incidentally in non-groundfish fisheries is 0.3 mt. The catch sharing harvest guidelines for yelloweye rockfish in 2010 are: Limited entry non-whiting trawl 0.3 mt, limited entry whiting 0.0 mt, limited entry fixed gear 0.8 mt, directed open access 1.2 mt, Washington recreational 2.6 mt, Oregon recreational 2.3 mt, California recreational 2.7 mt, and 0.2 mt for exempted fishing.

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[FR Doc. 2010–16632 Filed 7–2–10; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XX39

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2010 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 3, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA is 2,895 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,595 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 1, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 1, 2010.

Carrie Selberg,

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

[FR Doc. 2010–16639 Filed 7–2–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 130
Thursday, July 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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2010–0034]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/ALL—029 Civil Rights and Civil Liberties Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of an updated and reissued system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security/ALL—029 Civil Rights and Civil Liberties Records System of Records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

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

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0034, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer and Chief Freedom of Information Act Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions and privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security (DHS) civil rights and civil liberties staff, including components, as well as staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions (civil rights and civil liberties staff), rely on the DHS/Civil Rights and Civil Liberties—001 Matters System of Records (69 FR 70464, December 6, 2004) and other component specific systems of records, for the collection and maintenance of records that concern the Department's civil rights and civil liberties records. The system name is being changed to "DHS/ALL—029 Civil Rights and Civil Liberties Records System of Records" to reflect that the system is a Department-wide system of records and that all DHS civil rights and civil liberties records will now be covered by the DHS/ALL—029 Civil Rights and Civil Liberties Records System of Records. This name change, along with other changes to the system, are made to capture the expansion of the overall system of records including the Department Office for Civil Rights and Civil Liberties (CRCL) as well as component civil rights and civil liberties staff, staff of component offices that perform civil rights and civil liberties functions, and staff of components who do not have a designated civil rights and civil liberties office but who do perform investigative and reporting responsibilities related civil rights and civil liberties functions (collectively referred to as "civil rights and civil liberties staff"). The DHS/ALL—029 Civil Rights and Civil Liberties Records System of Records is the baseline system for Departmental civil rights and civil liberties activities, as led by the DHS Officer for Civil Rights and Civil Liberties. The Department's civil rights and civil liberties staff advise Departmental and/or component leadership, personnel, and partners about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. Civil rights and civil liberties staff also review and assess information concerning abuses of civil rights, civil liberties, such as profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security. The Department's civil rights and civil liberties staff also ensure that all federally-assisted and federally-conducted programs or activities of the Department comply with the provisions of Title VI of the Civil Rights Act of 1964. The Department's civil rights and civil liberties staff investigate complaints, including: allegations that individuals acted under color of law or otherwise abused their authority; discrimination; profiling; violations of the confidentiality provisions of the Violence Against Women Act; conditions of detention; treatment; due process; and watch list issues.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding such files within the agency.

The Privacy Act allows Government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/ALL—029 Civil Rights and Civil Liberties Records System of Records. Some information in DHS/ALL—029 Civil Rights and Civil Liberties Records System of Records relates to official DHS national security, law enforcement, immigration, intelligence activities, and protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS' ability to obtain information from third parties and other sources; to protect the privacy of third parties; to safeguard classified information; and to safeguard records in connection with providing protective services to the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/ALL—029 Civil Rights and Civil Liberties Records System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add to Appendix C to Part 5 the following new paragraph "49":

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

49. The DHS/ALL—029 Civil Rights and Civil Liberties Records System of Records consists of electronic and paper records and will be used by DHS and its components. The DHS/ALL—029 Civil Rights and Civil Liberties Records System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; national security and intelligence activities; and protection of the President of the United States or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/ALL—029 Civil Rights and Civil Liberties Records System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the individual who is the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would, therefore, present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the individual who is the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

* * * * *

Dated: June 30, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–16580 Filed 7–7–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0679; Directorate Identifier 2009–NM–179–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. The existing AD requires repetitive inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure, and visual inspections of the internal angle and external bulkhead chord and detailed inspection of internal angles, and corrective actions if necessary. The existing AD also provides for an optional inspection. This proposed AD would also require additional inspections of airplanes that have hi-lok bolts and collars at all of the Group B fastener locations, except fastener 13, and related investigative and corrective actions. This proposed AD would require repetitive inspections of the internal angle and corrective actions, if necessary. This proposed AD also would require, for certain airplanes, replacing the fasteners, which terminates certain repetitive inspections. This proposed AD results from the reports of undertorqued or loose fasteners, a cracked bulkhead chord, and a fractured back-up angle. We are proposing this AD to prevent loose fasteners and/or damaged or cracked hanger fittings, back-up angles, and bulkhead of the forward engine mount, which could lead to failure of the hanger fitting and bulkhead and consequent separation of the engine from the airplane.

DATES: We must receive comments on this proposed AD by August 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.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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: Ken Paoletti, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0679; Directorate Identifier 2009–NM–179–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

On September 14, 2007, we issued AD 2007–19–19, Amendment 39–15210 (72 FR 53939, September 21, 2007), for certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. That AD requires repetitive inspections and torque checks of the hanger fittings and strut forward bulkhead of the forward engine mount and adjacent support structure, and visual inspections of the internal angle and external bulkhead chord and detailed inspection of internal angles, and corrective actions if necessary. The existing AD also provides for an optional inspection. That AD resulted from reports of undertorqued or loose fasteners, a cracked bulkhead chord, and a fractured back-up angle after operators accomplished the terminating action required by AD 2001–15–02, Amendment 39–12336 (66 FR 37884, July 20, 2001), which was superseded by AD 2007–19–19. We issued that AD to detect and correct loose fasteners and/or damaged or cracked hanger fittings, back-up angles, and bulkhead of the forward engine mount, which could lead to failure of the hanger fitting and bulkhead and consequent separation of the engine from the airplane.

Actions Since Existing AD Was Issued

The preamble to AD 2007–19–19 specifies that we consider the requirements "interim action" and that we were considering requiring the inspections and applicable related investigative and corrective actions specified in Part 7 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, Revision 1, dated August 9, 2007, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Relevant Service Information

AD 2007–19–19 cited Boeing Alert Service Bulletin 747–54A2203, Revision 1, dated August 9, 2007, as the relevant source of information. Since we issued AD 2007–19–19, the manufacturer has revised the service information. Boeing has released Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009.

Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, specifies that hi-lok bolts and collars at all of the Group B fastener locations, except fastener 13, need to be replaced with bolts specified in the service bulletin within 18 months after the service bulletin is released. (Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000; and Revision 1, dated August 9, 2007; specified that the hi-lok bolts on these airplanes did not have to be replaced according to Part 6 of the Accomplishment Instructions if they met the inspection requirements of Part 2.) The related corrective actions are replacing the fasteners; removing loose fasteners; tightening all Group A

and Group B fasteners; tightening all under-torqued or loose Group A and Group B fasteners; and removing loose fasteners, inspecting the hole, installing fasteners, and applying optional torque stripes. In addition, that service bulletin specifies that the fasteners on these airplanes need to be replaced in accordance with Part 6—Fastener Replacement. The related investigative actions are doing repetitive detailed inspections, a torque stripe inspection, and torque checks.

Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, specifies a compliance time of within 90 days after the date of Revision 2 of that service bulletin for the Part 2 inspection, and within 18 months after the date of Revision 2 of that service bulletin for the Part 6 replacement. For the related investigative actions, that service bulletin specifies a compliance time ranging from before further flight to within 18 months after the fasteners are replaced. For the related corrective actions, that service bulletin specifies a compliance time ranging from before further flight to within 18 months after under-torqued or loose fasteners were found.

For all airplanes, Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, clarifies the requirements for conditions in which the torque stripe is not applied and for which no under-torqued or loose fastener was found by reordering the steps. In addition, Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, adds an option for supporting the engine weight, instead of removing the engine, in Part 7—HFEC Internal Angle Inspection of the Accomplishment Instructions of that service bulletin. Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, also no longer includes the 60-month compliance time for doing Part 6 of the Accomplishment Instructions of that service bulletin.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2007–19–19 and would retain certain requirements of the existing AD. This proposed AD would also require repetitive inspections of the internal angle, and corrective actions if necessary, and this proposed AD would also require, for certain airplanes, replacing the fasteners.

Differences Between the Proposed AD and Service Information

The service information specifies to contact the manufacturer for instructions on how to repair certain conditions, but this AD requires repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization whom we have authorized to make those findings.

Part 7—HFEC Internal Angle Inspection of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, also provides an option to support the engine weight rather than removing the engine. This AD requires the removal of the engine to perform the inspection.

Costs of Compliance

There are about 266 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Actions (required by AD 2007–19–19)	40	$85	$0	$3,400	121	$411,400
Internal Angle Inspection (new proposed action)	16	85	0	1,360	121	164,560
Replacement of fasteners (new proposed action)	24	85	0	2,040	121	246,840

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 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 that the 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. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15210 (72 FR 53939, September 21, 2007) and adding the following new AD:

The Boeing Company: Docket No. FAA–2010–0679; Directorate Identifier 2009–NM–179–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 23, 2010.

Affected ADs

(b) This AD supersedes AD 2007–19–19, Amendment 39–15210.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Unsafe Condition

(e) This AD results from the development of a mandating action. The Federal Aviation Administration is issuing this AD to detect and correct loose fasteners and/or damaged or cracked hanger fittings, back-up angles, and bulkhead of the forward engine mount, which could lead to failure of the hanger fitting and bulkhead and consequent separation of the engine from the airplane.

Compliance

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

Restatement of a Requirement of AD 2007–19–19, With Updated Service Information

Inspections and Related Investigative and Corrective Actions

(g) Except as provided by paragraphs (i), (l), and (n) of this AD: At the applicable compliance times and repeat intervals listed in Tables 1 and 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–54A2203, Revision 1, dated August 9, 2007, do the inspections and applicable related investigative and corrective actions in accordance with Parts 2 and 8 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, Revision 1, dated August 9, 2007; or Revision 2, dated July 9, 2009. After the effective date of this AD, use only Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009.

New Requirements of This AD

Mandatory Initial and Repetitive Inspections and Related Investigative and Corrective Actions

(h) For all airplanes: Except as provided by paragraph (m) of this AD, at the applicable time in Table 2 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, do the initial inspection and related investigative and corrective actions in accordance with Part 7 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, except as required by paragraphs (k) and (n) of this AD. Repeat the inspection thereafter at the applicable time in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009.

(i) For airplanes that were inspected in accordance with Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000; or Revision 1, dated August 9, 2007; and that have hi-lock bolts and collars at all of the Group B fastener locations: Except as provided by paragraph (m) of this AD, at the applicable time in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, do the initial inspection and related investigative and corrective actions in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, except as required by paragraph (n) of this AD. Repeat the inspection at the applicable interval in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009.

Replacement of Hi-Lok Group B Fasteners

(j) For airplanes that were inspected in accordance with Boeing Alert Service Bulletin 747–54A2203, dated August 31, 2000, and that have hi-lock bolts and collars at all of the Group B fastener locations: Within 18 months after the effective date of this AD, replace all hi-lok Group B fasteners in accordance with Part 6 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009. Repeat the inspection required by Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, at the applicable interval in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009.

Exceptions to Service Bulletin

(k) Where Step 3 of Part 7 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2203, Revision 1, dated August 9, 2007; or Revision 2, dated July 9, 2009; provides the option to support the engine weight instead of removing the engine, this AD does not allow that option. This AD requires that the engine be removed before performing the inspections required by paragraph (h) of this AD.

(l) Where Boeing Alert Service Bulletin 747–54A2203, Revision 1, dated August 9, 2007, specifies a compliance time after the date of that service bulletin, this AD requires compliance within the specified compliance time after October 9, 2007 (the effective date of AD 2007–19–19).

(m) Where Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009, specifies a compliance time after the date of Revision 1 or Revision 2 of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(n) Where Boeing Alert Service Bulletin 747–54A2203, Revision 1, dated August 9, 2007; or Boeing Alert Service Bulletin 747–54A2203, Revision 2, dated July 9, 2009; specifies to contact Boeing for appropriate action, this AD requires, before further flight, repair of the discrepancy or replacement of the discrepant part using a method approved in accordance with the Boeing Commercial Airplanes Organization Designation Authorization or in accordance with the procedures specified in paragraph (p) of this AD.

Credit for Actions Previously Accomplished

(o) Actions performed before the effective date of this AD, in accordance with Boeing Alert Service Bulletin 747–53A2203, Revision 1, dated August 9, 2007, are acceptable for compliance with the corresponding actions specified in paragraphs (h), (i), and (j) of this AD.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Seattle 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: Ken Paoletti, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6434; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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.

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

(4) AMOCs approved previously in accordance with AD 2007–19–19, Amendment 39–15210, are approved as AMOCs for the corresponding provisions of this AD.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–16606 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0674; Directorate Identifier 2010–NM–012–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Model 747 airplanes. This proposed AD would require repetitive inspections for cracking in the body skin around the aft corners of the nose wheel well; for certain airplanes, repetitive inspections for cracking in the skin splice plate at the aft corners of the nose wheel well; and related investigative and corrective actions if necessary. This proposed AD would also require repetitive post-modification inspections for cracking in the body skin and the skin splice plate; for certain airplanes, an inspection for steel cross-shaped doublers on the larger aluminum doublers; and corrective action if necessary. This proposed AD would also require repetitive surface high frequency eddy current (HFEC) inspections of a certain bulkhead outer chord, skin splice plate, and outer chord radius filler for cracking; repetitive detailed inspections for cracking of the bulkhead frame web and body skin; and corrective actions if necessary. This proposed AD would provide for optional terminating action for certain repetitive inspections. This proposed AD results from reports of cracking of the fuselage skin and adjacent internal skin splice plate at the left and right nose wheel well aft corners, and the outer chord of the body station (BS) 400 bulkhead. We are proposing this AD to detect and correct cracking of the fuselage skin or splice plate, which, together with cracking of the bulkhead outer chord, could result in large skin cracks and subsequent in-flight rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by August 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.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0674; Directorate Identifier 2010–NM–012–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of cracking of the fuselage skin and adjacent internal skin splice plate at the left and right nose wheel well aft corners, and the outer chord of the body station (BS) 400 bulkhead. Cracks were found in the skin on an airplane that had accumulated about 6,355 total flight cycles. In addition, small cracks were found in the outer chord of the body station (BS) 400 bulkhead on airplanes that had accumulated fewer than 20,000 total flight cycles. Cracking of the fuselage skin or splice plate, together with cracking of the bulkhead outer chord, if not detected and corrected, could result in large skin cracks and subsequent in-flight rapid decompression of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009. The service bulletin describes procedures for repetitive external detailed inspections for cracking in the body skin around the aft corners of the nose wheel well; for certain airplanes, repetitive external detailed inspections for cracking in the skin splice plate at the aft corners of the nose wheel well, and modification of any cracked aft corners of the nose wheel well by installing modification doublers; and, for certain airplanes, and a one-time external general visual inspection for steel cross-shaped doublers. The modification, which, if accomplished to repair cracks or to eliminate the need for certain repetitive inspections, includes related investigative actions and corrective actions if necessary. The related investigative actions include an open-hole HFEC inspection for cracking at fasteners common to the bulkhead outer chord, and a surface HFEC inspection or penetrant inspection for cracking of the skin if necessary. The corrective actions include repairing the crack, installing cross-shaped doublers, and contacting Boeing for repair instructions and doing the repair.

The service bulletin also describes procedures for repetitive post-modification inspections, which consist of an external low frequency eddy current (LFEC) inspection for cracking in the skin around fasteners at the periphery of modification doublers, and contacting Boeing for instructions to repair cracks and doing the repair. The service bulletin also describes procedures for repetitive surface HFEC inspections for cracking of a certain bulkhead outer chord, skin splice plate, and outer chord radius filler; repetitive detailed inspections for cracking of the bulkhead frame web and body skin, and corrective actions if necessary. The corrective actions include repairing the crack, or contacting Boeing for repair instructions and repairing if necessary.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as described below.

Differences Between Proposed Rule and Service Bulletin

Boeing Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD would affect 160 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspections: Body skin and skin splice plate	1	$85	$85	160	$13,600.
Modification: Groups 1–3 [1]	180	85	15,300	Up to 27	Up to $413,100.
Modification: Groups 1–3 [2]	320	85	27,200	Up to 27	Up to $734,400.
Modification: Groups 4–8 [3]	180	85	15,300	Up to 133	Up to $2,034,900.
Modification: Groups 4–7 [4]	40	85	3,400	Up to 44	Up to $149,600.
Post-Mod LFEC Inspection [5]	6	85	510	Up to 160	Up to $81,600.
Inspections: Bulkhead Outer Chord [6]	4	85	340	Up to 160	Up to $54,400.

[1] Installation of skin and splice plate doubler for Groups 1–3 airplanes that have not done Boeing Service Bulletin 747–53–2150 or Figure 35 of Section 53–30–03 of the Boeing 747 Structural Repair Manual.
[2] Installation of skin and splice plate doubler for Groups 1–3 airplanes that have done Boeing Service Bulletin 747–53–2150 or Figure 35 of Section 53–30–03 of the Boeing 747 Structural Repair Manual.
[3] Installation of skin and splice plate doubler for Groups 4–8 airplanes.
[4] Installation of splice plate doubler for Groups 4–7 airplanes changed before Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.
[5] Inspection for skin cracks around the fasteners at the periphery of the modification doublers.
[6] Includes inspection of the frame web and body skin.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866,
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2010–0674; Directorate Identifier 2010–NM–012–AD.

Comments Due Date

(a) We must receive comments by August 23, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from reports of cracking of the fuselage skin and adjacent internal skin splice plate at the left and right nose wheel well aft corners, and the outer chord of the body station (BS) 400 bulkhead. The Federal Aviation Administration is issuing this AD to detect and correct cracking of the fuselage skin or splice plate, which, together with cracking of the bulkhead outer chord, could result in large skin cracks and subsequent in-flight rapid decompression of the airplane.

Compliance

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

Pre-Modification Inspections

(g) For airplanes in Groups 1 through 3, as identified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, that have not been modified in accordance with Boeing Service Bulletin 747–53–2150; have not been repaired in accordance with Figure 35 of Section 53–30–03 of Boeing 747 Structural Repair Manual (SRM); and have not been modified in accordance with Boeing Alert Service Bulletin 747–53A2305: Before the accumulation of 3,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, do an external detailed inspection for cracks in the body skin around the aft corners of the nose wheel well, and skin splice plate at the aft corners of the nose wheel well, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(h) For airplanes in Groups 1 through 3, as identified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, that have been modified in accordance with Boeing Service Bulletin 747–53–2150; or repaired in accordance with Boeing 747 Figure 35 of Section 53–30–03 of Boeing 747 SRM: Within 6,000 flight cycles after doing the modification or repair, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, do an external detailed inspection for cracks in the body skin around the aft corners of the nose wheel well, and skin splice plate at the aft corners of the nose wheel well, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(i) For airplanes in Groups 4 through 7, as identified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, that have not been modified in accordance with Boeing Alert Service Bulletin 747–53A2305: Prior to the accumulation of 3,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, do an external detailed inspection for cracks in the body skin around the aft corners of the nose wheel well, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(j) For airplanes in Groups 4 through 7, as identified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, that have been modified in accordance with Boeing Service Bulletin 747–53–2305, dated June 27, 1991; or Revision 1, dated May 22, 1997: Within 1,000 flight cycles after the effective date of this AD, do a one-time external general visual inspection for steel cross-shaped doublers, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009. If no cross-shaped doublers are installed, within 1,500 flight cycles after the effective date of this AD, install cross-shaped doublers, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(k) For airplanes in Group 8, as identified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009: Prior to the accumulation of 3,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, do an external detailed inspection for cracks in the body skin around the aft corners of the nose wheel well, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(l) If no crack is found during any inspection required by paragraph (g), (h), (i), or (k) of this AD, repeat the applicable inspection specified in paragraph (g), (h), (i), or (k) of this AD thereafter at intervals not to exceed 1,500 flight cycles, until the modification specified in paragraph (n) of this AD is accomplished.

(m) If any crack is found during any inspection required by paragraph (g), (h), (i), (k), or (l) of this AD, before further flight, modify the aft corners of the nose wheel well by installing modification doublers and doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, except as required by paragraph (t) of this AD.

Optional Terminating Action

(n) Modification of the aft corners of the nose wheel well by installing modification doublers and doing all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, terminates the repetitive inspections required by paragraph (l) of this AD for the modified side only. Where Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, specifies to contact Boeing for appropriate action, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

Post-Modification Repetitive Inspections

(o) For airplanes on which the modification specified in Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, has been done: At the applicable time specified in paragraph (o)(1) or (o)(2) of this AD, do an external low frequency eddy current inspection for skin cracks around the fasteners at the periphery of the modification doublers, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009.

(1) For airplanes on which the edge row fastener holes common to the external modification doublers have been zero-timed in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009: Within 15,000 flight cycles after accomplishing the modification, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes on which the edge row fastener holes common to the external modification doublers have not been zero-timed in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009: Prior to the accumulation of 15,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(p) If no cracking is found during the inspection required by paragraph (o) of this AD, repeat the inspection specified in paragraph (o) of this AD thereafter at intervals not to exceed 1,500 flight cycles.

(q) If any cracking is found during any inspection required by paragraph (o) or (p) of this AD, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

Body Station (BS) 400 Bulkhead Outer Chord Inspection

(r) For all airplanes: At the latest of the times specified in paragraphs (r)(1), (r)(2), and (r)(3) of this AD, do a surface HFEC for cracking in the BS 400 bulkhead outer chord, skin splice plate, and outer chord radius filler; and a detailed inspection for cracking of the bulkhead frame web and body skin; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009. If no cracking is found during any inspection, repeat the inspection one time within 6,000 flight cycles, and thereafter at intervals not to exceed 3,000 flight cycles.

(1) Before the accumulation of 20,000 total flight cycles.

(2) Within 3,000 flight cycles after doing the HFEC inspection required by AD 2004–

07–22 R1, Amendment 39–15326, for structural significant item (SSI) F–4B of the Boeing Document No. D6–35022, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision G, dated December 2000.

(3) Within 1,500 flight cycles after the effective date of this AD.

(s) If any cracking is found during any inspection required by paragraph (r) of this AD, before further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, except as required by paragraph (t) of this AD. Within 6,000 flight cycles after doing the repair, do the inspections specified in paragraph (r) of this AD, and repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles.

Service Bulletin Exception

(t) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2305, Revision 2, dated January 15, 2009, specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (u) of this AD.

Alternative Methods of Compliance (AMOCs)

(u)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(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.

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–16551 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0564; Directorate Identifier 2010–SW–13–AD]

RIN 2120–AA64

Airworthiness Directives; Arrow Falcon Exporters, Inc. (Previously Utah State University), et al., Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P Helicopters; and Southwest Florida Aviation Model UH–1B (SW204 and SW204HP) and UH–1H (SW205) Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified type-certificated military surplus helicopters. The AD would require: Creating a component history card or equivalent record for each main rotor grip (grip); determining and recording the total hours time-in-service (TIS) for each grip; visually inspecting the upper and lower tangs of the grip for a crack; inspecting the grip buffer pads for delamination and if delamination is present, inspecting the grip surface for corrosion or other damage; inspecting the grip for a crack using ultrasonic (UT) and fluorescent-penetrant inspection methods; and establishing a retirement life for certain grips. This proposal is prompted by three in-flight failures of grips installed on Bell Helicopter Textron, Inc. (BHTI) Model 212 helicopters, which resulted from cracks originating in the lower main rotor blade bolt lug. The actions specified by the proposed AD are intended to prevent failure of the grip, separation of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 7, 2010.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *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.

You may get the service information identified in this proposed AD from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/.*

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Michael Kohner, ASW–170, Aviation Safety Engineer, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5170, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA–2010–0564, Directorate Identifier 2010–SW–13–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone

(800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters; and Southwest Florida Aviation Model UH–1B (SW204 and SW204HP) and UH–1H (SW205) helicopters. The AD would require creating a component history card or equivalent record for each grip; determining and recording the total hours TIS for each grip; visually inspecting the upper and lower tangs of the grip for a crack; inspecting the grip buffer pads for delamination, and if delamination is present, inspecting the grip surface for corrosion or other damage; inspecting the grip for a crack using UT and fluorescent-penetrant inspection methods; and establishing a retirement life for grips, part number (P/N) 204–011–121–009, ASI–4011–121–9, and P/N 204–011–121–121. This proposal is prompted by three in-flight failures of grips, P/N 204–011–121–009 and –121, installed on BHTI Model 212 helicopters, which resulted from cracks originating in the lower main rotor blade bolt lug. Grips with these same P/Ns, and those produced under an FAA Parts Manufacturing Approval (PMA) that have a design approval based on their being identical to the original BHTI-manufactured grips, are eligible for installation on certain modified Model HH–1K, TH–1F, TH–1L, and UH–1 helicopters. These helicopters have an FAA-approved modification which increases their power rating to the equivalent of the twin-engine Model 212 helicopter power rating. Grips, P/N 204–011–121–005, and –113, are also affected by the proposed AD if they were ever installed on a Model 205B or Model UH–1N helicopter; and grip, P/N 204–011–121–117, is also affected if it was ever installed on a Model 205B helicopter. Additionally, BHTI has developed a new, improved replacement grip that will not require the repetitive UT inspections and will have a 25,000 hour TIS and 500,000 Retirement Index Number (RIN) retirement life for the BHTI Model 212 helicopters. The RIN count accumulated for the new replacement grips will be increased by one for each take-off or each external lift event. The actions specified by the proposed AD are intended to prevent failure of the grip, separation of a main rotor blade, and subsequent loss of control of the helicopter.

We have reviewed the following service information:

- BHTI Alert Service Bulletin (ASB) 205B–02–39, Revision B, dated November 22, 2002, applicable to Model 205B helicopters; and
- BHTI ASB 212–02–116, Revision A, dated October 30, 2002, applicable to Model 212 helicopters.

Both ASBs contain BHTI Nondestructive Inspection Procedure, Log. No. 00–340, Revision E, dated April 9, 2002, which describes procedures for an UT inspection of the grip. We have also reviewed BHTI Operations Safety Notice (OSN) 204–85–6, OSN 205–85–9, and OSN 212–85–13, all dated November 14, 1985, which describe a cracked Model 212 helicopter grip that was returned to BHTI.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs. Therefore, the proposed AD would require:

- Within 10 hours TIS, creating a component history card or equivalent record for the grip, and determining and recording the total hours TIS of each grip;
- Within 10 hours TIS, and then at intervals not to exceed 25 hours TIS, visually inspecting the upper and lower tangs of the grip for a crack using a 10-power or higher magnifying glass;
- Within 30 days, and then at intervals not to exceed certain specified hours TIS or a certain number of engine start/stops, whichever occurs first, for grips with certain specified hours TIS, inspecting the grip for a crack using a UT inspection method;
- At intervals not to exceed 1,200 hours TIS or 24 months, whichever occurs first, inspecting the grip buffer pads for delamination, and if delamination is present, inspecting the grip surface for corrosion or other damage;
- Within 2,400 hours TIS or at the next main rotor hub overhaul, whichever occurs first, and then at intervals not to exceed 2,400 hours TIS, removing the grip buffer pads, visually inspecting the grip surface for corrosion or other damage, and fluorescent-penetrant inspecting the grip for a crack;
- Before further flight, removing from service any grip, P/N 204–011–121–009 or ASI–4011–121–9, with 15,000 or more hours TIS;
- Before further flight, removing from service any grip, P/N 204–011–121–121, with 25,000 or more hours TIS;
- Before further flight, replacing any unairworthy grip; and
- Establishing a retirement life of 15,000 hours TIS for grip, P/N 204–011–121–009 or ASI–4011–121–9, and 25,000 hours TIS for grip, P/N 204–011–121–121.

We estimate that this proposed AD would affect 20 helicopters of U.S. registry, and the proposed actions would take the following approximate number of work hours per helicopter to accomplish at an average labor rate of $85 per work hour:

- Create new component history cards or equivalent: 2 work hours;
- Maintain records: 5 work hours per year;
- 24 visual inspections using a magnifying glass: 12 work hours per year;
- ½ of a buffer pad inspection: 1.5 hours per year;
- ¼ of a fluorescent penetrant inspection: .5 work hour per year;
- 4 UT inspections: 4 work hours per year; and
- Remove and replace grip set: 20 work hours per year.

Required parts would cost approximately $37,590 per set of grips. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $828,300, if one set of grips is installed on the total affected fleet of helicopters at the end of the first year.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, 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 that the 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 draft economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the draft economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Arrow Falcon Exporters, Inc. (Previously Utah State University); Firefly Aviation Helicopter Services (Previously Erickson Air-Crane Co.); California Department of Forestry; Garlick Helicopters, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC (Previously Western International Aviation, Inc.); International Helicopters, Inc.; Precision Helicopters, LLC; Robinson Air Crane, Inc.; San Joaquin Helicopters (Previously Hawkins and Powers Aviation, Inc.); S.M.&T. Aircraft (Previously US Helicopters, Inc., UNC Helicopter, Inc., Southern Aero Corporation, and Wilco Aviation); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation International, Inc. (Previously Jamie R. Hill and Southwest Florida Aviation); Tamarack Helicopters, Inc. (Previously Ranger Helicopter Services, Inc.); US Helicopter, Inc. (Previously UNC Helicopter, Inc.); West Coast Fabrication; and Williams Helicopter Corporation (Previously Scott Paper Co.). Docket No. FAA–2010–0564; Directorate Identifier 2010–SW–13–AD.

Applicability: Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters, and Southwest Florida Aviation Model UH–1B (SW204 and SW204HP) and UH–1H (SW205) helicopters, with main rotor grip (grip), part number (P/N) 204–011–121–009, –121, or ASI–4011–121–9, installed; or with grip, P/N 204–011–121–005 or –113, if the grip was ever installed on a Model 205B or a Model UH–1N helicopter, or P/N 204–011–121–117, installed, if the grip was ever installed on a Model 205B helicopter, certificated in any category.

Compliance: Required as indicated.

To prevent failure of a grip, separation of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), unless accomplished previously, create a component history card or equivalent record and determine and record the total hours TIS for each grip. If the total hours TIS cannot be determined from the helicopter records, assume and record 50 hours TIS for each month for which the hours cannot be determined with the grip installed on any helicopter. Continue to count and record the hours TIS and begin to count and record the number of times the helicopter engine(s) are started (engine start/stop cycles).

(b) Within 10 hours TIS, unless accomplished previously, and then at intervals not to exceed 25 hours TIS, without removing the main rotor blades:

(1) Clean the exposed surfaces of the upper and lower tangs of each grip with denatured alcohol and wipe dry.

(2) Using a 10-power or higher magnifying glass, visually inspect the exposed surfaces of the upper and lower tangs of each grip for a crack. Pay particular attention to the lower surface of each lower grip tang from the main rotor blade bolt-bushing flange to the leading and trailing edge of each grip tang. *See* Figure 1 of this AD.

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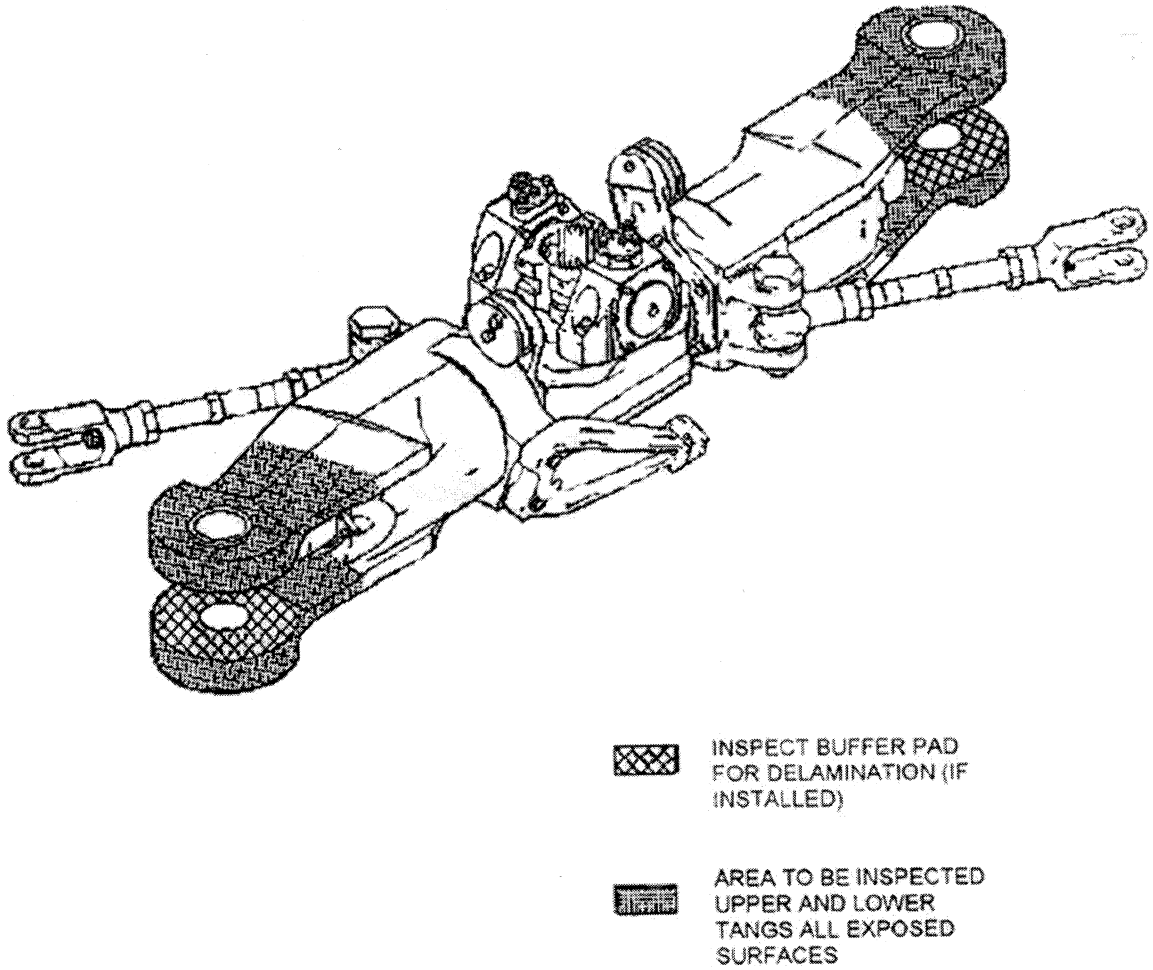

Figure 1. Inspection of Main Rotor Hub Grip Tangs

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(c) At the intervals shown in Table 1 of this AD, ultrasonic (UT) inspect each grip for a crack in accordance with the Bell Helicopter Textron, Inc. (BHTI) Nondestructive Inspection Procedure, Log No. 00–340, Revision E, dated April 9, 2002.

TABLE 1

UT inspect grip, P/N	Within 30 days, for a grip with the following or more hours TIS:	Thereafter, at intervals not to exceed the following number of hours TIS or the engine start/stop cycles, whichever occurs first:	
		Hours TIS	Engine start/ stop cycles
204–011–121–009 or ASI–4011–121–9	4,000	400	1,600
204–011–121–121	500	150	600
204–011–121–005 or –113, if the grip was EVER installed on a Model 205B or Model UH–1N helicopter	4,000	400	1,600
204–011–121–117, if the grip was EVER installed on a Model 205B helicopter	500	150	600

The UT inspection of the grip must be performed by a Nondestructive Testing (NDT) UT Level I Special, Level II, or Level III inspector who is qualified under the guidelines established by MIL–STD–410E, ATA Specification 105, AIA–NAS–410, or an FAA-accepted equivalent for qualification standards of NDT Inspection/Evaluation Personnel.

Note 1: You can find the Nondestructive Inspection Procedure attached to BHTI Alert

Service Bulletin (ASB) 205B–02–39, Revision B, dated November 22, 2002, or BHTI ASB 212–02–116, Revision A, dated October 30, 2002.

(d) At intervals not to exceed 1,200 hours TIS or 24 months, whichever occurs first:

(1) Remove each main rotor blade, and

(2) Inspect each grip buffer pad on the inner surfaces of each grip tang for delamination (*see* Figure 1 of this AD). If there is any delamination, remove the buffer pad and inspect the grip surface for corrosion or other damage.

Note 2: This inspection interval coincides with the main rotor tension-torsion strap replacement times.

(e) Within 2,400 hours TIS or at the next overhaul of the main rotor hub, whichever occurs first, and then at intervals not to exceed 2,400 hours TIS:

(1) Remove each main rotor blade.

(2) Remove each grip buffer pad (if installed) from the inner surfaces of each grip tang.

(3) Visually inspect the grip surfaces for corrosion or other damage.

(4) Fluorescent-penetrant inspect (FPI) the grip for a crack, paying particular attention to the upper and lower grip tangs. When inspecting a grip, P/N 204–011–121–005, –009, or –113, or ASI–4011–121–9, pay particular attention to the leading and trailing edges of the grip barrel.

Note 3: FPI procedures are contained in BHTI Standard Practices Manual, BHT–ALL–SPM.

(f) Before further flight:

(1) Replace any cracked grip with an airworthy grip.

(2) Replace any grip with any corrosion or other damage with an airworthy grip, or repair the grip if the corrosion or other damage is within the maximum repair limitations found in the applicable Component and Repair Overhaul Manual.

Note 4: BHTI ASB 212–94–92, Revision A, dated March 13, 1995, and BHTI Operations Safety Notice (OSN) 204–85–6, OSN 205–85–9, and OSN 212–85–13, all dated November 14, 1985, also pertain to the subject of this AD.

(3) Remove any grip, P/N 204–011–121–009 or ASI–4011–121–9, that has been in service for 15,000 or more hours TIS.

(4) Remove any grip, P/N 204–011–121–121, that has been in service for 25,000 or more hours TIS.

(g) Revise the Airworthiness Limitations section of the applicable maintenance manual or the Instructions for Continued Airworthiness (ICA) by establishing a new retirement life of 15,000 hours TIS for grip, P/N 204–011–121–009 or ASI–4011–121–9, and 25,000 hours TIS for grip, P/N 204–011–121–121, by marking pen and ink changes or inserting a copy of this AD into the maintenance manual or ICA.

(h) Record a 15,000 hour TIS life limit for each grip, P/N 204–011–121–009 or ASI–4011–121–9, and a 25,000 hour life limit for each grip, P/N 204–011–121–121, on the applicable component history card or equivalent record.

(i) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Certification Office, *Attn:* Michael Kohner, Aviation Safety Engineer, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5170, fax (817) 222–5783, for information about previously approved alternative methods of compliance.

(j) The Joint Aircraft System/Component (JASC) Code is 6220: Main Rotor Head.

Issued in Fort Worth, Texas, on June 5, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–16511 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2010–0667]

Proposed Legal Interpretation

AGENCY: Federal Aviation Administration (FAA)

ACTION: Proposed interpretation.

SUMMARY: The FAA is considering revising its broad prohibition on pro rata reimbursement for the cost of owning, operating and maintaining a company aircraft when used for routine personal travel by senior company officials and employees under certain conditions.

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

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0667 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: 202 267–3073.

SUPPLEMENTARY INFORMATION:

The Federal Aviation Administration (FAA) generally prohibits aircraft operators from seeking reimbursement for the costs associated with flights conducted under part 91 of Title 14 of the Code of Federal Regulations (CFR). Certain exceptions to this general prohibition may be found in 14 CFR 91.501. One of the exceptions, located in § 91.501(b)(5), provides for limited reimbursement for the "carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or a subsidiary of the parent, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air) and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane, * * *."

In 1993, the FAA's Office of the Chief Counsel issued a legal interpretation of this provision that addressed officials and employees of a company using the company aircraft for personal travel. Interpretation 1993–17, August 2, 1993. This letter is commonly referred to as the "Schwab Interpretation." In the Schwab Interpretation, the FAA noted that the personal travel was not within the scope of the company's business and so did not meet the two-part test set forth in § 91.501(b)(5), *i.e.,* that it be within the scope of and incidental to the company's business.

On March 1, 2010, the National Business Aviation Association (NBAA) requested the FAA consider revising the long-standing Schwab Interpretation to address highly placed officers and employees of a company who could be recalled at any moment, or whose travel plans could be altered immediately prior to the individual going on personal travel. The FAA is considering narrowing the broad prohibition provided in the Schwab Interpretation; the agency is publishing this notice to seek comment on its revised interpretation.

In the Schwab Interpretation, the FAA rejected the argument that a need to communicate with a senior company official justified an assertion that the personal travel was within the company's business. Instead, the FAA noted that "[i]t may very well be that the Company wants to maintain prompt communications with Mr. Schwab when he is on pleasure trips. That desire, however, does not alter the fact that he

is traveling for pleasure. As stated, the Agency's interpretations have held that such carriage is not within the scope of, and incidental to, the company's business. The ability of the Company to communicate with him is in no way dependent upon charging him for carriage for such purposes." The NBAA made similar arguments in its recent request that company officials have the ability to conduct meaningful, real-time work aboard company aircraft, and so personal travel can be within the scope of the company's business even though it is incidental to that business. The FAA rejects this argument as sufficient to merit a change in agency interpretation of § 91.501(b)(5). If anything, the advances in communication technology weaken any argument that the use of company aircraft is necessary for personal travel. The advent of laptop computers and handheld PDAs has led to greater communication than ever before.

The FAA finds more compelling the argument that certain, highly-placed officials and employees may be unable to reliably schedule personal travel due to the nature of their employment.

Recalling an individual from a vacation because of an emergency is clearly within the scope of a company's business. To the extent that using company aircraft is the most efficient way to transport the individual in an emergency situation, the FAA would not object to company aircraft being used; although there could be some question as to whether the transport was still incidental to the company's business, such that both prongs of § 91.501(b)(5) apply.

However, the FAA believes there is merit to the position that even the first leg of the trip could, under limited circumstances, be within the scope of a company's business, even though there were no emergency circumstances at play. The FAA recognizes that fairly routine personal travel, such as a summer vacation or weekend ski trip, could be cancelled up to the last moment because of compelling business concerns. As such, the company may determine that it is more efficient to provide the company aircraft than to reimburse the individual for the cost of cancelled commercial airfare. In addition, the company may be able to accommodate the individual's altered plans by providing the company aircraft as soon as possible after the compelling business concern has been resolved. As such, while the personal travel is not within the scope of the company's business, indeed it is clearly incidental to that business, the need to modify the travel on very short notice may well be. Likewise, to the extent that the return trip is not compelled by emergency circumstances, the ability of a company to alter an individual's travel plans on very short notice may render a particular flight both within the scope of and incidental to the company's business. Thus, the FAA has tentatively determined that a company could be reimbursed for the pro rata cost of owning, operating, and maintaining the aircraft when used for routine personal travel by an individual whose position merits such a high level of company interference into his or her personal travel plans.

The FAA notes that not all personal travel would meet these conditions. As noted above, truly emergency circumstances would likely obviate a company's ability to demonstrate that a particular flight is incidental to the company's business. By the same token, there are certain types of personal travel that are unlikely to be altered or cancelled, even for compelling business reasons. For example, absent an emergency, it is highly unlikely that a senior officer or employee would be expected to miss a significant event, such as a wedding or funeral of a close family member. It is also unlikely that the individual would be expected to cancel or reschedule necessary surgery or other medical treatment.

In order to prevent companies from abusing the proposed change in the Schwab Interpretation, the FAA believes that a company wishing to take advantage of the interpretation should maintain and regularly update a list of individuals whose position within the company require him or her to routinely change travel plans within a very short period of time. The company should be prepared to share this list with the FAA if requested. The FAA recognizes that the Securities Exchange Commission and Internal Revenue Service employ the concept of "specified individuals" in the context of certain reporting requirements and taxation issues. These individuals generally include officers, directors, and more than 10 percent owners of a company. The FAA does not believe that all officers of a company are likely to be subject to the level of company control discussed above, nor are all directors. Rather than issue a blanket description of which individuals may be covered by the proposed revision, the FAA believes it is appropriate for the company's board, or equivalent governing body, to list which company individuals are so situated. In addition, the company would need to keep records indicating that a determination has been made by the company that the flight in question was of a routine personal nature.

Issued in Washingon, DC, on June 30, 2010.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 2010–16385 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0600]

RIN 1625–AA00

Safety Zone; Fireworks Display, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of a temporary safety zone covering specified waters of the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and the shoreline to the east and west in support of the Oregon Symphony Celebration Fireworks Display, Portland, Oregon. The safety zone is necessary to help ensure the safety of the maritime public during the event and will do so by prohibiting all persons and vessels from entering the safety zone unless authorized by the Captain of the Port or his designated representative.

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

ADDRESSES: You may submit comments identified by docket number USCG–2010–0600 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 proposed rule, call or e-mail MST1 Jaime Sayers, Waterways Management Division, Coast Guard Sector Portland; telephone 503–240–9319, e-mail *Jaime.A.Sayers@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–2010–0600), 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–2010–0600" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0600" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

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

Basis and Purpose

The Oregon Symphony Celebration Fireworks display is an annual event. The display has an established safety zone in 33 CFR 165.1315(a)(7) but the established safety zone covers an event which is to be held in the month of August. The display this year will take place during the month of September. Due to the inherent dangers associated with such events, the safety zone created by this rule is necessary to help ensure the safety of the maritime public and will do so by prohibiting all persons and vessels from coming too close to the fireworks display and its associated hazards.

Discussion of Proposed Rule

The proposed rule would suspend 33 CFR 165.1315(a)(7) until 10 p.m. on September 2, 2010. This proposed rule establishes a temporary safety zone covering specified waters of the Willamette River in the vicinity of Portland, Oregon. Specifically, the safety zone would include all waters of the Willamette River bounded by the Hawthorne Bridge to the north, the Marquam Bridge to the south, and the shoreline to the east and west from 7 p.m. until 10 p.m. on September 2, 2010. All persons and vessels will be prohibited from entering the safety zone unless authorized by the Captain of the Port or his designated representative.

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. The Coast Guard has made this determination because the safety zone will only be in effect for 3 hours on one day and maritime traffic may be able to transit the zone with permission of the Captain of the Port or his designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: the owners or operators of vessels wishing to transit the safety zone established by this rule. The rule

will not have a significant economic impact on a substantial number of small entities, however, because the safety zone will only be in effect for 3 hours on one day and maritime traffic may be able to transit the zone with permission of the Captain of the Port or his designated representative.

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 MST1 Jaime Sayers. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraph 34(g) of the Instruction and neither an environmental assessment nor an environmental impact statement is required. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a temporary safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.1315(a)(7) [Suspended]

2. Section 165.1315(a)(7) is suspended until 10 p.m. on September 2, 2010.

3. A new temporary § 165.T13–149 is added from 7 p.m. to 10 p.m. on September 2, 2010 to read as follows:

§ 165.T13–149 Safety Zone; Fireworks Display, Portland, OR.

(a) *Location.* The following area is a safety zone: All waters of the Willamette River bounded by the Hawthorne Bridge to the north, the Marquam Bridge to the south, and the shoreline to the east and west.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, Subpart C, no person or vessel may enter or remain in the safety zone created by this section without the permission of the Captain of the Port or his designated representative. Designated representatives are Coast Guard personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. *See* 33 CFR Part 165, Subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zone created by this section will be enforced from 7 p.m. until 10 p.m. on September 2, 2010.

Dated: June 22, 2010.

F.G. Myer,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 2010–16585 Filed 7–7–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2010–10; Order No. 482]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking; availability of rulemaking petition.

SUMMARY: The Commission is establishing a docket to consider a proposed change in certain analytical methods used in periodic reporting. This action responds to a Postal Service rulemaking petition. The proposed change has two parts. One part would reduce the sample size of a major ongoing data collection effort. The other part would divert a designated percentage of sample tests to a special study using an alternative sample frame. Establishing this docket will allow the Commission to consider the Postal Service's proposal and comments from the public.

DATES: Comments are due: August 16, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document for advice on alternatives to electronic filing.

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

SUPPLEMENTARY INFORMATION: *Regulatory History,* 75 FR 7426 (Feb. 19, 2010).

On June 25, 2010, the Postal Service filed a petition to initiate an informal rulemaking proceeding to consider a change in the analytical methods approved for use in periodic reporting.[1] The Postal Service's proposal is in two parts. Proposal Two–A proposes to reduce the size of the sample that it uses to collect Origin–Destination Information System/Revenue Pieces and Weight (ODIS/RPW) data by 20 percent. *Id.* at 3. In effect, Proposal Two–A asks that the Commission's decision in Order No. 396[2] not to approve an identical proposal submitted by the Postal Service in June of 2009 be reconsidered.

The second part of Proposal Two is presented as Proposal Two–B. It proposes to divert 10 percent of the sample tests conducted under the current ODIS–RPW sample size to a special study utilizing an alternative sample frame. The alternative sample frame that the Postal Service proposes to test in Proposal Two–B would define a sample frame unit as a "delivery unit." According to the Postal Service, delivery units would include "city and rural carriers, box sections, and firms." Petition, Attachment Proposal Two–B, at 1.

Currently, ODIS–RPW sample frame units are Mail Exit Points (MEPs), which the Postal Service defines as a letter, flat, or parcel mail stream in a post office, station, branch or associate office. When sampling MEPs, the data collector samples Delivery Point Sequence (DPS) sorted letter trays after they arrive at the delivery unit from the processing plant and before they are dispatched to carriers. The Postal Service asserts that this interval is becoming too short to provide an adequate opportunity for the data collector to take a probabilistic sample of trays and record their contents. Another drawback of using MEPs as the sample frame unit, according to the Postal Service, is that the data collector cannot determine whether a tray is destined for a carrier, a firm hold–out, or the box unit. Since its 5–day delivery proposal does not envision delivering carrier mail on Saturday, a data collector working on Saturdays would need to be able to distinguish between trays destined for carriers from those destined for firm hold–outs and box sections. The Postal Service asserts that defining the "delivery unit as the ODIS–RPW frame and sample unit" would ameliorate both problems. *Id.*

The Postal Service explains that if the Commission were to approve Proposals Two–A and Two–B as a package, current total ODIS–RPW tests would be reduced by 10 percent and another 10 percent would be reallocated to study the alternative. If the Commission were to approve only Proposal Two–B, total tests would not be reduced, but 10 percent would be reallocated to studying the alternative. Petition at 1–4. If the Commission were to decline to approve either, ODIS–RPW data would continue to be collected at the current sample size.

The attachments to the Postal Service's petition explain its proposals in more detail, including their backgrounds, objectives, and rationale.

It is ordered:

1. The Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposal Two), filed June 25, 2010, is granted.

2. The Commission establishes Docket No. RM2010–10 to consider the matters raised by the Postal Service's Petition.

3. Interested persons may submit comments on or before August 16, 2010.

4. Pursuant to 39 U.S.C. 505, Diane Monaco is designated to serve as the Public Representative to represent the interests of the general public in this proceeding.

5. The Secretary shall arrange for publication of this notice in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–16531 Filed 7–7–10; 8:45 am]

BILLING CODE 7710–FW–S

[1] Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Proposed Changes in Analytic Principles (Proposal Two), June 25, 2010 (Petition).

[2] Docket No. RM2009–5, Order Concerning Principles for Periodic Reporting (Proposal One), January 21, 2010 (Order No. 396).

Notices

Federal Register
Vol. 75, No. 130
Thursday, July 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

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee will meet in Petersburg, Alaska. 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 meeting is to review project proposals and make project funding recommendations.

DATES: The meeting will be held Friday, July 23rd from 1 p.m. to 5 p.m., and on Saturday, July 24th from 8 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Petersburg Lutheran Church Holy Cross House in Petersburg, Alaska. Written comments should be sent to Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833, or Robert Dalrymple, Wrangell District Ranger, P.O. Box 50, Wrangell, AK 99929. Comments may also be sent via e-mail to *csavage@fs.fed.us,* or via facsimile to 907–772–5995.

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 Petersburg Ranger District office at 12 North Nordic Drive or the Wrangell Ranger District office at 525 Bennett Street during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

FOR FURTHER INFORMATION CONTACT: Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska, 99833, phone (907) 772–3871, e-mail *csavage@fs.fed.us,* or Robert Dalrymple, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *rdalrymple@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: Evaluation of project proposals and recommendation of projects for funding. 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. A public input session will be provided beginning at 9 a.m. on July 24th .

Dated: June 28, 2010.

Christopher S. Savage,

District Ranger.

[FR Doc. 2010–16598 Filed 7–7–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

MedBow-Routt Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The MedBow-Routt Resource Advisory Committee will meet in Steamboat Springs, 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 of the meeting is to review projects proposed for funding.

DATES: The meeting will be held July 22, 9:30 a.m.–3:30 p.m.

ADDRESSES: The meeting will be held at Forest Service Office, 925 Weiss Drive, Steamboat Springs, Colorado. Written comments should be sent to Phil Cruz, RAC DFO, 2468 Jackson Street, Laramie, Wyoming 82070. Comments may also be sent via e-mail to *pcruz@fs.fed.us,* or via facsimile to 307–745–2467.

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 Forest Supervisor's Office, 2468 Jackson Street, Laramie, Wyoming.

FOR FURTHER INFORMATION CONTACT: Diann Ritschard, RAC Coordinator, 925 Weiss Drive, Steamboat Springs, CO 80487, 970–870–2187, *dritschard@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: Review and discussion of projects proposed for funding. 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. Public input sessions will be provided and individuals who made written requests by July 15, 2010 will have the opportunity to address the Comittee at those sessions.

Dated: July 1, 2010.

Phil Cruz,

Acting Forest Supervisor .

[FR Doc. 2010–16612 Filed 7–7–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. FSIS–2010–0001]

Nominations for Membership on the National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the U.S. Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Microbiological Criteria for Foods (NACMCF). FSIS inadvertently published this information with errors on June 30, 2010, at 75 FR 37754. The Agency, therefore, is withdrawing the June 30,

2010, notice and publishing the correct version of the notice below. This notice is being issued to fill twelve vacancies on the NACMCF that resulted from a USDA change in the member term limit. Appointments to the NACMCF for two-year terms will now be renewable for up to two consecutive terms instead of three consecutive terms.

Please note that nominations that were provided in response to the previously issued **Federal Register** notice dated August 18, 2008 (73 FR 48191) will be considered for these vacancies, so they do not need to be resubmitted.

NACMCF is seeking members with scientific expertise in the fields of epidemiology, food technology, microbiology (food, clinical, and predictive), toxicology, chemistry, risk assessment, infectious disease, biostatistics, and other related sciences. NACMCF is seeking applications from persons from the Federal government, State governments, industry, consumer groups, and academia, as well as all other interested persons with such expertise.

Members who are not Federal government employees will be appointed to serve as non-compensated special government employees (SGEs). SGEs will be subject to appropriate conflict of interest statutes and standards of ethical conduct.

USDA is also seeking nominations for one individual affiliated with a consumer group to serve on the NACMCF. This member will serve as a representative member to provide a consumer viewpoint. This member will not be required to have a scientific background and will not be subject to conflict of interest review.

To receive consideration for serving on the NACMCF, a resume and USDA Advisory Committee Membership Background Information form AD–755 are required. The nominee's typed resume or curriculum vitae must be limited to five one-sided pages and should include educational background, expertise, and a select list of publications. For submissions received that are more than five one-sided pages in length, only the first five pages will be considered.

DATES: Nominations, including the nominee's typed resume or curriculum vitae and a USDA Advisory Committee Membership Background Information form AD–755 must be received by August 9, 2010. USDA Advisory Committee Membership Background Information form AD–755 is available on-line at: *http://www.ocio.usda.gov/forms/doc/AD–755.pdf.*

ADDRESSES: Resumes and AD–755 forms can be sent by mail, fax, or e-mail to Ms. Karen Thomas-Sharp, Advisory Committee Specialist, USDA, Food Safety and Inspection Service, Room 333 Aerospace Center, 1400 Independence Avenue, SW., Washington, DC 20250–3700, fax number: 202–690–6634, e-mail address: *Karen.Thomas-Sharp@fsis.usda.gov.* Please note, if using an overnight courier, use this address: USDA, FSIS, OPHS, Aerospace Center, 901 D Street, SW., Room 378, Washington, DC 20024.

The Food Safety and Inspection Service (FSIS) invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.

Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, USDA, FSIS, Room 2–2127, George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5474, Beltsville, MD 20705–5474.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2010–0001. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. All comments submitted in response to this notice, as well as background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Thomas-Sharp, Advisory Committee Specialist, at the above address or by telephone at 202–690–6620 or by fax at 202–690–6634.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in March 1988, in response to a recommendation in a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria, "An Evaluation of the Role of Microbiological Criteria for Foods." The current charter for the NACMCF and other information about the Committee are available for viewing on the NACMCF homepage at *http://www.fsis.usda.gov/About_FSIS/NACMCF/index.asp.*

The Committee provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed. For example, the Committee assists in the development of criteria for microorganisms that indicate whether food has been processed using good manufacturing practices.

Appointments to the Committee will be made by the Secretary of Agriculture after consultation with the Secretary of Health and Human Services to ensure that recommendations made by the Committee take into account the needs of the diverse groups served by the Department.

Membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Given the complexity of issues, the full Committee expects to meet up to two times a year, and the meetings will be announced in the **Federal Register**. The subcommittees will meet as deemed necessary by the chairperson and will be held as working group meetings in an open public forum. Intermittently, subcommittees may also meet through computer-based conferencing (net meetings). Subcommittees may invite technical experts to present information for consideration by the subcommittee. The subcommittee meetings will not be announced in the **Federal Register**. FSIS will announce the agenda and subcommittee working group meetings through the Constituent Update, available on-line at *http://www.fsis.usda.gov/news_&_events/Constituent_Update/index.asp.*

NACMCF holds subcommittee working group meetings in order to accomplish the work of NACMCF; all work accomplished by the subcommittees is reviewed and approved by the full Committee during a public meeting of the full Committee, as announced in the **Federal Register**. All data and records available to the full Committee are expected to be available to the public at the time the full Committee reviews and approves the work of the subcommittee.

Appointment to the Advisory Committee is for a two-year term, renewable for up to two consecutive terms. Members are expected to attend all meetings in-person, as this is necessary for the functioning of this advisory committee. However, the Advisory Committee realizes that unexpected events or extenuating circumstances (*e.g.,* a personal or family emergency) may result in a member's inability to attend a meeting in-person and that attendance through teleconferencing may be necessary. Because attendance through teleconferencing has been a less than optimal means to contribute to the work of the committee, members should make efforts to attend all meetings to the extent that this is possible.

Members must be prepared to work outside of scheduled Committee and subcommittee meetings and may be required to assist in document preparation. Committee members serve on a voluntary basis; however, travel reimbursement and per diem reimbursement are available.

Regarding Nominees Who Are Selected

All SGE and Federal government employee nominees who are selected must complete the Office of Government Ethics (OGE) 450 Confidential Financial Disclosure Report before rendering any advice or prior to their first meeting. All members will be reviewed for conflict of interest pursuant to 18 U.S.C. 208 in relation to specific NACMCF work charges. Financial disclosure updates will be required annually. Members must report any changes in financial holdings requiring additional disclosure. OGE 450 forms are available on-line at: *http://www.usoge.gov/forms/form_450.aspx.*

USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, or audiotape.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2010_Notices_Index/index.asp.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts. Done at Washington, DC, on July 2, 2010.

Alfred V. Almanza,

Administrator.

[FR Doc. 2010–16818 Filed 7–7–10; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0027]

Notice of Availability of a Pest Risk Analysis for Importation of Wall Rocket Leaves from the United Kingdom into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis with respect to perennial wall rocket leaves grown in the United Kingdom. The analysis evaluates the risks associated with the importation into the continental United States of fresh leaves of perennial wall rocket. Based on that analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of wall rocket leaves from the United Kingdom. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before September 7, 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-2010-0027*) 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-2010-0027, 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-2010-0027.

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. Claudia Ferguson, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56-1 through 319.56-50, referred to below as the regulations), the Animal and Plant

Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56-3;
- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56-5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;
- The fruits or vegetables are treated in accordance with 7 CFR part 305;
- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or
- The fruits or vegetables are a commercial consignment.

APHIS received a request from the Government of the United Kingdom to allow the importation of fresh leaves of perennial wall rocket from the United Kingdom into the United States. We have completed a pest risk assessment to identify pests of quarantine significance that could follow the pathway of importation into the continental United States and, based on that pest risk assessment, have prepared a risk management document to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk. We have concluded that perennial wall rocket leaves can be safely imported into the continental United States from the United Kingdom using one or more of the five designated phytosanitary measures listed in § 319.56-4(b). Therefore, in accordance with § 319.56-4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis that you wish to review when requesting copies.

After reviewing the comments we receive, we will announce our decision regarding the import status of wall rocket leaves from the United Kingdom in a subsequent notice. If the overall conclusions of the analyses and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for importation of fresh leaves of perennial wall rocket from the United Kingdom into the continental United States subject to the requirements specified in the risk management analyses.

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 30th day of June 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–16709 Filed 7–7–10: 8:45 am]

BILLING CODE 3410–34–S

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before September 7, 2010.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail at *bjohnson@usaid.gov.*

ADDRESSES: Send comments via e-mail at *ssegal@usaid.gov* or mail comments to: Sabrina Segal, Office of the General Counsel (A/GC), United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523, (202) 712–5409.

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0581.

Form No.: N/A.

Title: Disaster and Emergency Relief Information.

Type of Review: Renewal of Information Collection.

Purpose: The purpose of this Information Collection is to enable the U.S. Agency for International Development (USAID) to collect information from members of the public as it relates to in-kind donations or expressions of interest to volunteer in response to an international disaster or emergency where USAID has been tasked with relief or recovery responsibilities.

Annual Reporting Burden:

Respondents: 2,000.

Total Annual Responses: 2,000.

Total Annual Hours Requested: 500 hours.

Dated: June 28, 2010.

Roberto Miranda, Director,

Office of Administrative Services, Bureau for Management.

[FR Doc. 2010–16465 Filed 7–7–10; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing

collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before September 7, 2010.

ADDRESSES: Send comments via e-mail at *jjtaylor@usaid.gov* or mail comments to: Jacqueline Taylor, Office of Acquisition and Assistance, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC 20523, (202) 712–0492.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail at *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0565.

Form No.: N/A.

Title: Applicant's Certification that it Does Not Support Terrorist Organizations or Individuals.

Type of Review: Renewal of Information Collection.

Purpose: The United States Agency for International Development (USAID) needs to require applicants for assistance to certify that it does not and will not engage in financial transactions with, and does not and will not provide material support and resources to individuals or organizations that engage in terrorism. The purpose of this requirement is to assure that USAID does not directly provide support to such organizations or individuals, and to assure that recipients are aware of these requirements when it considers individuals or organizations are subrecipients.

Annual Reporting Burden:

Respondents: 2,000.

Total Annual Responses: 4,000.

Total Annual Hours Requested: 1,500 hours.

Dated: June 28, 2010.

Roberto Miranda,

Director, Office of Administrative Services, Bureau for Management.

[FR Doc. 2010–16466 Filed 7–7–10; 8:45 am]

BILLING CODE 6116–02–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Wednesday and Thursday, July 28–29, 2010, at the times and location noted below.

DATES: The schedule of events is as follows:

Wednesday, July 28, 2010

9:45–10:30 a.m. Ad Hoc Committee on Classroom Acoustics.

10:30–12:15 p.m. Ad Hoc Committee on Frontier Issues.

1:30–3:00 p.m. Board Meeting.

Thursday, July 29, 2010

9–5 p.m. Information meeting on Medical Diagnostic Equipment.

ADDRESSES: All meetings will be held at the Access Board Conference Room, 1331 F Street, NW., suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, July 28, 2010, the Access Board will consider the following agenda items:

- Approval of the draft May 12, 2010 meeting minutes.
- Ad Hoc Committee Reports.
- Executive Director's Report.
- ADA and ABA Guidelines; Federal Agency Updates.

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meetings and information meeting. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (*see http://www.access-board.gov/about/policies/fragrance.htm* for more information).

David M. Capozzi,

Executive Director.

[FR Doc. 2010–16674 Filed 7–7–10; 8:45 am]

BILLING CODE 8150–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, July 16, 2010; 9:30 a.m. EDT.

PLACE: 624 9th St., NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public, except where noted otherwise.

I. Approval of Agenda

II. Program Planning

- Approval of Recommendations for Briefing Report on Encouraging Minority Students to Pursue Science, Technology, Engineering and Math (STEM) Careers.
- Consideration of FY 2011 Enforcement Report Topic.
- Discussion of Concept Paper on Attack against Asian-American Students at South Philadelphia High School.
- New Black Panther Party Enforcement Project—Some of the discussion of this agenda item may be held in closed session.
- Consideration of Discovery Plan and Project Outline for Report on Sex Discrimination in Liberal Arts College Admissions—Some of the discussion of this agenda item may be held in closed session.

III. State Advisory Committee Issues

- Florida SAC.
- Consideration of Additional Nominee to the New Jersey SAC.

IV. Management and Operations

- Submission of FY 2012 Budget Estimate to the Office of Management and Budget.

V. Approval of March 12, April 16, May 14, May 28, and June 11 Meeting Minutes.

VI. Announcements.

VII. Staff Director's Report.

VIII. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: July 6, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–16795 Filed 7–6–10; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; International Buyer Program Application and Exhibitor Data

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 7, 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 Susan Crawford—202–482–2050, *susan.crawford@trade.gov,* 202–482–2599.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration, U.S. and Foreign Commercial Service's International Buyer Program (IBP) encourages international buyers to attend selected domestic trade shows in high export potential industries and to facilitate contact between U.S. exhibitors and foreign visitors. The program has been successful, having substantially increased the number of foreign visitors attending these selected shows as compared to the attendance when not supported by program. The criteria used to select these shows are: export potential, international interest, scope of show, stature of show, exhibitor interest, overseas marketing, logistics, delegation incentives, and cooperation of show organizers.

The application is used by IBP applicant show organizers to demonstrate (1) Their experience, (2) ability to meet the special conditions of the IBP, (3) provide information about the domestic trade show such as the number of U.S. exhibitors and the percentage of net exhibit space occupied by U.S. companies vis-a-vis non-U.S. exhibitors.

The exhibitor data is used to determine which U.S. firms are interested in meeting with international business visitors and the overseas business interest of the exhibitor. The form is completed by U.S. exhibitors participating in an IBP domestic trade show and is used to list the firm and its products in an Export Interest Directory, which is made available for use by Foreign Commercial Officers in recruiting delegations of international buyers to attend the show and is also distributed to IBP delegation members and other foreign buyers visiting the event.

II. Method of Collection

Forms ITA–4014P and ITA–4102P are available on the Internet; and can be filled-in, printed, and mailed.

III. Data

OMB Control Number: 0625–0151.

Form Number(s): ITA–4014P and ITA–4102P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: IBP Application: 130; Exhibitor Data: 2,400.

Estimated Time per Response: IBP Application: 180 minutes; Exhibitor Data: 10 minutes.

Estimated Total Annual Burden Hours: 790.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 1, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–16589 Filed 7–7–10; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS41

Marine Mammals; File Nos. 87–1851 and 555–1870

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

ACTION: Notice; receipt of applications for permit amendments.

SUMMARY: Notice is hereby given that Daniel P. Costa, PhD, University of California at Santa Cruz, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, CA, has applied for an amendment to Scientific Research Permit No. 87–1851–02; and, James T. Harvey, PhD, Moss Landing Marine Laboratory, 8272 Moss Landing Road, Moss Landing, CA, has applied for an amendment to Scientific Research Permit No. 555–1870–01.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 9, 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. 87–1851 or 555–1870 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; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by e-mail to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 87–1851–02, issued December 28, 2009 (75 FR 106) and Permit No. 555–1870–01, issued February 24, 2010 (75 FR 11132) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 87–1851–02 authorizes tagging studies and physiological research on seals in Antarctica, including crabeater (*Hydrurga leptonyx*), Weddell (*Leptonychotes weddellii*), and Ross (*Ommatophoca rossii*) seals. The permit also authorizes research on California sea lions (*Zalophus californianus*) to investigate foraging, diving, energetics, food habits, and at-sea distribution. The permit expires on January 31, 2012. The permit holder is requesting eight of 40 Weddell seals permitted for capture participate in a metabolic study in addition to currently permitted procedures. The amendment request is annually for the duration of the permit.

Permit No. 555–1870–01 authorizes research on the biology and ecology of harbor seals (*Phoca vitulina*) in California, Oregon, Washington, and Alaska including external tagging, sampling, and surgical implantation of subcutaneous radio transmitters. The permit expires April 15, 2012. The applicant proposes to modify the sedation and suture protocols for the implant surgeries in a trial study on six animals brought into captivity for post-implant monitoring. The applicant also proposes to increase the number of subadult seals captured, sampled, and tagged in the wild (from 20 male subadults and 20 female subadults a year to 35 males and 35 females a year) for a more robust survival model and to apply the new surgical protocols in the field if the pilot study proves successful. The amendment request is annually for the duration of the permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 1, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–16659 Filed 7–7–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV93

Notice of Intent To Prepare an Environmental Assessment and Conduct San Joaquin River Chinook Salmon Scoping Meeting

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

ACTION: Notice; extension of comment period; correction.

SUMMARY: NMFS published a document in the **Federal Register** of April 21, 2010, concerning an announcement of intent to prepare an Environmental Assessment (EA) to analyze the potential impacts of the proposed reintroduction of spring-run Chinook salmon to the mainstem of the San Joaquin River. The document contained incorrect contact information.

FOR FURTHER INFORMATION CONTACT: Elif Fehm-Sullivan, 916–930–3723.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the **Federal Register** of April 21, 2010 (FR Doc. 2010–9188), on page 20815 in the second column, correct the e-mail address that was listed as *SJRSpringSalmon@noaa.gov* to read *SJRSpring.Salmon@noaa.gov.*

Extension of Comment Period

Due to this error, the comment period is extended for August 9, 2010.

Dated: July 1, 2010.

Angela Somma,

Chief, Endangered Species Division, National Marine Fisheries Service.

[FR Doc. 2010–16660 Filed 7–7–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–803]

Purified Carboxymethylcellulose From Finland: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1121 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, on August 25, 2009, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 74 FR 42873, August 25, 2009. The review covers the period July 1, 2008, through June 30, 2009. On January 21, 2010, the Department published an extension of the deadline for the preliminary results of review, setting a new deadline of June 30, 2010. *See Purified Carboxymethylcellulose From Finland: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 3444 (January 21, 2010). In addition, the Department exercised its discretion to toll the deadline an additional seven days to account for the closure of the federal government from February 5, 2010, to February 12, 2010. *See* Memorandum to the File from Ronald K. 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 for this administrative review are currently due no later than July 7, 2010.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for

which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245 day time period for the preliminary results up to 365 days.

The Department has determined it is not practicable to complete this review within the present deadline because we require additional time to complete our analysis of the respondent's cost-of-production data and to analyze other information needed for our preliminary results. Accordingly, the Department is extending the time limits for completion of the preliminary results of this administrative review until no later than August 2, 2010. We intend to issue the final results in this review no later than 120 days after publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: June 25, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–16665 Filed 7–7–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Polyester Staple Fiber from Taiwan: Final Results of Changed-Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), that Far Eastern New Century Corporation (FENC) is the successor-in-interest to Far Eastern Textile Limited (FET) and, as a result, should be accorded the same treatment previously accorded to Far Eastern Textile Limited with regard to the antidumping duty order on polyester staple fiber from Taiwan.

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

FOR FURTHER INFORMATION CONTACT: Michael A. Romani or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0198, or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 26, 2010, pursuant to a request from FENC, we initiated a changed-circumstances review of the antidumping duty order on polyester staple fiber from Taiwan to determine whether FENC was the successor-in-interest to FET after the company changed its name. Concurrent with the initiation, we preliminarily determined that FENC is the successor-in-interest to FET. See *Polyester Staple Fiber From Taiwan: Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review,* 75 FR 4044 (January 26, 2010). We did not receive any comments from interested parties. We did not hold a hearing as one was not requested. Based on our analysis, we are now affirming our preliminary results.

Scope of the Order

The product covered by the order is certain polyester staple fiber (PSF). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 5503.20.00.20 is specifically excluded from the order. Also specifically excluded from the order are PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from the order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Final Results of the Review

For the reasons stated in the preliminary results, we continue to find that FENC is the successor-in-interest to FET and, as a result, FENC should be accorded the same treatment as FET for the purposes of the antidumping duty order on polyester staple fiber from Taiwan. We will instruct U.S. Customs and Border Protection to collect cash deposits at 1.97 percent, the weighted-average dumping margin we found for FET in the most recently completed review. See *Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review,* 74 FR 18348 (April 22, 2009).

Notification

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. 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 30, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–16661 Filed 7–7–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1690]

Termination of Foreign-Trade Subzone 39J Lewisville, TX

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on December 4, 2008, the Foreign-Trade Zones Board issued a grant of authority to the Dallas/Fort Worth International Airport Board (grantee of FTZ 39) authorizing the establishment of Foreign-Trade Subzone 39J at The Apparel Group facility in Lewisville, Texas (Board Order 1592, 73 FR 79049, 12/24/08);

Whereas, subzone status is no longer needed at the facility due to changed circumstances and the grantee concurs

with the termination of Subzone 39J (FTZ Docket 40–2010);

Whereas, the proposal has been reviewed by the FTZ Staff and Customs and Border Protection officials, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone 39J, effective this date.

Signed at Washington, DC, June 8, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2010–16663 Filed 7–7–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S.-China Environmental Industries Forum

AGENCY: International Trade Administration, DOC.

ACTION: Notice and Request for Comment.

SUMMARY: This notice sets forth a request for input from private businesses, trade associations, academia, labor organizations, non-governmental organizations, and other interested parties regarding foreign or domestic policies or conditions that impede U.S. environmental technology exports to China, with emphasis on those pertaining to water management. This may include, but is not limited to, the development of Chinese environmental regulations, licensing procedures, technical standards, and laws, or issues pertaining to their enforcement, that create barriers to trade. Comments may also propose approaches intended to strengthen the U.S.-China trade relationship in this sector. This input will be used to guide the Environment Working Group of the U.S.-China Joint Commission on Commerce and Trade (JCCT) in its formulation of a U.S.-China Environmental Industries Forum conference agenda, the development of related projects, and to outline trade issues to be addressed within the framework of the JCCT.

DATES: The Second EIF is scheduled for: Wednesday, October 6, 2010, from approximately 9 a.m. to 5 p.m. Eastern Daylight Time (EDT) at the Hilton Riverside New Orleans Hotel, New Orleans, LA.

ADDRESSES: To provide input to the JCCT Environment Working Group, please send comments by post, e-mail, or fax to the attention of Todd DeLelle, Office of Energy & Environmental Industries, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave., NW., Room 4053, Washington, DC 20230; 202–482–4877; e-mail *todd.delelle@trade.gov;* fax 202–482–5665. Electronic responses should be submitted in Microsoft Word format. Information identified as confidential will be protected to the extent permitted by law.

FOR FURTHER INFORMATION CONTACT: Mr. Todd DeLelle, Office of Energy & Environmental Industries, International Trade Administration, Room 4053, 1401 Constitution Ave., NW., Washington, DC 20230. (Phone: 202–482–4877; Fax: 202–482–5665; e-mail: *todd.delelle@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The biennial U.S.-China Environmental Industries Forum was created by the JCCT Environment Working Group co-chairing agencies (U.S. Environmental Protection Agency, U.S. Department of Commerce, and Chinese Ministry of Environmental Protection) to encourage dialogue between representatives from the U.S. and Chinese governments and their respective environmental industries on a variety of environmental technology, trade, and policy issues. These discussions intend to enhance cooperation in environmental protection and increase bilateral trade in products and services related to the environmental sector. The Second EIF will focus on water/wastewater management issues and related technologies.

Dated: July 1, 2010.

Henry P. Misisco,

Deputy Assistant Secretary for Manufacturing, Acting.

[FR Doc. 2010–16581 Filed 7–7–10; 8:45 am]

BILLING CODE 3510–DR–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, July 14, 2010, 9 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

1. Decisional Matter: Cribs—Notice of Proposed Rulemaking (NPR).

2. Public Accommodation—Virginia Graeme Baker Pool and Spa Safety Act.

3. Interim Policy and Partial Lifting of the Stay on Component Testing and Certification of Children's Toys and Child Care Articles to the Phthalates Limits.

A live webcast of the Meeting can be viewed at *http://*www.cpsc.gov/webcast.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 6, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–16817 Filed 7–6–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, July 14, 2010; 2 p.m.–4 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: July 6, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–16855 Filed 7–6–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Consumer Product Safety Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 75, No. 128, Tuesday, July 6, 2010, page 38791.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m.–12:30 p.m., Wednesday July 7, 2010.

CHANGES IN MEETING: Agenda Item on Interim Policy and Partial Lifting of the Stay on Component Testing and Certification of Children's Toys and Child Care Articles to the Phthalates Limits is postponed to July 14, 2010, 10 a.m.–12 noon.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: July 6, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–16814 Filed 7–6–10; 4:15 pm]

BILLING CODE 6355–01–P

COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[OJP (OJJDP) Docket No. 1524]

Request for Public Comments

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of request for public comments.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) requests public comments in connection with its assessment of Federal policy and practice that affect children, youth, and families. Interested individuals and organizations are invited to submit ideas, insights, reflections, and suggestions grounded in experience in and with Federal support as to Federal policies and practices that either support or act as a barrier related to juvenile justice outcomes. The Council has identified four priority issue areas for this close examination: (1) Education and At-Risk Youth, (2) Juvenile Reentry and Transitions into Adulthood, (3) Racial/Ethnic Disparities in the Juvenile Justice and Related Systems, and (4) Tribal Youth and Juvenile Justice. Please note that the deadline for comments is thirty days (instead of the customary sixty days) after the publication of this notice in the **Federal Register**—this is due to the scheduling needs of the Council.

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

ADDRESSES: You may submit comments electronically via *http://www.regulations.gov.* Search for 'Juvenile Council' to get to the docket for this notice. The Council prefers to receive comments through *http://www.regulations.gov* where possible; however, you may also mail them to Robin Delany-Shabazz, Office of Juvenile Justice and Delinquency Prevention, 810 Seventh Street, NW., Washington, DC 20531. To ensure proper handling, in the lower left hand corner of the envelope and in your correspondence clearly reference "OJP (OJJDP) Docket No. 1524."

FOR FURTHER INFORMATION: Visit the website for the Council at *http://www.juvenilecouncil.gov;* call the Office of Juvenile Justice and Delinquency Prevention at 202–307–5911 (this is not a toll-free number); or e-mail your inquiry to *juvenilecouncil@usdoj.gov* (please submit any comments through *http://www.regulations.gov*).

SUPPLEMENTARY INFORMATION:

I. Posting of Public Comments

Please note that all comments received are considered part of the public record and may be made available in their entirety for public inspection online at the Council's website and *http://www.regulations.gov.* Publicly available information in posted comments includes personal identifying information (such as name and address) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish for it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all the personal identifying information you do not wish to be posted online in the first paragraph of your comment and identify what information you would like redacted.

If you wish to submit confidential business information as part of your comment but do not wish for it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the Council's public docket file, but not posted online. If you wish to inspect the docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

II. Overview of Coordinating Council

The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2) works to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, *et seq.*

The Council membership is composed of the Attorney General (Chair), the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Secretary of Health and Human Services (HHS), the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. Affiliate agencies are the Departments of Defense, the Interior, and Agriculture and the Substance and Mental Health Services Administration of HHS. Other Federal agencies may take part in Council activities. Up to nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States.

The Council has initiated cross-department teams of Federal employees and others organized around four priority issues:

- Education and At-Risk Youth
- Tribal Youth and Juvenile Justice
- Juvenile Reentry and Transitions to Adulthood
- Racial/Ethnic Disparities in the Juvenile Justice System and Related Systems

The issue teams are assessing and identifying policies, practices, regulations, and where applicable, legislation, that foster or hinder ways to improve access to, use of and coordination of Federal resources by Tribes, states, localities, organizations and individuals toward the goal of improving Federal practice and, by extension, the well being of children and families. Resulting recommendations may be incorporated

by the Council in its 2010 Annual Report to Congress.

III. Brief Descriptions of Priority Issues

1. Education and At-Risk Youth

The best way to keep young people out of trouble is to keep them in school. Without structure and supervision that school provides, young people often turn to delinquent or criminal behavior during school hours and end up in the juvenile justice system, with most not completing high school. A number of factors contribute to the failure of young people to complete schooling including: Chronic truancy, educational instability, "push out," issues of access, co-occuring factors, school connectedness, and the absences of positive activities for afterschool times.

2. Juvenile Reentry and Transitions to Adulthood

Young people reentering the community from juvenile residential facilities often lack the support they need to change the course of their lives and avoid the destructive cycle of recidivism. The multiple needs of these young people (schooling, stable housing, skills to obtain meaningful employment, physical and mental health problems, etc.) require coordination of services, supervision, and support at the local level to help ensure each youth a successful transition back home and to adulthood. Youth aging out of foster care and youth who are homeless have similar needs for transitional support. A number of Federal policies, practices, programs, and legislation affect local and state capacity to provide solid support through transition.

3. Racial and Ethnic Disparities in the Juvenile Justice and Related Systems

Disproportionate contact of minorities (DMC) in juvenile justice has been a challenge for policymakers for decades. DMC is not an issue specific to the justice system; it is connected with inequities in other youth-serving systems and requires exploration of the relationship between child welfare, education, and youth's socioeconomic status. The team seeks to identify Federal legislation and practices that both assist States and those that function as barriers in reducing disparities in juvenile justice, child welfare, and education.

4. Tribal Youth and Juvenile Justice

Tribal youth face a host of challenges—poverty, child abuse and neglect, exposure to family violence, substance abuse, the highest rate of suicides among all youth, and a weak educational system. Without intervention and remediation these issues can lead to additional negative outcomes including delinquency. Multiple Federal agencies have specific responsibility for working with Indian Country, notably, the Departments of Agriculture, Justice, Health and Human Services, Housing and Urban Development, and Interior. The overlapping mosaic of policies, regulations, guidelines and programs can challenge achievement of desired results.

IV. Guiding Questions for Commenters

The Council's issue teams have identified a number of questions to focus their examination, and the Council is particularly interested in receiving comments addressing some or all of these questions. The first question for three of the topic areas is listed by topic as follows:

Education and At-Risk Youth: What is the Federal role in preventing youth from entering the juvenile justice system and successfully graduating from high school prepared for adulthood?

Juvenile Reentry and Transitions to Adulthood: What is the Federal role in helping ensure youth graduate and successfully transition back home and into adulthood (from juvenile facilities, out of the foster care system, and in returning home and to their communities from runaway/thrown away/homeless status)?

Racial and Ethnic Disparities in the Juvenile Justice and Related Systems: How do you view the Federal role with regard to racial and ethnic disparities?

For these first three topic areas, all of the questions below also apply:

a. What does the Federal government do well? What needs to be changed?

b. Are there *Federal* practices, policies, legislation, and/or regulations that support or restrict the successful education of youth; reentry and/or transitions to adulthood; or addressing of racial/ethnic disparities in the juvenile justice and related systems? What role does technical/training support have in redressing restrictions?

c. Are there legislative challenges affecting this issue that should be brought to the attention of the Federal agencies? What ought Federal agencies do about them?

d. What results and/or consequences might occur from the enacted recommendations?

e. Is there anything else the Federal government should be aware of concerning this topic?

The Council's Tribal Youth issue team requests public comments addressing the following questions:

a. How do you view the Federal role with regard to tribal youth and their families?

b. What does the Federal government do well for tribal youth? What needs to be changed?

c. Describe what *Federal* practices, policies, or regulations support or fail to support Tribal youth and their families. What comes to mind when you think of barriers? Alternatively, areas of good practice (to meeting the needs for belonging, mastery, independence and generosity)?

d. Are there legislative challenges affecting issues related to Tribal youth and juvenile justice that should be brought to the attention of the Federal agencies? What ought Federal agencies do about them? Who are the key people to help with this issue?

e. What results and/or consequences might occur in Indian Country from enacted recommendations? Are there individuals, agencies or systems that might not welcome the recommendations or changes in policies (Tribal Youth, Tribes, and Agencies)?

f. Is there anything else the Federal government should be aware of concerning tribal youth justice, specifically in the areas of youth prevention, intervention, detention and reentry?

Robin Delany-Shabazz,

Designated Federal Official, Coordinating Council on Juvenile Justice and Delinquency Prevention.

[FR Doc. 2010–16696 Filed 7–7–10; 8:45 am]

BILLING CODE 4410–18–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled the Peer Reviewer Application Instructions to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, James Willie at (202) 606–6845. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202)

606–3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**.

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: *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 Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, *e.g.,* permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on April 28, 2010. This comment period ended June 29, 2010. No public comments were received from this Notice.

Description: The Corporation seeks to renew the current information collection. Minor revisions are proposed to clarify eGrants instructions and reflect adjustments to the Corporation for National and Community Service eGrants system.

The information collection will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on October 31, 2010.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Peer Reviewer Application Instructions.

OMB Number: 3045–0090.

Agency Number: None.

Affected Public: Individuals who are interested in serving as peer reviewers and peer review panel facilitators for the Corporation.

Total Respondents: 2,500 responses annually.

Frequency: One time to complete.

Average Time per Response: Averages 40 minutes.

Estimated Total Burden Hours: 1,666 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: June 30, 2010.

Vielka Garibaldi,

Director, Office of Grants Policy and Operations.

[FR Doc. 2010–16575 Filed 7–7–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of Department of Defense Federal Advisory Committee; Independent Panel Review of Judge Advocate Requirements of the Department of the Navy

AGENCY: Department of Defense (DoD).

ACTION: Establishment of Federal advisory committee.

SUMMARY: Under the provisions of section 506 of Public Law 111–84, the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.50, the Department of Defense gives notice that it is establishing the charter for the Independent Panel Review of Judge Advocate Requirements of the Department of the Navy (hereafter referred to as the Panel).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Panel is a non-discretionary Federal advisory committee established to review the judge advocate requirement of the Department of the Navy. The Panel shall:

a. Carry out a study of the policies and management and organizational practices of the U.S. Navy and the U.S. Marine Corps with respect to the responsibilities, assignment, and career development of judge advocates for purposes of determining the number of judge advocates required to fulfill the legal mission of the Department of the Navy.

b. In carrying out the study, the Panel shall review the following:

i. The emergent operational law requirements of the U.S. Navy and the U.S. Marine Corps, including requirements for judge advocates on joint task forces, in support of rule of law objectives in Iraq and Afghanistan, and in operational units;

ii. New requirements to support the Office of Military Commissions and to support the disability evaluation system for members of the U.S. Armed Forces;

iii. The judge advocate requirements of the Department of the Navy for the military justice mission, including assignment policies, training and education, increasing complexity of court-martial litigation, and the performance of the U.S. Navy and U.S. Marine Corps in providing legally sufficient post-trial processing of cases in general courts-martial and special courts-martial.

iv. The role of the Judge Advocate General of the Navy, as the senior uniformed legal officer of the Department of the Navy, to determine whether additional authority for the Judge Advocate General over manpower policies and assignments of judge advocates in the U.S. Navy and U.S. Marine Corps is warranted;

v. Directives issued by the U.S. Navy and the U.S. Marine Corps pertaining to jointly-shared missions requiring legal support;

vi. Career patterns for U.S. Marine Corps judge advocates in order to identify and validate assignments to non-legal billets required for professional development and promotion; and

In addition, the Panel will review, evaluate and assess such other matters and materials as the Panel considers appropriate for purposes of the study.

In carrying out its study the Panel may review, and incorporate as appropriate, the findings of applicable on-going and completed studies in future manpower requirements, including the two-part study by CNA Analysis and Solutions® entitled, "An Analysis of Navy JAG Corps Future Manpower Requirements".

The Panel, no later than 120 days after its first meeting, shall submit a report of its study. The report, as a minimum, shall include the following:

a. The findings and conclusions of the Panel as a result of the study; and

b. Any recommendations for legislative or administrative action that the Panel considers appropriate in light of the study.

The Panel, pursuant to section 506(a) of Public Law 111–84, shall be comprised of five members appointed by the Secretary of Defense from among private U.S. citizens who have expertise in law, military manpower policies, the missions of the Armed Forces of the United States, or the current responsibilities of judge advocates in ensuring competent legal representation and advice to commanders. The Panel chairperson shall be appointed by the Secretary of Defense from among the total membership. All Panel members shall be appointed for the life of the Panel, and any Panel vacancy shall be filled in the same manner as the original appointment.

Panel members appointed by the Secretary of Defense, who are not full-time or permanent part-time federal government employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees. Panel members, with the exception of travel and per diem for official travel, shall serve without compensation.

With DoD approval, the Panel is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other governing Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Panel, and shall report all their recommendations and advice to the Panel for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Panel nor can they report directly to the Department of Defense or any Federal officers or employees who are not Panel members.

Subcommittee members, who are not Panel members, shall be appointed in the same manner as the Panel members.

The Panel may hold such meetings or hearings, sit and act as such times and places, take such testimony, and receive such evidence as the Panel considers appropriate to carry out its duties. The Panel, pursuant to section 506(a)(6) of Public Law 111–84, shall meet at the call of the Chairperson. The estimated number of Panel meetings is five (5) per year. The Chairperson shall call the first meeting of the Panel not later than 60 days after the date of the appointment of all the members of the Panel.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings, however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Independent Panel Review of Judge Advocate Requirements of the Department of the Navy membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Independent Panel Review of Judge Advocate Requirements of the Department of the Navy.

All written statements shall be submitted to the Designated Federal Officer for the Independent Panel Review of Judge Advocate Requirements of the Department of the Navy, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Independent Panel Review of Judge Advocate Requirements of the Department of the Navy Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Independent Panel Review of Judge Advocate Requirements of the Department of the Navy. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: July 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–16592 Filed 7–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Extension of Provider Reimbursement Demonstration Project for the State of Alaska

AGENCY: Department of Defense (DoD).

ACTION: Notice of demonstration extension.

SUMMARY: This notice provides an extension of the demonstration project in the State of Alaska for individual provider payment rates. Under the demonstration, payment rates for physicians and other non-institutional individual professional providers in the State of Alaska have been set at a rate higher than the Medicare rate.

DATES: The demonstration regarding payment rates for physicians and other non-institutional providers is extended through December 31, 2012.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Mr. Glenn J. Corn, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3566.

SUPPLEMENTARY INFORMATION: On November 20, 2006, DoD published a notice of a TRICARE demonstration project for the State of Alaska, with an effective date of January 1, 2007 (71 FR 67113), to set payment rates for physicians and other non-institutional individual professional providers in the State of Alaska at a rate higher than the Medicare rate. The demonstration was effective January 1, 2007 for a period of three years, ending on December 31, 2009. On December 18, 2009, DoD published a Notice of demonstration extension (74 FR 67179) that extended the demonstration through December 31, 2010. The DoD has determined that increasing provider payment rates (factor rate increase) in Alaska, across all services, has shown mixed results on provider participation, beneficiary access to care, cost of health care services, military readiness, and morale and welfare. Due to recent Health Care Reform legislation (section 5104, Pub. L. 111–148), creating an interagency task force to assess and improve access to health care in the State of Alaska, the Agency has determined further extension of the Demonstration is needed pending receipt of the Task Force's report. The report is due to Congress no later than 180 days after the date of enactment of the Act that details

the activities of the Task Force and contains the findings, strategies, recommendations, policies, and initiatives developed. The Agency needs time after the Task Force's report to review the recommendations and determine appropriate related actions; therefore, we are extending the Demonstration through December 31, 2012. The demonstration continues to be conducted under statutory authority provided in 10 United States Code 1092.

Dated: July 2, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–16680 Filed 7–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The 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 September 7, 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 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: July 2, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education.

Type of Review: Reinstatement.

Title: Annual Performance Reports for Title III and Title V Programs.

OMB #: 1840–0766.

Agency Form Number(s): N/A.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 891.

Burden Hours: 17,460.

Abstract: Titles III and V programs authorized by the Higher Education Act of 1965 (HEA), as amended, provide discretionary and formula grants to approximately 40 percent of eligible institutions of higher education and organizations (MSEIP–Title III, E only) to support improvements in educational quality, institutional management and fiscal stability. The office of Institutional Development and Undergraduate Education Services (IDUES) is authorized to award one year planning grants and five-year development grants and collect key data, analyze, report, and evaluate grantee and Program performance and outcomes. Grantees submit a yearly performance report to demonstrate that substantial progress is being made towards meeting the objectives of their project and first year grantees submit an interim (six month) report as well. This request continues the use of a web-based performance report to more effectively elicit program-specific information to be used for program monitoring, data analysis, and Government Performance and Results Act (GPRA) reporting purposes. The Annual Performance Report (APR) continues to be the cornerstone of the Information Management Performance System (IMPS) tailored to strengthen the Department of Education's program monitoring efforts, streamline our processes, and enhance our customer service to the end of meeting legislative, regulatory, and directive requirements.

The colleges and communities served by Titles III and V of the HEA include: Historically Black Colleges and Universities (HBCU); Historically Black Graduate Institutions (HBGI); Hispanic-Serving Institutions (HSI); American Indian Tribally Controlled Colleges and Universities (TCCU); Alaska Native-Serving Institutions; Native Hawaiian-Serving Institutions; Asian American and Native American Pacific Islander-Serving Institutions (AANAPISI); Native American-Serving Nontribal Institutions (NASNTI); and other institutions that serve a significant number of minority and financially disadvantaged students and have low average and general expenditures per student.

There are major forces continuing to drive the APR: (1) The need to improve the quality and effectiveness of our program monitoring efforts; (2) the need to provide more reliable and valid data for the Government Performance and Results Act (GPRA); (3) the need to evaluate grantee and Program effectiveness; and (4) capacity building efforts toward a Title III and Title V community of practice. The Office of Inspector General (IG) has identified repeatedly the aforementioned needs as areas that IDUES should resolve. For the past seven years, IDUES has been focused on addressing these areas and has designed this APR as the data collection tool of the Information Management Performance System platform.

The APR supports IDUES IMPS as the database tool of our monitoring oversight, analysis, evaluation, trend and profile reporting of grant and program life cycle performance. According the IG audit ED–OIG/A04–90013 ("Office of Higher Education Programs Needs to Improve its Oversight of Parts A and B of the Title III Program"), "[Higher Education Programs] needs a systematic approach to effectively and efficiently monitor Title III grantees for compliance and program performance." With this methodical approach to program monitoring, IDUES is significantly reducing the risk of grantees using federal funds inappropriately and better ensuring that grant objectives are being met. In our most recent collection grantees indicated that only one percent of grantees requested a change to scheduled objectives and 57 percent of grantee objectives were on schedule of

the more than 9,000 objectives identified. Prior to the development and implementation of the APR electronic collection we were not able to present data that indicated success or failure of the programs individually or collectively without laboring through hundreds of hard copy reports.

In addition to improving our program oversight, the IG has found that the current Title III and Title V performance indicators for GPRA were developed with minimal consultation with the grantee communities, and minimal involvement from IDUES staff. In the Audit Report ED–OIG/A04–90014 ("Review of Title III Program, HEA, Compliance with GPRA Requirements for Implementation of Performance Indicators"), the IG recommends that we create a more reliable system for collecting and aggregating the data needed to demonstrate the effectiveness of the Title III and Title V programs. Clearly, the APR should play a central role in collecting the GPRA data that we are required to report to Congress. With this in mind, the APR was designed to collect data in a manner that is flexible, reliable, valid and pertinent to program objectives and Program performance measures. Furthermore the resulting profile and trend reports from the APR are facilitating dialogues with the grantee community on performance indicators and individual program success.

In conjunction with the IG's findings and in accordance with Actions (4)(a)(1) & (4)(a)(2) of the Corrective Action Plan (CAN #04–6001) issued by IDUES, we are continuing use of an Annual Performance Report that substantially improves our efforts to meet the aforementioned objectives. Yet it is clear that a single, annual report would be insufficient for satisfying the multiple and varied demands that are required for program monitoring and GPRA reporting. Therefore the APR is being submitted for OMB approval as IDUES' cornerstone of an Information Management Performance System that employs various tools to comprehensively analyze, evaluate, report Program trends and community practice, and monitor our grantees and Program success. Catalog of Federal Domestic Assistance program numbers are being added for 84.031C, 84.031L, 84.382B, 84.031M, and 84.031X. Current questions for CFDA 84.031B and 84.031S are edited for clarity.

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 4348. 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. 2010–16655 Filed 7–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The 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 September 7, 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 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: July 2, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: National Household Education Survey (NHES 2011/2012) Field Test.

OMB#: 1850–0768.

Agency Form Number(s): N/A.

Frequency: Once.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 40,905.

Burden Hours: 5,535.

Abstract: The National Household Education Surveys Program (NHES) collects data directly from households on early childhood care and education, children's readiness for school, parent perceptions of school safety and discipline, before- and after-school activities of school-age children, participation in adult and continuing education, parent involvement in education, school choice, homeschooling, and civic involvement. NHES surveys have been conducted approximately every other year from 1991 through 2007 using random digit dial (RDD) sampling and telephone data collection from landline telephones only. Each survey collection included the administration of household screening questions (screener) and two or three topical surveys. Like virtually all RDD surveys, NHES Screener response rates have declined (from above 80% in early 1990s to 53% in 2007) and the decline in the percentage of households without landline telephones (from 93% in early 2004 to about 75% in 2009 mostly due to conversion to cellular-only coverage) raises issues about population coverage.

To address these issues, the NHES is transitioning from a Random Digit Dial (RDD) interviewer administered study to an Address Based Sample, self-administered study. A feasibility test of the methodology was conducted successfully in 2009. In 2011, the National Center for Education Statistics (NCES) will conduct a large scale pilot test to further refine the methodology. A number of interventions to improve response rates and data quality will be tested in 2011. In 2012, NCES will conduct the first full-scale production data collection utilizing the new design. The 2011 test and 2012 data collections will utilize the Parent and Family Involvement in Education (PFI) and Early Childhood Program Participation (ECPP) modules.

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 4351. 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. 2010–16654 Filed 7–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The 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 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before August 9, 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, N.W., 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. 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.

Dated: July 2, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.

Title of Collection: Undergraduate International Studies and Foreign Language Program.

OMB #: 1840–0796.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions.

Estimated Number of Annual Responses: 100.

Estimated Annual Burden Hours: 10,017.

Abstract: This is an application to participate in the Title VI Undergraduate International Studies and Foreign Language Program which provides grants to institutions of higher education, partnerships between nonprofit educational organizations and institutions of higher education, and public and private nonprofit organizations, to implement programs to strengthen and improve undergraduate instruction in international studies and foreign languages.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4316. 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 and OMB Control Number of the information collection when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–16653 Filed 7–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Effective Vocational Rehabilitation (VR) Service Delivery Practices; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–8.

Dates:

Applications Available: July 8, 2010.

Date of Pre-Application Meeting: July 19, 2010.

Deadline for Transmittal of Applications: August 23, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities.

Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Priorities: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). The *Effective Vocational Rehabilitation (VR) Service Delivery Practices* priority is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register.**

For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Rehabilitation Research and Training Centers (RRTC) Requirements and *Effective Vocational Rehabilitation (VR) Service Delivery Practices.*

Note: The full text of each of these priorities is included in the notices of final priorities published in the **Federal Register** and in the application package.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). (d) The notice of final priority for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

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: $1,000,000.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 for a single budget period of 12 months. 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: 1.

Note: The Department is not bound by any estimates in this notice.

Note: The maximum amount includes direct and indirect costs. A grantee may not collect more than 15 percent of the total grant award as indirect cost charges (34 CFR 350.23).

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* 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: 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 program or competition as follows: CFDA number 84.133B–8.

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. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended 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 recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: July 8, 2010.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 19, 2010. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further

information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Marlene Spencer, U.S. Department of Education, Potomac Center Plaza (PCP), Room 5133, 550 12th Street, SW., Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

Deadline for Transmittal of Applications: August 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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 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 Rehabilitation Research and Training Centers (RRTCs)—CFDA Number 84.133B–8 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 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this competition after 4:30 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 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8 p.m. on Sundays and 6 a.m. on Mondays, and between 7 p.m. on Wednesdays and 6 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 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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133B–8), 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 84.133B–8), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 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 34 CFR 350.54 and are listed in the application package.

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.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

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.

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Dated: July 2, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–16683 Filed 7–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Charter Schools Program (CSP) Grants for Replication and Expansion of High-Quality Charter Schools

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2010; extension of application deadline. CFDA Number 84.282M.

SUMMARY: On May 24, 2010, we published in the **Federal Register** (75 FR 28789) a notice inviting applications for new awards for FY 2010 for the Charter Schools Program Grants for Replication and Expansion of High-Quality Charter Schools. That notice specified that applications must be submitted by July 7, 2010. We are extending the deadline for the transmittal of applications to July 14, 2010 and the deadline for intergovernmental review to September 14, 2010.

SUPPLEMENTARY INFORMATION: This notice extends the deadline for transmittal of applications for the Charter Schools Program Grants for Replication and Expansion of High-Quality Charter Schools FY 2010 competition to July 14, 2010 and the deadline for intergovernmental review to September 14, 2010. We are taking this action to ensure applicants have sufficient time to consider the responses to Frequently Asked Questions recently posted on the Department's Web site. The revised dates are as follows:

Deadline for Transmittal of Applications: July 14, 2010.

Deadline for Intergovernmental Review: September 14, 2010.

FOR FURTHER INFORMATION CONTACT: Erin Pfeltz or Richard Payton, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W255, Washington, DC 20202–5970 or by e-mail: *erin.pfeltz@ed.gov* or *richard.payton@ed.gov.*

If you use a telecommunications device for the deaf, call the Federal Relay Service, toll free, at 1–800–877–8339.

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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: July 2, 2010.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2010–16670 Filed 7–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Effective Vocational Rehabilitation (VR) Service Delivery Practices

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–8.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice announces a priority for an RRTC on Effective Vocational Rehabilitation (VR) Service Delivery Practices. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of

Education, 400 Maryland Avenue, SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 701 *et seq.*).

RRTC Program

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on February 1, 2008 (73 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants must also demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on May 14, 2010 (75 FR 27328). The NPP included a background statement that described our rationale for the priority proposed in that notice.

There are differences between the NPP and this notice of final priority (NFP) as discussed in the following section.

Public Comment: In response to our invitation in the NPP, five parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the NPP follows.

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 priority.

Analysis of Comments and Changes

Comment: Two commenters suggested that the required activities under paragraph (a) of the priority would take longer than the six months that is allowed in the priority. These commenters suggested allowing at least a year for grantees to complete these activities.

Discussion: The required activities under paragraph (a) of the priority are intended to help grantees identify State VR programs with high employment outcome rates and promising VR service delivery practices. The Rehabilitation Services Administration (RSA) data to be analyzed under paragraph (a) are readily available, and we believe that the gathering of input from VR personnel and other stakeholders can be completed within the first six months of the cooperative agreement.

Changes: None.

Comment: In reference to the requirements under paragraph (a) of the priority, one commenter asked how NIDRR defines "systematically gathering input."

Discussion: The goal of this input-gathering activity is to help identify promising practices that are associated with high rates of employment outcomes. Toward that end, applicants must propose and justify the methods that they will use to gather input from VR personnel and other stakeholders in a consistent and orderly manner. NIDRR believes that specifying the methods an applicant must use would be unnecessarily restrictive, and, therefore, is not identifying specific methods for meeting this requirement.

Changes: None.

Comment: With respect to the activities required under paragraph (b) of the priority, one commenter suggested that two to three in-depth case studies would not capture the variation in the size of VR programs or the regional variations that exist in VR programs across the U.S. This commenter suggested that more case studies would capture data that are more representative of VR agencies across the country.

Discussion: The purpose of the case studies is not to build a body of knowledge about VR programs that is representative of programs from around the country. Rather, the stated outcome goal for these in-depth case studies is improved knowledge of specific VR service delivery practices that have strong potential for improving employment outcomes for VR clients. This improved knowledge will help

provide a basis for the testing of VR service delivery practices required under paragraph (c) of the priority.

Changes: None.

Comment: One commenter suggested that the RRTC develop a clearinghouse from which policymakers, researchers, and advocates could learn about successful VR services, techniques, programs, or approaches. This commenter suggested that such a clearinghouse could facilitate the replication of successful practices and policies identified by the RRTC.

Discussion: Paragraph (d) of the priority seeks to enhance the likelihood that effective practices identified by the RRTC will be adopted and used in VR settings. Under this paragraph, the RRTC is required to develop implementation strategies and tools that will facilitate the use of effective practices identified by the RRTC. There is a wide variety of strategies or tools that could be implemented to facilitate the use of findings, including the use of clearinghouses. NIDRR believes, however, that specifying the implementation strategies or tools an applicant must use would be unnecessarily restrictive, and therefore, NIDRR is not identifying such tools or strategies in the priority. Accordingly, applicants must specify the tools and implementation strategies that they will use to fulfill the requirements of paragraph (d) of the priority.

Changes: None.

Comment: One commenter noted that the in-depth case studies that are required under paragraph (b) of the priority to be completed by the end of the second year of the cooperative agreement could be completed in six months. This commenter also stated that the more extensive testing of practices under paragraph (c) of the priority would take at least 24 to 36 months and suggested that these activities should begin late in the second year of the RRTC.

Discussion: The commenter's suggestions regarding the timing of activities in paragraph (b) are within the timeline constraints of the priority and the project period of 60 months for grants under this program. Applicants are free to specify in their applications the timelines for conducting the required activities, so long as the activities required under paragraph (a) of the priority are completed within the first six months of the cooperative agreement and the activities required under paragraph (b) of the priority are completed within the first two years of the cooperative agreement. While certain applicants may be able to complete the activities required under paragraph (b) within six months, we do not have information that indicates that all applicants could do so and therefore decline to shorten that time period. With respect to the testing required under paragraph (c) of the priority, we do not believe it is necessary to specify a beginning date for these activities. Under paragraph (b) of the priority, a grantee will need to complete its identification of the practices to be tested by the end of year two of the cooperative agreement. We expect that a grantee will begin the testing required under paragraph (c) shortly after that process is complete.

Changes: None.

Comment: Two commenters asked about the specificity with which NIDRR uses the term "service delivery practice." One commenter asked whether the term "practice" includes VR program management practices such as State agency partnerships, service funding arrangements, or VR staff capacity-building efforts. Another commenter suggested that the term "practice" reference VR program management practices, including staff development systems and administrative policies.

Discussion: The opening paragraph of this priority states that the RRTC must focus on the delivery of VR services that are authorized in the Rehabilitation Act. For the purposes of this priority, VR service delivery practices do not include VR management practices, administrative policies, staff development programs, or other practices that do not directly involve the delivery of services to VR clients.

Changes: None.

Comment: Three commenters asked about NIDRR's use of the term "test" in paragraph (c) of the priority. One commenter asked whether NIDRR's use of the term requires research that would lead to cause and effect assertions about VR practices. Another commenter noted that randomized clinical trials are an unrealistic means of testing practices under this priority, as such trials require more time and resources than are available to an RRTC. A third commenter, drawing a distinction between testing and evaluation, suggested that NIDRR add language that would allow the RRTC to rigorously test or evaluate practices under this paragraph.

Discussion: Nothing in the priority either precludes or requires the use of randomized experimental trials of VR service delivery practices. The word "test" in this priority is used to describe research activities that can begin to determine the effectiveness of specific VR service delivery practices. Applicants are free to choose experimental, quasi-experimental, case-control, or other applicable research designs that are appropriate for an initial determination about the effectiveness of VR service delivery practices identified under paragraphs (a) and (b) of the priority. Because we are using the term broadly, we agree with the commenter's suggestion to add the term "evaluate" to the language in paragraph (c) of the priority in order to clarify our meaning.

Changes: NIDRR has revised paragraph (c) of the priority to require the RRTC to test or evaluate the service delivery practices identified under paragraphs (a) and (b) of the priority.

Comment: In reference to the requirement that the RRTC test at least one intervention in each of the case study sites described in paragraph (b) of the priority, one commenter stated that the case study sites may not be the best sites in which to test the service delivery practices. This commenter noted a number of factors that must be considered in determining the suitability of a site for testing specific service delivery practices. This commenter suggested that the RRTC be allowed to work with NIDRR and RSA to determine the sites in which practices would be tested.

Discussion: NIDRR agrees with this commenter's assertion that the case study sites might not be the best sites for testing VR service delivery practices.

Changes: NIDRR has removed the requirement that practices be tested at the sites in which the case studies were conducted. NIDRR has also revised the priority to require the RRTC to test service delivery practices identified under paragraph (b) of this priority in at least two sites that will be chosen in conjunction with NIDRR and RSA.

Comment: One commenter asked whether NIDRR is interested either in practices that are uniquely developed to assist specific subpopulations of VR clients or in practices developed for a broader client base that can be demonstrated to work with particular subpopulations.

Discussion: NIDRR does not specify in the priority whether it seeks research either in practices that have been developed for specific VR subpopulations or in practices developed for the broader client base. Accordingly, an applicant may include either research approach in its proposal. NIDRR anticipates that decisions about the specific practices to be tested under paragraph (c) of the priority will be driven by the findings of the research activities conducted under paragraphs (a) and (b) of the priority.

Changes: None.

Comment: One commenter asked NIDRR for clarification regarding the term "intervention" in paragraph (c) of the priority.

Discussion: In the context of this priority, NIDRR uses the term "intervention" to mean VR service delivery practices.

Changes: To avoid confusion, NIDRR has revised paragraph (c) of the priority to eliminate use of the term "intervention."

Final Priority: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Research and Training Center (RRTC) on Effective Vocational Rehabilitation (VR) Service Delivery Practices. This RRTC must conduct research that contributes to new knowledge of VR service delivery practices that produce high-quality employment outcomes for VR customers. This RRTC will contribute to improved employment outcomes by generating new knowledge about effective practices that can be used by State VR agencies in serving their customers. This RRTC must focus on the delivery of VR services that are authorized in the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 701 *et seq.*). NIDRR will fund this research effort as a cooperative agreement in order to ensure close interaction between the grantee and staff from NIDRR and the Rehabilitation Services Administration (RSA).

Under this priority, the RRTC must contribute to the following outcomes:

(a) Increased knowledge of the variations among State VR agencies in achieving quality employment outcomes, including but not limited to wages and hours of work, for subpopulations of individuals with significant disabilities, as defined in the Rehabilitation Act (29 U.S.C. 705(21)(A) and (D)), who have lower than average employment outcomes rates, wages, and hours of work. The RRTC must contribute to this outcome by analyzing relevant RSA datasets that provide information on the outcomes of these subpopulations of individuals with significant disabilities and by systematically gathering input from VR counselors and administrators, RSA staff, VR customers, and community rehabilitation programs. This analysis will help to identify promising practices by identifying agencies that demonstrate statistically better than average employment outcome rates and quality employment outcomes for these subpopulations of VR customers. The RRTC must complete this work within six months of award of the cooperative agreement.

(b) Improved knowledge of specific VR service delivery practices that have strong potential for improving employment outcomes for the subpopulations of VR customers identified in paragraph (a) of this priority. The RRTC must contribute to this outcome by conducting in-depth case studies of VR agencies where data demonstrate quality employment outcomes that are statistically better than average for the subpopulations of VR customers identified in paragraph (a) above compared to VR agencies that demonstrate average employment outcomes for the same subpopulations. NIDRR and RSA staff must approve the topics for the case studies and the agencies that will serve as sites for these studies. The applicant must budget to conduct two to three in-depth case studies. These case studies must identify the elements of the promising practices, the barriers to and facilitators of the implementation of the practices, and the outcomes of the practices. The RRTC must complete this work by the end of year two of the cooperative agreement.

(c) New knowledge of VR service delivery practices that are effective in producing high-quality employment outcomes for VR customers, especially those identified in paragraph (a) of this priority. The RRTC must contribute to this outcome by conducting research that rigorously tests or evaluates promising service delivery practices identified in paragraph (b) of this priority. The RRTC will work with NIDRR and RSA to identify at least two appropriate sites for testing the service delivery practice(s).

(d) Enhanced likelihood of adoption of service delivery practices that demonstrate effectiveness as described in paragraph (c) of this priority. The RRTC must contribute to this outcome by developing implementation strategies and tools that will facilitate introduction and use of newly identified effective practices in other VR settings.

In addition, through coordination with the NIDRR Project Officer, this RRTC must—

- Collaborate with existing RSA grantees, including Regional Technical Assistance and Continuing Education (TACE) Centers, RSA's Technical Assistance Network, and RSA's National Technical Assistance Coordinator to disseminate new knowledge to key stakeholders; and
- Collaborate with existing NIDRR grantees, including the RRTC on VR, the Center on Effective Delivery of Rehabilitation Technology by VR Agencies, and the Research and Technical Assistance Center on VR Program Management.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

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 this priority, 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 priority justify the costs.

Discussion of Costs and Benefits: The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development.

Another benefit of this final priority is that the establishment of a new RRTC will improve the lives of individuals with disabilities. The new RRTC will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to obtain, retain, and advance in employment.

Accessible Format: Individuals with disabilities can obtain this document 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.

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Dated: July 2, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–16681 Filed 7–7–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Virtual Public Meeting for EAC Standards Board.

DATE AND TIME: Tuesday, July 27, 2010, 1–7 p.m. edt

PLACE: The EAC Standards Board Virtual Public Meeting will be webcast live from the U.S. Election Assistance Commission; 1225 New York Ave, NW., Suite 150; Washington, DC 20005. Members of the Executive Board of the Standards Board will meet in person at EAC. Board members and EAC staff who are present at EAC will facilitate communication among the full Standards Board membership via teleconference and the use of WebEx technology. To view the webcast, viewers should visit EAC's home page at *http://*www.eac.gov and click the link to the Standards Board Virtual Public Meeting.

AGENDA: The U.S. Election Assistance Commission (EAC) Standards Board will conduct a virtual public meeting to receive updates on EAC programs and activities. The meeting will include presentations from the following EAC program divisions: Payments and Grants; Research, Programs, & Policy; and Voting System Testing & Certification. Presentation topics will include: Prior grant programs; 2010 Election Administration & Voting Survey; Election Management Guidelines; Commercial Off-the-Shelf considerations; Election Operations Assessment; and Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) projects. The Standards Board will receive updates on other EAC activities; formulate recommendations to the EAC; hear Standards Board committee reports; consider bylaw amendments and resolutions; and consider other administrative matters.

Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.

This meeting will be open to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Gineen Bresso,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 2010–16845 Filed 7–6–10; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4093–031]

PK Ventures, Inc.; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

June 30, 2010.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 4093–031.

c. *Dated Filed:* April 30, 2010.

d. *Submitted By:* PK Ventures, Inc.

e. *Name of Project:* Bynum Hydroelectric Project.

f. *Location:* On the Haw River, in Chatham County, North Carolina. No Federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Robert L Rose, President, P.O. Box 35236, Sarasota, FL 34242; (941) 312–0303; e-mail—*tampapapc@hotmail.com.*

i. *FERC Contact:* Sean Murphy at (202) 502–6145; or e-mail at *sean.murphy@ferc.gov.*

j. PK Ventures, Inc. filed its request to use the Traditional Licensing Process on April 30, 2010. PK Ventures, Inc. provided public notice of its request on May 22, 2010. In a letter dated June 30, 2010, the Director of the Office of Energy Projects approved PK Ventures, Inc.'s request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the North Carolina State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. PK Ventures, Inc. filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD 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. 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 h.

n. The licensee states its unequivocal intent to submit an application for a new license for Project No. 4093.

Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2013.

o. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16558 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

June 24, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–4124–026.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits non-material Notice of Change.
Filed Date: 06/24/2010.
Accession Number: 20100624–5104.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER05–1389–000; ER07–301–000; ER07–645–000.
Applicants: San Juan Mesa Wind Project, LLC; Wildorado Wind, LLC; Sleeping Bear, LLC.
Description: Supplement to Updated Market Power Analysis for the Southwest Power Pool Region of San Juan Mesa Wind Project, LLC, *et al.*
Filed Date: 06/23/2010.
Accession Number: 20100623–5127.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: ER07–844–007; ER07–845–007; ER07–846–007; ER07–847–007; ER09–629–007; ER99–4160–023.
Applicants: Dynegy Power Marketing, Inc., Dynegy Moss Landing, LLC, Dynegy Morro Bay, LLC, Dynegy Oakland, LLC, Dynegy South Bay, LLC, Dynegy Marketing and Trade, LLC.
Description: Dynegy Marketing and Trade, LLC, *et al* Updated Market Power Analysis.
Filed Date: 06/23/2010.
Accession Number: 20100623–5128.
Comment Date: 5 p.m. Eastern Time on Monday, August 23, 2010.

Docket Numbers: ER93–3–007.
Applicants: The United Illuminating Company.
Description: United Illuminating Company submits a notice of change in status re their Market-Based Rate authority and a revised Market-Based Rate.
Filed Date: 06/23/2010.
Accession Number: 20100624–0202.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: ER10–1274–001.
Applicants: Consumers Energy Company.
Description: Consumers Energy Company submits tariff filing per 35: Power Sales Tariff Of Consumers Energy Company to be effective 6/10/2010.
Filed Date: 06/10/2010.
Accession Number: 20100610–5079.
Comment Date: 5 p.m. Eastern Time on Thursday, July 01, 2010.

Docket Numbers: ER10–1530–000.
Applicants: Llano Estacado Wind, LLC.
Description: Llano Estacado Wind, LLC submits tariff filing per 35.12: Baseline Filing of Llano Estacado Wind, LLC to be effective 6/23/2010.
Filed Date: 06/23/2010.
Accession Number: 20100623–5095.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: ER10–1531–000.
Applicants: Entergy Nuclear Power Marketing, LLC.
Description: Entergy Nuclear Power Marketing, LLC submits tariff filing per 35.12: Baseline Filing of ENPM to be effective 6/23/2010.
Filed Date: 06/23/2010.
Accession Number: 20100623–5104.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: ER10–1532–000.
Applicants: Entergy Nuclear Palisades, LLC.
Description: Entergy Nuclear Palisades, LLC submits tariff filing per 35.12: Baseline Filing of Entergy Nuclear Palisades, LLC to be effective 6/23/2010.
Filed Date: 06/23/2010.
Accession Number: 20100623–5116.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: ER10–1533–000.
Applicants: Macquarie Energy LLC.
Description: Macquarie Energy LLC submits tariff filing per 35.12: Macquarie Energy LLC MBR and Reassignment Tariffs to be effective 6/23/2010.
Filed Date: 06/23/2010.
Accession Number: 20100623–5118.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: ER10–1534–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Certain Agreements with Big Creek Water Works, Ltd. and Pacific Gas and Electric Company.
Filed Date: 06/24/2010.
Accession Number: 20100624–5016.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1535–000.
Applicants: ISO New England Inc. & New England Power.
Description: ISO New England Inc *et al* submits Sheet No 7201E to FERC Electric Tariff No 3 and its supporting testimony of Shannon L Hann re revisions to the settlement procedures for the Meter Data Error Correction Request etc.
Filed Date: 06/23/2010.
Accession Number: 20100624–0203.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: ER10–1536–000.
Applicants: Dyon LLC.
Description: Dyon LLC submits tariff filing per 35.12: Dyon, LLC FERC Electric Tariff to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5044.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1537–000.
Applicants: Entergy Nuclear FitzPatrick, LLC.
Description: Entergy Nuclear FitzPatrick, LLC submits its baseline market-based rate tariff filing, to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5046.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1539–000.
Applicants: Entergy Nuclear Indian Point 3, LLC.
Description: Entergy Nuclear Indian Point 3, LLC submits tariff filing per 35.12: Baseline Filing of ENIP3 to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5075.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1540–000.
Applicants: Entergy Nuclear Vermont Yankee, LLC.
Description: Entergy Nuclear Vermont Yankee, LLC submits tariff filing per 35.12: Baseline Filing of ENVY to be effective 6/24/2010.

Filed Date: 06/24/2010.
Accession Number: 20100624–5078.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1541–000.
Applicants: Entergy Power, LLC.
Description: Entergy Power, LLC submits tariff filing per 35.12: Baseline Filing of Entergy Power, LLC to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5080.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1542–000.
Applicants: Entergy Power Ventures, L.P.
Description: Entergy Power Ventures, L.P. submits tariff filing per 35.12: Baseline Filing of Entergy Power Ventures, L.P. to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5081.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1543–000.
Applicants: Choctaw Gas Generation, LLC.
Description: Choctaw Gas Generation, LLC submits tariff filing per 35.12: Baseline eTariff Filing to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5082.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1544–000.
Applicants: Choctaw Generation Limited Partnership.
Description: Choctaw Generation Limited Partnership submits tariff filing per 35.12: Baseline eTariff Filing to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5084.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1546–000.
Applicants: GDF SUEZ Energy Marketing NA, Inc.
Description: GDF SUEZ Energy Marketing NA, Inc. submits tariff filing per 35.12: Baseline eTariff Filing to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5087.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1547–000.
Applicants: Hopewell Cogeneration Limited Partnership.
Description: Hopewell Cogeneration Limited Partnership submits tariff filing per 35.12: Baseline eTariff Filing to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5096.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1549–000.
Applicants: Hot Spring Power Company, LLC.
Description: Hot Spring Power Company, LLC submits tariff filing per 35.12: Baseline eTariff Filing to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5098.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1550–000.
Applicants: Northeastern Power Company.
Description: Northeastern Power Company submits tariff filing per 35.12: Baseline eTariff Filing to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5100.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

Docket Numbers: ER10–1551–000.
Applicants: Syracuse Energy Corporation.
Description: Syracuse Energy Corporation submits tariff filing per 35.12: Baseline eTariff Filing to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5102.
Comment Date: 5 p.m. Eastern Time on Thursday, July 15, 2010.

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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.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–16633 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

June 29, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–50–000.
Applicants: Synergics Roth Rock North Wind Energy, LLC.
Description: Notice of Self-Certification of EWG Status for

Synergics Roth Rock North Wind Energy, LLC.
Filed Date: 06/29/2010.
Accession Number: 20100629–5093.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER94–389–038; ER01–2641–018.
Applicants: Tenaska Power Services Co., High Desert Power Project, LLC.
Description: Updated Market Power Analysis of High Desert Power, LLC, *et al.*
Filed Date: 06/28/2010.
Accession Number: 20100628–5073.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER01–1527–016; ER01–1527–016.
Applicants: Sierra Pacific Power Company.
Description: Sierra Pacific Power Company submits an updated market power study for the Northwest Region.
Filed Date: 06/28/2010.
Accession Number: 20100629–0113.
Comment Date: 5 p.m. Eastern Time on Thursday, September 16, 2010.

Docket Numbers: ER04–1186–006.
Applicants: KGEN SANDERSVILLE LLC.
Description: KGen Sandersville LLC submits their filing demonstrating that KGen is a Category 1 market based rate seller under Section 35.36 of the Commission's regulations established in Order No 697.
Filed Date: 06/28/2010.
Accession Number: 20100629–0101.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER07–1259–003.
Applicants: San Joaquin Cogen, L.L.C.
Description: San Joaquin Cogen, LLC submits a request for Category 1 Seller classification.
Filed Date: 06/28/2010.
Accession Number: 20100629–0112.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER07–1372–020.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to the Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff, to comply with 30-day compliance filing etc.
Filed Date: 06/28/2010.
Accession Number: 20100629–0111.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER09–1020–002.
Applicants: Panoche Energy Center, LLC.
Description: Panoche Energy Center, LLC submits their triennial compliance filing pursuant to Order No. 697.
Filed Date: 06/28/2010.
Accession Number: 20100629–0108.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER09–1064–003.
Applicants: California Independent System Operator Corporation.
Description: California System Operator Corporation submits new clean sheet 2nd Sub. Original Sheet 802H.01 that replaces Sub. Original Sheet 802H.01 in order to exclude the erroneous language.
Filed Date: 06/25/2010.
Accession Number: 20100628–0214.
Comment Date: 5 p.m. Eastern Time on Friday, July 16, 2010.

Docket Numbers: ER10–877–002.
Applicants: The Empire District Electric Company.
Description: The Empire District Electric Company submits Rate Schedule designated as FERC Electric Tariff, Original Volume No. 4, effective 6/1/10.
Filed Date: 06/25/2010.
Accession Number: 20100628–0213.
Comment Date: 5 p.m. Eastern Time on Friday, July 16, 2010.

Docket Numbers: ER10–947–002; ER10–948–002; ER10–949–002; ER10–950–002.
Applicants: Westar Energy, Inc.
Description: Westar Energy submits sub revised sheets to certain of its Full Requirement Electric Service Rate Schedules and its Tariff under which it provides full requirements service to municipal customers.
Filed Date: 06/28/2010.
Accession Number: 20100628–0219.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–990–001.
Applicants: Midwest Independent System Transmission Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits instant filing in compliance with the Commission's May 28 Order.
Filed Date: 06/28/2010.
Accession Number: 20100629–0110.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1228–001.
Applicants: Allegheny Energy Supply Company, LLC.
Description: Allegheny Energy Supply Company, LLC submits First Revised Sheet No. 2C of its market based rate tariff, effective 6/1/10.
Filed Date: 06/25/2010.
Accession Number: 20100628–0215.
Comment Date: 5 p.m. Eastern Time on Friday, July 16, 2010.

Docket Numbers: ER10–1554–000.
Applicants: Mid-Continent Area Power Pool.
Description: The California Independent System Operator Corporation submits revisions to its tariff necessary to implement convergence bidding in the ISO's markets.
Filed Date: 06/25/2010.
Accession Number: 20100628–0212.
Comment Date: 5 p.m. Eastern Time on Friday, July 16, 2010.

Docket Numbers: ER10–1557–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits executed Large Generator Interconnection Agreement.
Filed Date: 06/25/2010.
Accession Number: 20100628–0207.
Comment Date: 5 p.m. Eastern Time on Friday, July 16, 2010.

Docket Numbers: ER10–1558–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits executed Meter Agent Services Agreement between The Energy Authority, Inc. and Nebraska Public Power District.
Filed Date: 06/25/2010.
Accession Number: 20100628–0208.
Comment Date: 5 p.m. Eastern Time on Friday, July 16, 2010.

Docket Numbers: ER10–1560–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits amendment to the McNeal Mutual Standby Transmission Service Agreement, designated as APS's Rate Schedule FERC No. 125.
Filed Date: 06/25/2010.
Accession Number: 20100628–0209.
Comment Date: 5 p.m. Eastern Time on Friday, July 16, 2010.

Docket Numbers: ER10–1561–000.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc. submits Facilities Construction Agreement with Lakefield Wind Project, LLC *et al.*
Filed Date: 06/25/2010.
Accession Number: 20100628–0210.
Comment Date: 5 p.m. Eastern Time on Friday, July 16, 2010.

Docket Numbers: ER10–1562–000.
Applicants: Duke Energy Ohio, Inc.
Description: Duke Energy Ohio, Inc. *et al.* submits the first step of their proposed move from the Midwest ISO to PJM Interconnection.

Filed Date: 06/25/2010.
Accession Number: 20100628–0211.
Comment Date: 5 p.m. Eastern Time on Monday, July 26, 2010.

Docket Numbers: ER10–1570–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corporation submits Service Agreement for Network Integration Transmission Service and Network Operating Agreement between PEF and the City of Winter Park.
Filed Date: 06/28/2010.
Accession Number: 20100628–0217.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1571–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits an executed interim interconnection service agreement.
Filed Date: 06/28/2010.
Accession Number: 20100628–0216.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1572–000.
Applicants: Southern Company Services, Inc.
Description: Alabama Power Company *et al.* submits information pertaining to recovery of Post-Retirement Benefits Other Than Pensions etc.
Filed Date: 06/28/2010.
Accession Number: 20100628–0220.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1573–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Wolverine Power Supply Cooperative, Inc. submits tariff filing per 35.12: Initial Baseline Filing of Reactive Supply Service Rate Schedule to be effective 6/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5133.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1574–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Wolverine Power Supply Cooperative, Inc. submits tariff filing per 35.37: Category One Demonstration Filing to be effective 8/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5138.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1575–000.
Applicants: Cottonwood Energy Company, LP.
Description: Cottonwood Energy Company, LP submits tariff filing per 35.12: Initial Market Based Rate Tariff Filing to be effective 6/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5142.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1576–000.
Applicants: Magnolia Energy LP.
Description: Magnolia Energy LP submits tariff filing per 35.12: Initial Baseline Filing to be effective 6/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5147.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1577–000.
Applicants: Dogwood Energy LLC.
Description: Dogwood Energy LLC submits tariff filing per 35.12: Initial Baseline Filing to be effective 6/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5151.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1578–000.
Applicants: Liberty Electric Power, LLC.
Description: Liberty Electric Power, LLC submits tariff filing per 35.37: Category One Demonstration Filing to be effective 8/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5152.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1579–000.
Applicants: Milford Power Company, LLC.
Description: Milford Power Company, LLC submits tariff filing per 35.37: Category One Demonstration Filing to be effective 8/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5153.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1580–000.
Applicants: Saguaro Power Company LP.
Description: Saguaro Power Company LP submits tariff filing per 35.12: Saguaro Power—FERC Electric Tariff to be effective 6/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5154.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1581–000.
Applicants: Long Beach Peakers LLC.
Description: Long Beach Peakers LLC submits tariff filing per 35.12: Long Beach Peakers—FERC Electric Tariff to be effective 7/1/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5155.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1582–000.
Applicants: Solar Blythe LLC.
Description: Solar Blythe LLC submits tariff filing per 35.12: NRG Solar Blythe—FERC Electric Tariff to be effective 6/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5169.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1583–000.
Applicants: El Segundo Power II LLC.
Description: El Segundo Power II LLC submits tariff filing per 35.12: El Segundo Power II—FERC Electric Tariff to be effective 6/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5173.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1584–000.
Applicants: Indianapolis Power & Light Company.
Description: Indianapolis Power & Light Co submits a notice of cancellation.
Filed Date: 06/28/2010.
Accession Number: 20100629–0115.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

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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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–16635 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

[June 24, 2010]

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–873–000.
Applicants: USG Pipeline Company.
Description: USG Pipeline Company submits tariff filing per 154.203: Baseline Tariff, to be effective 6/23/2010.
Filed Date: 06/23/2010.
Accession Number: 20100623–5049.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–874–000.
Applicants: B–R Pipeline Company.
Description: B–R Pipeline Company submits tariff filing per 154.203: Baseline, to be effective 6/23/2010.
Filed Date: 06/23/2010.
Accession Number: 20100623–5054.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–875–000.
Applicants: NGO Transmission, Inc.
Description: NGO Transmission, Inc. submits tariff filing per 154.203: NGO Transmission—Baseline eTariff Filing to be effective 6/23/2010.
Filed Date: 06/23/2010.
Accession Number: 20100623–5056.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–876–000.
Applicants: Cheyenne Plains Gas Pipeline Company, LLC.
Description: Cheyenne Plains Gas Pipeline Company, LLC submits fourteenth revised Sheet 1 et al to FERC Gas Tariff, Original Volume 1, to be effective 7/26/10.
Filed Date: 06/23/2010.
Accession Number: 20100623–0204.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–877–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Cameron Interstate Pipeline, LLC submits tariff filing per 154.203: Cameron Interstate Pipeline, LLC FERC Gas Tariff July 2010 to be effective 7/1/2010.
Filed Date: 06/23/2010.
Accession Number: 20100623–5115.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–879–000.
Applicants: Cimarron River Pipeline, LLC.
Description: Annual Cash Out Report of Cimarron River Pipeline, LLC.
Filed Date: 06/23/2010.
Accession Number: 20100623–5129.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–880–000.
Applicants: Dominion Cove Point LNG, LP.
Description: Dominion Cove Point LNG, LP submits tariff filing per 154.203: DCP 2010–06–24 baseline filing to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5017.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–881–000.
Applicants: Nautilus Pipeline Company, L.L.C.
Description: Nautilus Pipeline Company, L.L.C. submits tariff filing per 154.203: Baseline Filing to be effective 7/25/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5019.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–882–000.
Applicants: Trunkline LNG Company, LLC.
Description: Trunkline LNG Company, LLC submits tariff filing per 154.203: Baseline Filing to be effective 6/24/2010.
Filed Date: 06/24/2010.
Accession Number: 20100624–5021.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–16640 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 1, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–898–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits its capacity release agreement containing negotiated rate provisions by Gulf South and BP Energy Company.
Filed Date: 06/29/2010.
Accession Number: 20100630–0204.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–899–000.
Applicants: Alliance Pipeline LP.
Description: Alliance Pipeline L.P. submits tariff filing per 154.204: July 2010 Auction to be effective 7/1/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5040.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–900–000.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI—2010 Informational Fuel Report to be effective N/A.
Filed Date: 06/30/2010.
Accession Number: 20100630–5043.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–901–000.
Applicants: Gas Transmission Northwest.
Description: Gas Transmission Northwest submits part of its FERC Gas Tariff, Third Revised Volume 1–A and Original Sheet 29C and 29D effective 8/1/10.
Filed Date: 06/30/2010.
Accession Number: 20100630–0213.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–902–000.
Applicants: Trunkline Gas Company, LLC.
Description: Trunkline Gas Company, LLC submits tariff filing per 154.203: Baseline Filing to be effective 6/30/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5100.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–903–000.
Applicants: Trunkline LNG Company, LLC.
Description: Trunkline LNG Company, LLC submits tariff filing per 154.203: Misc. Revenue Surcharge Report to be effective N/A.
Filed Date: 06/30/2010.
Accession Number: 20100630–5116.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–904–000.
Applicants: Equitrans, LP.
Description: Equitrans, LP submits tariff filing per 154.203: Compliance Filing to Implement NAESB Version 1.8 under Order 587–T to be effective 7/1/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5129.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–905–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits 137th Revised Sheet No 9 to its FERC Gas Tariff, Fourth Revised Volume No 1, to be effective 7/1/10.
Filed Date: 06/30/2010.
Accession Number: 20100630–0228.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–906–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Agreement—NJR Energy Services Contract 781839 to be effective 7/1/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5131.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–907–000.
Applicants: Kinder Morgan Interstate Gas Trans. LLC.
Description: Kinder Morgan Interstate Gas Transmission LLC submits Original Sheet 4G.05 *et al* to FERC Gas Tariff, Fourth Revised Volume 1A effective 7/1/10.
Filed Date: 06/30/2010.
Accession Number: 20100630–0227.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–908–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits an existing negotiated rate agreement.
Filed Date: 06/30/2010.
Accession Number: 20100630–0222.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–909–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits Original Sheet 35C.18 *et al* of its FERC Gas Tariff, Seventh Revised Volume 1 effective 7/1/10.
Filed Date: 06/30/2010.
Accession Number: 20100630–0223.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–910–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits Original Sheet 35C.17 of its FERC Gas Tariff, Seventh Revised Volume 1 effective 7/1/10.
Filed Date: 06/30/2010.
Accession Number: 20100630–0224.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–911–000.
Applicants: Gas Transmission Northwest Corporation.
Description: Gas Transmission Northwest Corporation submits tariff filing per 154.203: Baseline Filing to be effective 6/30/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5137.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–912–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits Second Revised Sheet No 34G, to be effective 7/1/10.
Filed Date: 06/30/2010.
Accession Number: 20100630–0225.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–913–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Sea Robin Pipeline Company, LLC submits Substitute Eighth Revised Sheet No. 7, to be effective 4/1/10.
Filed Date: 06/30/2010.

Accession Number: 20100630–0226.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–914–000.
Applicants: Equitrans, LP.
Description: Equitrans, LP submits tariff filing per 154.204: Revised Form of Service Agreements to be effective 8/1/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5146.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–915–000.
Applicants: Chandeleur Pipe Line Company.
Description: Chandeleur Pipe Line Company submits Eighth Revised Sheet 18 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 8/1/10.
Filed Date: 06/30/2010.
Accession Number: 20100630–0218.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–916–000.
Applicants: Midwestern Gas Transmission Company.
Description: Midwestern Gas Transmission Company submits tariff filing per 154.203: Midwestern Baseline Filing to be effective 6/30/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5156.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–917–000.
Applicants: Rockies Express Pipeline, LLC.
Description: Rockies Express Pipeline, LLC submits tariff filing per 154.204: Negotiated Rate 2010–6–30 3 A&R and 1 IT with KMIGT to be effective 7/1/2010.
Filed Date: 07/01/2010.
Accession Number: 20100701–5000.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–918–000.
Applicants: Alliance Pipeline, LP.
Description: Alliance Pipeline, LP submits tariff filing per 154.204: Fortuna assignment to CNRL July 2010 to be effective 7/1/2010.
Filed Date: 07/01/2010.
Accession Number: 20100701–5014.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–919–000.
Applicants: Colorado Interstate Gas Company.
Description: Non-Conforming Agreement Update with Front Range Power Company of Colorado Interstate Gas Company.
Filed Date: 06/29/2010.
Accession Number: 20100629–5199.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–922–000.
Applicants: Venice Gathering System, LLC.
Description: Venice Gathering System, LLC submits tariff filing per 154.203: Baseline Tariff Filing to be effective 7/1/2010.
Filed Date: 07/01/2010.
Accession Number: 20100701–5032.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–923–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.203: Baseline to be effective 7/1/2010.
Filed Date: 07/01/2010.
Accession Number: 20100701–5040.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 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.

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. 2010–16642 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

July 2, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–877–003.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Cameron Interstate Pipeline, LLC submits their baseline tariff filing, to be effective 7/1/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5073.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–779–002.
Applicants: Dominion Transmission, Inc.
Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI—Baseline Compliance Filing Volume No. 2 to be effective 6/30/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5028.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–625–001.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.205(b): Baseline Errata Filing to be effective 4/22/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5041.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP01–382–020.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits for filing its annual report setting forth the Carlton Resolution buyout and surcharge dollars

reimbursed to the Carlton Sourcers on their May reservation invoices for the 2009–2010 heating season.

Filed Date: 06/30/2010.

Accession Number: 20100630–5041.

Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–534–001.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits negotiated rate agreement between Natural and Tate & Lyle Ingredients America, Inc.

Filed Date: 07/01/2010.

Accession Number: 20100701–0276.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP91–143–061.

Applicants: Great Lakes Gas Transmission L.P.

Description: Great Lakes Gas Transmission L.P. submits the Interruptible/Overrun Revenue Sharing Report for November 2009–April 2010.

Filed Date: 07/01/2010.

Accession Number: 20100701–5184.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: CP09–460–001.

Applicants: ETC Tiger Pipeline, LLC.

Description: Amendment to Application of ETC Tiger Pipeline, LLC Limited Amendment of Certificate Authority.

Filed Date: 06/15/2010.

Accession Number: 20100615–5106.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis,

Deputy Secretary.

[FR Doc. 2010–16647 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

June 28, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–883–000.

Applicants: Dauphin Island Gathering Partners.

Description: 2010 Cash Out Refund Report of Dauphin Island Gathering Partners.

Filed Date: 06/24/2010.

Accession Number: 20100624–5034.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–884–000.

Applicants: Bluewater Gas Storage, LLC.

Description: Bluewater Gas Storage, LLC submits tariff filing per 154.203: Bluewater Gas Storage, LLC, Baseline Tariff Filing to be effective 6/24/2010.

Filed Date: 06/24/2010.

Accession Number: 20100624–5043.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–885–000.

Applicants: Portland Natural Gas Transmission System.

Description: Portland Natural Gas Transmission System submits Second Revised Sheet 201 et al. of its FERC Gas Tariff, Second Revised Volume 1, to be effective RP10–885.

Filed Date: 06/24/2010.

Accession Number: 20100624–0207.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–886–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits tariff filing per 154.403(d)(2): Out-of-Period Recomputation of Fuel and L&U to be effective 8/1/2010.

Filed Date: 06/25/2010.

Accession Number: 20100625–5110.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 07, 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.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–16646 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

[June 28, 2010]

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–877–001.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Cameron Interstate Pipeline, LLC submits tariff filing per 154.203: Cameron Interstate Pipeline, Compliance Tariff Filing to be effective 7/15/2010.

Filed Date: 06/24/2010.

Accession Number: 20100624–5092.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–843–001.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits tariff filing per 154.203: Resolve RP10–843 Issue to be effective 4/19/2010.

Filed Date: 06/23/2010.

Accession Number: 20100623–5108.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–797–001.

Applicants: North Baja Pipeline, LLC.

Description: North Baja Pipeline, LLC submits tariff filing per 154.203: RP10–560/RP10–797 Compliance to be effective 4/30/2010.

Filed Date: 06/21/2010.

Accession Number: 20100621–5127

Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–818–001.

Applicants: North Baja Pipeline, LLC.

Description: North Baja Pipeline, LLC submits tariff filing per 154.205(b): Amendment to RP10–818 to be effective 6/1/2010.

Filed Date: 06/21/2010.

Accession Number: 20100621–5139.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 06, 2010.

Docket Numbers: RP10–804–001.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company LLC submits its tariff filing per 154.205(b): Errata Filing, to be effective 6/1/2010.

Filed Date: 06/25/2010.

Accession Number: 20100625–5084.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 07, 2010.

Docket Numbers: RP10–877–002.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Cameron Interstate Pipeline, LLC submits tariff filing per 154.203: Cameron Interstate Pipeline, LLC, Compliance Tariff Filing, Dated June 25, 2010 to be effective 7/15/2010.

Filed Date: 06/25/2010.

Accession Number: 20100625–5054.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 07, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Nathaniel J. Davis,

Deputy Secretary.

[FR Doc. 2010–16645 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

June 30, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–877–003.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Cameron Interstate Pipeline, LLC submits their baseline tariff filing, to be effective 7/1/2010.

Filed Date: 06/29/2010.

Accession Number: 20100629–5073.

Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–625–001.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff filing per 154.205(b): Baseline Errata Filing to be effective 4/22/2010.

Filed Date: 06/28/2010.

Accession Number: 20100628–5041.

Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–16644 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

June 30, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–888–000.
Applicants: Northern Border Pipeline Company.
Description: Northern Border Pipeline Company submits Eighth Revised Sheet 100 *et al* to FERC Gas Tariff, First Revised Volume 1, to be effective 7/26/10.
Filed Date: 06/25/2010.
Accession Number: 20100628–0205.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 07, 2010.

Docket Numbers: RP10–889–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits tariff filing per 154.403: Annual Electric Power Cost Tracker Surcharge Filing to be effective 8/1/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5158.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–890–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Questar Southern Trails Pipeline Company submits tariff filing per 154.203: Baseline to be effective 6/28/2010.
Filed Date: 06/28/2010.
Accession Number: 20100628–5215.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–891–000.
Applicants: Dauphin Island Gathering Partners.
Description: Dauphin Island Gathering Partners submits the Fifty-Third Revised Sheet 9 *et al* to FERC Gas Tariff, First Revised Volume 1, to be effective 7/1/10.
Filed Date: 06/28/2010.
Accession Number: 20100629–0107.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–892–000.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: Great Lakes Gas Transmission Limited Partnership submits tariff filing per 154.203: Baseline Filing to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5060.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–893–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Report/Form of Iroquois Gas Transmission System, L.P. under New Docket. Measurement Variance/Fuel Use Factors utilized by Iroquois during the period January 1, 2010 through June 30, 2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5067.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–894–000.
Applicants: Hardy Storage Company, LLC.
Description: Hardy Storage Company, LLC submits tariff filing per 154.203: Baseline Filing to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5077.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–895–000.
Applicants: Kinder Morgan Interstate Gas Trans. LLC.
Description: Kinder Morgan Interstate Gas Transmission LLC submits Original Sheet 4G.06 to FERC Gas Tariff, Fourth Revised Volume 1A, to be effective 7/1/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–0119.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–897–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Columbia Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rated Service Agreement—Rock Springs to be effective 7/1/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5180.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 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 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2010–16643 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

July 2, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–920–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits negotiated rate capacity release agreement.
Filed Date: 06/30/2010.
Accession Number: 20100701–0217.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–921–000.
Applicants: Young Gas Storage Company, Ltd.

Description: Young Gas Storage Company, LTD submits Third Revised Sheet 0 et al to FERC Gas Tariff, Original Volume No. 1, to be effective 8/1/10.
Filed Date: 06/30/2010.
Accession Number: 20100701–0218.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–924–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Enterprise Replacement Amendment to be effective 7/1/2010.
Filed Date: 07/01/2010.
Accession Number: 20100701–5044.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–925–000.
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: Gulfstream Natural Gas System, LLC submits Third Revised Sheet 8.01 to FERC Gas Tariff, Original Volume No. 1, to be effective 7/1/10.
Filed Date: 06/30/2010.
Accession Number: 20100701–0244.
Comment Date: 5 p.m. Eastern Time on Monday, July 12, 2010.

Docket Numbers: RP10–926–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Guardian Pipeline, LLC submits Third Revised Sheet No. 3 et al, effective 8/1/10.
Filed Date: 07/01/2010.
Accession Number: 20100701–0250.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–927–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Texla Cap Release Negotiated Rate Filing to be effective 7/1/2010.
Filed Date: 07/01/2010.
Accession Number: 20100701–5080.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–928–000.
Applicants: Texas Eastern Transmission, LP.
Description: Texas Eastern Transmission, LP submits tariff filing per 154.403: EPC AUG 2010 FILING to be effective 8/1/2010.
Filed Date: 07/01/2010.
Accession Number: 20100701–5100.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–929–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Devon-Texla to be effective 7/1/2010.
Filed Date: 07/01/2010.
Accession Number: 20100701–5101.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–930–000.
Applicants: Kinder Morgan Louisiana Pipeline LLC.
Description: Kinder Morgan Louisiana Pipeline LLC submits tariff filing per 154.203: Baseline Filing to be effective 7/1/2010.
Filed Date: 07/01/2010.
Accession Number: 20100701–5103.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–931–000.
Applicants: American Midstream (Midla), LLC.
Description: American Midstream (Midla), LLC submits Second Revised Sheet No. 5, to be effective 7/1/10.
Filed Date: 07/01/2010.
Accession Number: 20100701–0232.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–932–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Midcontinent Express Pipeline LLC submits First Revised No. 14A et al. to FERC Gas Tariff, Original Volume No. 1, effective 7/1/10.
Filed Date: 07/01/2010.
Accession Number: 20100701–0233.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–933–000.
Applicants: CenterPoint Energy Gas Transmission Co.
Description: CenterPoint Energy Gas Transmission Company submits an amended and restated negotiated rate agreement with Shell Energy North America, LP, to be effective 7/1/10.
Filed Date: 07/01/2010.
Accession Number: 20100701–0278.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–934–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits a Negotiated Rate Letter Agreement with Entergy Louisiana, LLC Agreement 30592.
Filed Date: 07/01/2010.
Accession Number: 20100701–0277.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–935–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: Calpine Permanent Release Negotiated Rate Agreement to be effective 7/1/2010.
Filed Date: 07/01/2010.
Accession Number: 20100701–5155.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–936–000.
Applicants: MIGC, LLC.
Description: MIGC, LLC submits Third Revised Sheet No. 6 to its FERC Gas Tariff, Second Revised Volume 1.
Filed Date: 07/01/2010.
Accession Number: 20100701–0259.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 13, 2010.

Docket Numbers: RP10–937–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Agreements—BG Energy and VPEM to be effective 7/1/2010.
Filed Date: 07/02/2010.
Accession Number: 20100702–5007.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 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 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–16641 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 30, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER95–72–023; ER10–790–002; ER09–665–002; ER09–1270–003; ER09–1269–003; ER08–275–002; ER01–3118–005; ER01–3117–005; ER00–2392–004.

Applicants: Power Exchange Corporation; El Cajon Energy, LLC; Wellhead Power eXchange, LLC; Chula Vista Energy Center, LLC; Escondido Energy Center, LLC; Santa Maria Cogen Inc.; Wellhead Power Panoche, LLC; Wellhead Power Gates, LLC; Fresno Cogeneration Partners, LP.

Description: Power Exchange Corp *et al.* (Sellers) submits updated market power analysis in compliance with the requirements of Section 205 of the Federal Power Act, *etc.*

Filed Date: 06/29/2010.

Accession Number: 20100630–0203.

Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: ER99–845–020; ER10–622–002.

Applicants: Puget Sound Energy, Inc., Macquarie Energy LLC.

Description: Triennial Updated Market Analysis of Puget Sound Energy, Inc. and Macquarie Energy LLC.

Filed Date: 06/29/2010.

Accession Number: 20100629–5191.

Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: ER99–2284–015; ER98–2185–020; ER09–1278–004; ER99–1773–015; ER99–1761–011; ER09–38–005; ER98–2184–020; ER01–1315–011; ER00–33–017; ER01–2401–017; ER98–2186–021; ER05–442–009; ER00–1026–022; ER01–751–017.

Applicants: Mountain View Power Partners, LLC, Indianapolis Power & Light Company, AES Eastern Energy, LP, AES Energy Storage, LLC, AES Red Oak, LLC, AES Redondo Beach, LLC, Condon Wind Power, LLC, AES Placerita, Inc., AES Huntington Beach, LLC, AES Ironwood, LLC, AES Armenia Mountain Wind, LLC, AES Alamitos, LLC, AES 2, LLC, AES Creative Resources, LP, AES ES WESTOVER, LLC.

Description: Triennial Market Power Analysis for Southwest Region of AES 2, LLC, *et al.*

Filed Date: 06/29/2010.

Accession Number: 20100629–5195.

Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: ER00–3614–014; ER00–443–002; ER08–337–007.

Applicants: BP Energy Company, BP West Coast Products LLC, Watson Cogeneration Company.

Description: Updated Market Power Analysis for Southwest Region of BP Energy Co., Watson Cogeneration Company, and BP West Coast Products, LLC.

Filed Date: 06/30/2010.

Accession Number: 20100630–5039.

Comment Date: 5 p.m. Eastern Time on Monday, August 30, 2010.

Docket Numbers: ER04–947–010; ER08–1297–008; ER09–1656–004; ER02–2559–014; ER01–1071–019; ER02–669–001; ER02–2018–012; ER10–2–003; ER01–2074–011; ER08–1293–008; ER08–1294–008; ER10–297–002; ER10–825–001; ER05–222–008; ER00–2391–014; ER10–149–004; ER98–2494–015; ER06–9–014; ER09–902–004; ER00–3068–012; ER05–487–009; ER04–127–009; ER03–34–003; ER10–402–004; ER02–1903–015; ER06–1261–013; ER03–179–010; ER03–1104–015; ER03–1105–015; ER03–1332–008; ER09–138–006; ER08–197–012; ER03–1333–009; ER03–1103–008; ER10–256–002; ER01–838–011; ER98–3563–016; ER98–3564–018; ER03–1025–007; ER02–2120–010; ER10–296–002; ER05–714–007; ER01–1972–012; ER10–1–003; ER03–155–011; ER03–623–011; ER09–1462–003; ER08–250–009; ER07–1157–007; ER04–290–009; ER02–256–005; ER09–988–007; ER09–832–009; ER09–989–007; ER09–990–005; ER05–236–010; ER04–187–011; ER09–1297–003; ER07–174–013; ER08–1296–008; ER02–2166–013; ER09–901–004; ER05–661–005; ER08–1300–008; ER03–1375–010; ER09–1760–003; ER09–900–004; ER10–3–003; ER98–3511–016; ER99–2917–015; ER07–875–006.

Applicants: Acme POSDEF Partners, LP; Ashtabula Wind, LLC; Ashtabula Wind II, LLC; Backbone Mountain Windpower, LLC; Badger Windpower, LLC; Bayswater Peaking Facility, LLC; Blythe Energy, LLC; Butler Ridge Wind Energy Center, LLC; Calhoun Power Company I, LLC; Crystal Lake Wind, LLC; Crystal Lake Wind II, LLC; Crystal Lake Wind III, LLC; Day County Wind, LLC; Diablo Winds, LLC; Doswell Limited Partnership; Elk City Wind, LLC; ESI Vansycle Partners, LP; FPL Energy Cabazon Wind, LLC; FPL Energy Cabazon Wind, LLC; FPL Energy Cape, LLC; FPL Energy Cowboy Wind, LLC; FPL Energy Green Power Wind, LLC; FPL Energy Hancock County Wind, LLC; FPL Energy Illinois Wind, LLC; FPL Energy Marcus Hook, LP; FPL Energy Mower County, LLC; FPL Energy New Mexico Wind, LLC; FPL Energy North Dakota Wind, LLC; FPL Energy North Dakota Wind II, LLC; FPL Energy Oklahoma Wind, LLC; FPL Energy Oliver Wind I, LLC; FPL Energy Oliver Wind II, LLC; FPL Energy Sooner Wind, LLC; FPL Energy South Dakota Wind, LLC; FPL Energy Stateline II, Inc.; FPL Energy Vansycle, LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; FPL Energy Wyoming, LLC; FPLE Rhode Island State Energy, LP; Garden Wind, LLC; Gexa Energy LLC; Gray County Wind Energy, LLC; Hawkeye Power Partners, LLC; High Majestic Wind Energy Center, LLC; High Winds, LLC; Jamaica Bay Peaking Facility, LLC; Lake Benton Power Partners II, LLC; Langdon Wind, LLC; Logan Wind Energy LLC; Meyersdale Windpower, LLC; Mill Run Windpower, LLC; NextEra Energy Duane Arnold, LLC; NextEra Energy Power Marketing, LLC; NextEra Energy Point Beach, LLC; NextEra Energy SeaBrook, LLC; Northeast Energy Associates, LP; North Jersey Energy Associates, LP; Northern Colorado Wind Energy, LLC; Osceola Windpower, LLC; Osceola Windpower II, LLC; Pennsylvania Windfarms, Inc.; Sky River LLC; Somerset Windpower, LLC; Story Wind, LLC; WayMart Wind Farm, LP; Wilton Wind II, LLC; Victory Garden Phase IV, LLC; Wessington Wind Energy Center, LLC; FPL Energy Maine Hydro, LLC; FPL Energy MH50 LP; Peetz Table wind Energy, LLC.

Description: Acme POSDEF Partners, LP (NextEra Companies) *et al.* submits Notice of Non-Material Change in Status and Market-Based Rate Tariff Changes in Compliance with Order Nos 697 and 697A.

Filed Date: 06/23/2010.

Accession Number: 20100625–0200.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 14, 2010.

Docket Numbers: ER07–232–004; ER07–374–003; ER05–1316–003.
Applicants: Aragonne Wind LLC; Buena Vista Energy, LLC; Kumeyaay Wind LLC.
Description: Aragonne Wind LLC *et al.* submits its application requesting that the Commission find that they qualify as Category 1 Sellers in the Northwest, Southeast, Central, Southwest Power Pool, Northwest & Southwest Regions.
Filed Date: 06/29/2010.
Accession Number: 20100630–0202.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1391–001.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Company submits tariff filing per 35: San Diego Gas & Electric Company Wholesale Distribution Access Tariff Volume 6 to be effective 6/28/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5179.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1633–000.
Applicants: Deseret Generation & Transmission Co-operative, Inc.
Description: Deseret Generation & Transmission Co-operative, Inc. submits tariff filing per 35.12: Baseline Tariff Filing to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5178.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1635–000.
Applicants: Virginia Electric and Power Company.
Description: Request of Virginia Electric and Power Company and its Market-Regulated Power Sales Affiliates For Waivers Of Certain Affiliate Restrictions Requirements.
Filed Date: 06/29/2010.
Accession Number: 20100629–5197.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1564–001.
Applicants: Cabrillo Power I LLC.
Description: Cabrillo Power I LLC submits tariff filing per 35: Cabrillo I—Amendment to Market-Based Rate Tariff to be effective 6/28/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5035.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1565–001.
Applicants: Cabrillo Power II LLC.
Description: Cabrillo Power II LLC submits tariff filing per 35: Cabrillo Power II—Amendment to Market-Based Rate Tariff to be effective 6/28/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5052.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1566–001.
Applicants: El Segundo Power LLC.
Description: El Segundo Power LLC submits tariff filing per 35: El Segundo Power—Amendment to Market-Based Rate Tariff to be effective 6/28/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5053.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1583–001.
Applicants: El Segundo Power II LLC.
Description: El Segundo Power II LLC submits tariff filing per 35: El Segundo Power II—Amendment to Market-Based Rate Tariff to be effective 6/28/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5070.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1636–000.
Applicants: Xcel Energy Services Inc.
Description: Northern States Power Company *et al.* submits a Notice of Cancellation of the Interconnection and Interchange Agreement with Upper Peninsula Power Company.
Filed Date: 06/29/2010.
Accession Number: 20100630–0208.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1637–000.
Applicants: Synergics Roth Rock Wind Energy, LLC.
Description: Synergics Wind Energy, LLC submits an application for authorization to sell energy and capacity in wholesale transactions at negotiated, market-based rates.
Filed Date: 06/29/2010.
Accession Number: 20100630–0209.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1638–000.
Applicants: Public Service Electric and Gas Company.
Description: Public Service Electric and Gas Company submits tariff filing per 35.12: Baseline Filing of Market-Based rate Tariff Under Order No. 714 to be effective 6/30/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5051.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1639–000.
Applicants: CPV Milford, LLC.
Description: CPV Milford, LLC submits tariff filing per 35.37: Category 1 Demonstration Filing to be effective 8/30/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5068.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1640–000.
Applicants: CPV Liberty, LLC.
Description: CPV Liberty, LLC submits tariff filing per 35.37: Category 1 Demonstration Filing to be effective 8/30/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5069.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1641–000.
Applicants: Dogwood Energy LLC.
Description: Dogwood Energy LLC submits tariff filing per 35.37: Category 1 Demonstration Filing to be effective 8/30/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5071.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1642–000.
Applicants: EWO Marketing, Inc.
Description: EWO Marketing, Inc. submits tariff filing per 35.12: Baseline Filing of EWOM to be effective 6/30/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5077.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1643–000.
Applicants: Cottonwood Energy Company, LP.
Description: Cottonwood Energy Company, LP submits tariff filing per 35.37: Category 1 Demonstration Filing to be effective 8/30/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5093.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1644–000.
Applicants: Magnolia Energy LP.
Description: Magnolia Energy LP submits tariff filing per 35.37: Category 1 Demonstration Filing to be effective 8/30/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5109.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1652–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–06–30 CAISO Corona MSA Termination to be effective 7/1/2010.
Filed Date: 06/30/2010.
Accession Number: 20100630–5145.
Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1656–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits

tariff filing per 35: 2010–06–30 ISO Security Deposit Tariff Waiver to be effective 7/1/2010.

Filed Date: 06/30/2010.

Accession Number: 20100630–5149.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Docket Numbers: ER10–1657–000.

Applicants: New York Independent System Operator.

Description: New York Independent System Operator submits tariff filing per 35.12: Baseline Tariff Filing of the New York Independent System Operator, Inc., to be effective 6/30/2010.

Filed Date: 06/30/2010.

Accession Number: 20100630–5153.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–51–000.

Applicants: AEP Appalachian Transmission Company, Inc.

Description: Application Under Section 204 of the Federal Power Act of AEP Appalachian Transmission Company, Inc., *et al.,* for Authorization to Issue Securities.

Filed Date: 06/30/2010.

Accession Number: 20100630–5083.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 21, 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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–16636 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

June 29, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1585–000.

Applicants: Alabama Electric Marketing, LLC.

Description: Alabama Electric Marketing, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/28/2010.

Filed Date: 06/28/2010.

Accession Number: 20100628–5183.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1586–000.

Applicants: Big Sandy Peaker Plant, LLC.

Description: Big Sandy Peaker Plant, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/28/2010.

Filed Date: 06/28/2010.

Accession Number: 20100628–5195.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1587–000.

Applicants: KGen Murray I and II LLC.

Description: KGen Murray I and II LLC submits tariff filing per 35.37: Category 1 Demonstration Filing to be effective 8/28/2010.

Filed Date: 06/28/2010.

Accession Number: 20100628–5209.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1588–000.

Applicants: KGen Hot Spring LLC.

Description: KGen Hot Spring LLC submits tariff filing per 35.37: Category 1 Demonstration Filing to be effective 8/28/2010.

Filed Date: 06/28/2010.

Accession Number: 20100628–5210.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1589–000.

Applicants: KGen Hinds LLC.

Description: KGen Hinds LLC submits tariff filing per 35.37: Category 1 Demonstration Filing to be effective 8/28/2010.

Filed Date: 06/28/2010.

Accession Number: 20100628–5211.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1590–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed service agreement for Firm Point-To-Point Transmission Service with Calpine Energy Services, LP, effective 6/1/2010.

Filed Date: 06/28/2010.

Accession Number: 20100629–0102.

Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1591–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Meter Agent Services Agreement with Westar Energy, Inc Generation Services.

Filed Date: 06/28/2010.
Accession Number: 20100629–0103.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1592–000.
Applicants: Ameren Services Company.
Description: Ameren Services Company submits an executed second revised service agreement for Wholesale Distribution Service with City of Jackson, Missouri.
Filed Date: 06/28/2010.
Accession Number: 20100629–0104.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1593–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Service Corp submits Ninth Interconnection and Local Delivery Service Agreement No 1262 with Wabash Valley Power Association, Inc.
Filed Date: 06/28/2010.
Accession Number: 20100629–0105.
Comment Date: 5 p.m. Eastern Time on Monday, July 19, 2010.

Docket Numbers: ER10–1594–000.
Applicants: California Electric Marketing, LLC.
Description: California Electric Marketing, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5069.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1595–000.
Applicants: Crete Energy Venture, LLC.
Description: Crete Energy Venture, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5070.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1596–000.
Applicants: High Desert Power Project, LLC.
Description: High Desert Power Project, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5071.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1597–000.
Applicants: Kiowa Power Partners, LLC.
Description: Kiowa Power Partners, LLC submits tariff filing per 35.12: Market Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5072.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1598–000.
Applicants: Lincoln Generating Facility, LLC.
Description: Lincoln Generating Facility, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5075.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1599–000.
Applicants: Invenergy Cannon Falls LLC.
Description: Invenergy Cannon Falls LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5078.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1600–000.
Applicants: Forward Energy LLC.
Description: Forward Energy LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5079.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1601–000.
Applicants: Hardee Power Partners Limited.
Description: Hardee Power Partners Limited submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5080.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1602–000.
Applicants: Beech Ridge Energy LLC.
Description: Beech Ridge Energy LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5081.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1603–000.
Applicants: Grand Ridge Energy LLC.
Description: Grand Ridge Energy LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5082.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1604–000.
Applicants: Grand Ridge Energy II LLC.
Description: Grand Ridge Energy II LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5084.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1605–000.
Applicants: Grand Ridge Energy III LLC.
Description: Grand Ridge Energy III LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5087.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1606–000.
Applicants: Grand Ridge Energy IV LLC.
Description: Grand Ridge Energy IV LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5092.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1607–000.
Applicants: Grand Ridge Energy V LLC.
Description: Grand Ridge Energy V LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5094.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1608–000.
Applicants: Invenergy TN LLC.
Description: Invenergy TN LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5097.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1609–000.
Applicants: Judith Gap Energy LLC.
Description: Judith Gap Energy LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.

Accession Number: 20100629–5101.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1610–000.
Applicants: Wolverine Creek Energy LLC.
Description: Wolverine Creek Energy LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5102.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1611–000.
Applicants: Grays Harbor Energy LLC.
Description: Grays Harbor Energy LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5103.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1612–000.
Applicants: Spring Canyon Energy LLC.
Description: Spring Canyon Energy LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5104.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1613–000.
Applicants: Spindle Hill Energy LLC.
Description: Spindle Hill Energy LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5105.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1614–000.
Applicants: Sheldon Energy LLC.
Description: Sheldon Energy LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5106.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1615–000.
Applicants: Willow Creek Energy LLC.
Description: Willow Creek Energy LLC submits tariff filing per 35: Category 1 Exemption Filing to be effective 8/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5107.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1616–000.
Applicants: New Covert Generating Company, LLC.
Description: New Covert Generating Company, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5111.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1617–000.
Applicants: New Mexico Electric Marketing, LLC.
Description: New Mexico Electric Marketing, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5112.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1618–000.
Applicants: Rolling Hills Generating, LLC.
Description: Rolling Hills Generating, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5113.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1619–000.
Applicants: Tenaska Alabama Partners, LP.
Description: Tenaska Alabama Partners, LP submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5114.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1620–000.
Applicants: Tenaska Alabama II Partners, LP.
Description: Tenaska Alabama II Partners, LP submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5115.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1621–000.
Applicants: Golden State Water Company.
Description: Golden State Water Company submits tariff filing per 35.12: Baseline Tariff Filing to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5118.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1622–000.
Applicants: Interstate Power and Light Company.
Description: Application of Interstate Power and Light Company; Preliminary Survey and Investigation Costs for Proposed Sutherland Generating Station Unit 4.
Filed Date: 06/29/2010.
Accession Number: 20100629–5124.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1623–000.
Applicants: Tenaska Frontier Partners, Ltd.
Description: Tenaska Frontier Partners, Ltd. submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5136.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1624–000.
Applicants: Tenaska Gateway Partners, Ltd.
Description: Tenaska Gateway Partners, Ltd. submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5138.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1625–000.
Applicants: Tenaska Georgia Partners, LP.
Description: Tenaska Georgia Partners, LP submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5139.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1626–000.
Applicants: Tenaska Virginia Partners, LP.
Description: Tenaska Virginia Partners, LP submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.
Filed Date: 06/29/2010.
Accession Number: 20100629–5141.
Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1627–000.
Applicants: Tenaska Washington Partners, LP.
Description: Tenaska Washington Partners, LP submits tariff filing per

35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.

Filed Date: 06/29/2010.

Accession Number: 20100629–5143.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1628–000.

Applicants: Texas Electric Marketing, LLC.

Description: Texas Electric Marketing, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.

Filed Date: 06/29/2010.

Accession Number: 20100629–5147.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1629–000.

Applicants: San Diego Gas & Electric Company.

Description: San Diego Gas & Electric Company submits tariff filing per 35: San Diego Gas & Electric Company Baseline Transmission Owner Tariff Volume 11 to be effective 6/28/2010.

Filed Date: 06/29/2010.

Accession Number: 20100629–5150.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1630–000.

Applicants: Wolf Hills Energy, LLC.

Description: Wolf Hills Energy, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.

Filed Date: 06/29/2010.

Accession Number: 20100629–5151.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1631–000.

Applicants: University Park Energy, LLC.

Description: University Park Energy, LLC submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.

Filed Date: 06/29/2010.

Accession Number: 20100629–5155.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Docket Numbers: ER10–1632–000.

Applicants: Tenaska Power Services Co.

Description: Tenaska Power Services Co. submits tariff filing per 35.12: Market-Based Rate Tariff in Compliance with Order No. 714 to be effective 6/29/2010.

Filed Date: 06/29/2010.

Accession Number: 20100629–5162.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 20, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–48–000.

Applicants: Trans-Allegheny Interstate Line Company.

Description: Trans-Allegheny Interstate Line Company Supplemental Filing.

Filed Date: 06/29/2010.

Accession Number: 20100629–5130.

Comment Date: 5 p.m. Eastern Time on Friday, July 09, 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. 2010–16634 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Hooper Springs Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: BPA intends to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) on the proposed construction, operation, and maintenance of a 115-kilovolt (kV) transmission line and a 138/115-kV substation (collectively referred to as the Hooper Springs Project). The new BPA substation would be called Hooper Springs Substation and would be located adjacent to PacifiCorp's existing 345/138-kV Threemile Knoll Substation, located near the City of Soda Springs in Caribou County, Idaho. The new 115-kV single-circuit BPA transmission line would extend generally north and east from these substations to a connection with Lower Valley Energy's (LVE's) existing 115-kV Lane Creek Substation, east of the City of Wayan, Idaho. The proposed project would address voltage stability and reliability concerns of two of BPA's full requirements customers, LVE and Fall River Rural Electric Cooperative (Fall River), which purchase all or almost all of the electric power required to serve their loads from BPA under existing contracts. With this Notice of Intent, BPA is initiating the

public scoping process for the EIS and is requesting comments about the proposal and its potential environmental impacts that BPA should consider as it prepares the EIS. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment to avoid or minimize potential harm to or within any affected floodplains and wetlands. The assessment will be included in the EIS.

DATES: Written scoping comments are due to the address below by August 9, 2010 to ensure their consideration in the preparation of the Draft EIS. Comments may also be submitted at the public scoping meeting to be held on July 29, 2010 in Soda Springs, Idaho at the address below. Scoping comments received after the comment period will be considered to the extent practicable.

ADDRESSES: Send written comments to inform the preparation of the Draft EIS, and requests to be placed on the project mailing list, to Hooper Springs Project, P.O. Box 9250, Portland, OR 97207, or by fax to (888) 315–4503. You also may call BPA's toll free comment line at (800) 622–4519 and leave a message (please include the name of this project), or submit comments online at *http://www.bpa.gov/comment.* BPA will post all comment letters in their entirety on BPA's Web site at *http://www.bpa.gov/comment.*

On Thursday, July 29, 2010, an open-house style scoping meeting will be held from 5 p.m. to 7 p.m. at the Soda Springs High School, in the commons area, 300 E 1st N, Soda Springs, Idaho 83276. At the meeting, BPA will provide maps and other information about the project and have members of the project team available to answer questions and accept oral and written comments. You may stop by any time during the open house.

Persons needing reasonable accommodation to attend and participate in the public meetings should contact John Barco (*see* **FOR FURTHER INFORMATION CONTACT**) at least 10 business days prior to the meeting, to allow sufficient time to process requests. Information regarding the Hooper Springs Project is available in alternative formats upon request.

FOR FURTHER INFORMATION CONTACT: John Barco, Environmental Project Lead, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–3223; or e-mail *jwbarco@bpa.gov.* You may also contact Erich Orth, Project Manager, Bonneville Power Administration—TEP–TPP–3, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 360–619–6559; or e-mail *etorth@bpa.gov.* Additional information can be found at BPA's Web site: *http://www.efw.bpa.gov/environmental_services/Document_Library/HooperSprings/.*

SUPPLEMENTARY INFORMATION: BPA needs to respond to a request from LVE to help improve the stability and reliability of the transmission system in southeastern Idaho. LVE, along with Fall River, are full requirements customers of BPA that purchase all or almost all of the electric power required to serve their electrical loads from BPA under existing contracts. LVE and Fall River provide electrical service to eastern Idaho, northwestern Wyoming, and southwestern Montana.

Over the past few years, BPA has increased the voltage stability and reliability of its existing transmission lines in the area (*e.g.,* Palisades-Goshen, Swan Valley-Goshen, Swan Valley-Teton, and Goshen-Drummond lines), which has helped improve the stability and reliability of the Fall River transmission system and the northern portion of LVE's transmission system. However, the voltage stability and reliability of the southern portion of LVE's transmission system continues to be a concern. LVE's system experiences extreme peaks in electrical load during winter, when temperatures can drop to −50 °F and electricity is needed for heat. If a transmission line were to go out of service during these times, voltage instability could occur and utility customers could lose power, potentially creating life-threatening situations. The proposed project would allow BPA to provide transmission reinforcement to avoid loss of LVE's entire voltage load during peak winter conditions, enhance the existing system in the southern Idaho region, and prepare to meet ongoing and forecasted load growth of about 3 percent per year in southeast Idaho and the Jackson Hole valley area in Wyoming.

Background: In May 2009, BPA completed and issued a Preliminary Environmental Assessment (EA) (DOE/EA–1567) for BPA's proposal to construct, operate, and maintain Hooper Springs Substation and to partially fund LVE's construction, operation, and maintenance of a new 22-mile double-circuit 115-kV Hooper Springs-Lower Valley Line. The proposed line considered in the Preliminary EA extended from the proposed Hooper Springs Substation generally northeast across a portion of the U.S. Forest Service Caribou-Targhee National Forest (USFS), U.S. Bureau of Land Management (BLM) land, and private land, along the Blackfoot River, connecting with LVE's existing Lanes Creek-Valley Line at a point about 2 miles southeast of the intersection of Blackfoot River Road and Diamond Creek.

Based on comments received on the Preliminary EA, it was discovered that the proposed route identified in the Preliminary EA crossed four contaminated mining sites (Conda, Ballard, Wooley Valley, and North Maybe Phosphate Mines) that are the subject of an ongoing Superfund Site Investigation for selenium soil contamination under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Each of these Superfund Site Investigation areas is currently under review to determine the nature and extent of contamination. Given the presence of these Superfund Sites and the routing of the line as originally proposed, either through or near those sites, BPA has determined that preparation of an EIS is appropriate.

BPA will be the lead agency for preparation of the EIS. The USFS and BLM will act as cooperating agencies to assist with preparation of the EIS, including assisting BPA in evaluating transmission line alternatives and identifying interests that should be addressed in the EIS. If, after completion of the environmental review in the EIS, BPA decides to proceed with constructing, operating, and maintaining a new line, both the USFS and BLM would be able to use the information in the EIS to support their respective decisions to grant Special Use Permits to BPA, as appropriate, where the line would cross their respective lands. Additional cooperating agencies for the EIS may be identified as the proposed project proceeds through the NEPA process.

Alternatives Proposed for Consideration: BPA has identified three potential action alternatives that vary the transmission line by route, connection point, length, and voltage. Two of these alternatives would originate from the same proposed Hooper Springs Substation as was described in the May 2009 Preliminary EA, while the third alternative would originate from PacifiCorp's existing ThreeMile Knoll Substation. The three potential alternatives are as follows:

• *Hooper Springs Substation and Northernmost Route (Proposed Action):* Under this alternative, BPA would construct, operate, and maintain a new

115-kV, 32-mile, single-circuit transmission line, from BPA's proposed Hooper Springs Substation, extending generally north along Highway 34 before heading east to connect with LVE's existing 115-kV Lane Creek Substation east of the City of Wayan, Idaho, crossing both private land and public land (USFS and BLM lands), but remaining south of Grays Lake National Wildlife Refuge and outside the four known contaminated mining sites to the maximum extent practicable.

• *Hooper Springs Substation and Easternmost Route, with Line Adjustments:* Under this alternative, BPA would construct, operate, and maintain a new 115-kV, 22- to 30-mile, double-circuit transmission line, connecting PacifiCorp's existing Threemile Knoll Substation with the proposed BPA-constructed, operated, and maintained Hooper Springs Substation, extending generally northeast and then east before connecting with LVE's existing Lane Creek-Valley Line at a point about 2 miles southeast of the intersection of Blackfoot River Road and Diamond Creek Road. This alternative is similar to the action originally proposed in the Preliminary EA, except that BPA, rather than LVE, would retain ownership, operation, and maintenance of the line, and would route the line around known Superfund Sites, thus also lengthening the line.

• *Threemile Knoll Substation and Northernmost Route:* Under this alternative, BPA would not construct Hooper Springs Substation. BPA would construct, operate, and maintain a new 138-kV (230-kV construction), 32-mile, single-circuit transmission line, connecting PacifiCorp's existing Threemile Knoll Substation with LVE's existing 138/115-kV Lane Creek Substation, using the route specified in the Proposed Action.

In addition to these three action alternatives, BPA also will consider a No Action Alternative. Under this alternative, BPA would not construct the Hooper Springs Substation or a transmission line. Other alternatives may be identified through the scoping process.

Public Participation and Identification of Environmental Resources: With this Notice of Intent, BPA is initiating the public scoping process for the Hooper Springs Project EIS. BPA will conduct a 30-day scoping period during which Tribes, affected landowners, concerned citizens, special interest groups, local, State, and Federal governments, and any other interested parties are invited to comment on the scope of the Draft EIS to be prepared. The potential environmental resources identified for analysis in most transmission line projects include land use, recreation, transportation and aviation, socioeconomics, cultural resources, visual resources, public health and safety, noise, electric and magnetic field effects, sensitive plants and animals and their habitats, soil erosion, wetlands and floodplains, and fish and water resources. BPA is seeking any additional information about these environmental resources, and impacts to those resources, from the proposed alternatives, including potential mitigation measures for each proposed alternative or different alternatives that may meet the technical requirements of the transmission system.

While all comments are appreciated, BPA specifically seeks comment to inform its analysis of the effects of any potential line route on bird species, habitat, and habitat use, including flyway patterns and other behaviors in the Grays Lake National Wildlife Refuge area and any other flyway areas identified through this process. BPA also particularly seeks information about the nature and extent of the four known Superfund sites, and any other contamination in the area not currently known to the agency.

Scoping will help BPA further assess and refine the transmission line alternatives to be studied in the Draft EIS. Scoping will also ensure that a full range of issues related to this proposal are addressed in the Draft EIS, and identify significant or potentially significant impacts that may result from the proposed project. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold public meetings to answer questions and receive comments. At this time, BPA expects to issue the Draft EIS in spring 2012. BPA will consider and respond to comments received on the Draft EIS in the Final EIS. The Final EIS is expected to be published in fall 2012. BPA's decision will be documented in a Record of Decision that will follow the Final EIS.

Issued in Portland, Oregon, on June 29, 2010.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 2010–16622 Filed 7–7–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1634–000]

California Independent System; Operator Corporation; Notice of Filing

June 30, 2010.

Take notice that on June 29, 2010, the California Independent System Operator Corporation (CAISO) and the City of Riverside, California (Riverside) filed a Joint Petition For Limited Waiver Of Tariff Provisions And Request For Shortened Comment Period And Expedited Commission Order (tariff waiver) to allow CAISO to correct an inadvertent data entry error that resulted in an erroneous wheeling access charge to Riverside in the amount of $30 million dollars. The tariff waiver would exempt Riverside from the obligation of paying the erroneous amount of $30 million due on July 1, 2010, exempt Riverside from the obligation to post Financial Security to secure this amount, and also exempt CAISO from the obligation to pay this amount to Southern California Edison Company.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 10 a.m. Eastern Time on Thursday, July 1, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16556 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–45–000]

Arizona Public Service Company, Sequent Energy Management, L.P.; Notice of Joint Petition for Clarification, or in the Alternative, Request for Limited Waiver

June 30, 2010.

Take notice that on June 25, 2010, Arizona Public Service Company and Sequent Energy Management, L.P. filed with the Federal Energy Regulatory Commission (Commission) a Joint Petition for Confirming Clarification, or in the Alternative, Request for Limited Waiver and Expedited Consideration.

Any person desiring to participate in this rate proceeding must file a motion 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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 7, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16555 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–14–000]

Reliability Standards Development and NERC and Regional Entity Enforcement; Further Notice Concerning Technical Conference

June 30, 2010.

Take notice that on July 6, 2010, the Federal Energy Regulatory Commission will convene a Commissioner-led technical conference regarding issues pertaining to the development of mandatory Reliability Standards for the Bulk-Power System by the North American Electric Reliability Corporation and the Regional Entities as previously announced.[1]

In addition to the rulemaking proceedings where the Commission acted on March 18, 2010, the discussions at this public conference may address matters related to the following additional proceedings:

Docket No. RR09–6–000, North American Electric Reliability Corporation (Directed ERO to develop proposed modification to ERO Rules of Procedure)

Docket No. RR09–7–000, North American Electric Reliability Corporation (NERC's Three-Year Performance Assessment Report)

Docket No. RR10–12–000, North American Electric Reliability Corporation (Reliability Standard Processes Manual Revisions)

[1] *Notice of Technical Conference,* 75 FR 35,021 (issued June 15, 2010), as supplemented by *Supplemental Notice of Technical Conference,* 75 FR 36,385 (issued June 18, 2010).

For more information, please contact Sarah McKinley, 202–502–8368, *Sarah.Mckinley@ferc.gov* for logistical issues, and either Karin Larson at 202–502–8236, *Karin.Larson@ferc.gov* or Christopher Young at 202–502–6403, *Christopher.Young@ferc.gov* for other concerns.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16557 Filed 7–7–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9173–4]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. Seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1981.04; Distribution of Offsite Consequence Analysis Information under Section 112(r); 40 CFR part 1400; was approved on 06/01/2010; OMB Number 2050–0172; expires on 06/30/2013; Approved with change.

EPA ICR Number 1353.09; Land Disposal Restrictions No-Migration Variances (Renewal); 40 CFR 268.6; was approved on 06/01/2010; OMB Number 2050–0062; expires on 06/30/2013; Approved without change.

EPA ICR Number 1926.05; NSPS for Commercial and Industrial Solid Waste Incineration Units; 40 CFR part 60, subparts A and CCCC; was approved on 06/02/2010; OMB Number 2060–0450; expires on 06/30/2013; Approved without change.

EPA ICR Number 1783.05; NESHAP for Flexible Polyurethane Foam Product; 40 CFR part 63, subparts A and III; was approved on 06/02/2010; OMB Number 2060–0357; expires on 06/30/2013; Approved without change.

EPA ICR Number 1790.05; NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production; 40 CFR part 63, subparts A, AA, and BB, was approved on 06/02/2010; OMB Number 2060–0361; expires on 06/30/2013; Approved without change.

EPA ICR Number 1739.06; NESHAP for the Printing and Publishing Industry; 40 CFR part 63, subparts A and KK; was approved on 06/03/2010; OMB Number 2060–0335; expires on 06/30/2013; Approved with change.

EPA ICR Number 2062.04; NESHAP for Site Remediation; 40 CFR part 63, subpart A and GGGGG; was approved on 06/03/2010; OMB Number 2060–0534; expires on 06/30/2013; Approved with change.

EPA ICR Number 1160.09; NSPS/NESHAP for Wool Fiberglass Insulation Manufacturing Plants; 40 CFR part 63, subpart A and NNN and 40 CFR part 60, subparts A and PPP, was approved on 06/03/2010; OMB Number 2060–0114; expires on 06/30/2013; Approved without change.

EPA ICR Number 1652.07; NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants; 40 CFR part 63, subparts A and T; was approved on 06/03/2010; OMB Number 2060–0273; expires on 06/30/2013; Approved without change.

EPA ICR Number 1801.08; NESHAP for the Portland Cement Manufacturing Industry; 40 CFR part 63, subparts A and LLL; was approved on 06/03/2010; OMB Number 2060–0416; expires on 06/30/2013; Approved without change.

EPA ICR Number 1716.06; NESHAP for Wood Furniture Manufacturing Operations; 40 CFR part 63, subparts A and JJ; was approved on 06/03/2010; OMB Number 2060–0324; expires on 06/30/2013; Approved without change.

EPA ICR Number 1788.09; NESHAP for Oil and Natural Gas Production; 40 CFR part 63, subparts A and HH; was approved on 06/03/2010; OMB Number 2060–0417; expires on 06/30/2013; Approved without change.

EPA ICR Number 2044.04; NESHAP for Plastic Parts and Products Surface Coating; 40 CFR 63, subparts A and PPPP; was approved on 06/03/2010; OMB Number 2060–0537; expires on 06/30/2013; Approved without change.

EPA ICR Number 1799.05; NESHAP for Mineral Wool Production; 40 CFR part 63, subparts A and DDD; was approved on 06/08/2010; OMB Number 2060–0362; expires on 06/30/2013; Approved without change.

EPA ICR Number 2098.05; NESHAP for Primary Magnesium Refining; 40 CFR part 63, subparts A and TTTTT; was approved on 06/08/2010; OMB Number 2060–0536; expires on 06/30/2013; Approved with change.

EPA ICR Number 1678.07; NESHAP for Magnetic Tape Manufacturing Operations; 40 CFR part 63, subparts A and EE; was approved on 06/08/2010; OMB Number 2060–0326; expires on 06/30/2013; Approved with change.

EPA ICR Number 1927.05; Emission Guidelines for Existing Commerce and Industrial Solid Waste Incineration Units; 40 CFR part 60, subparts A and DDDD; was approved on 06/14/2010; OMB Number 2060–0451; expires on 06/30/2013; Approved without change.

EPA ICR Number 2115.03; NESHAP for Miscellaneous Coating Manufacturing; 40 CFR part 63, subparts A and HHHHH; was approved on 06/14/2010; OMB Number 2060–0535; expires on 06/30/2013; Approved without change.

EPA ICR Number 1381.09; Solid Waste Disposal Facility Criteria (Renewal); 40 CFR part 258; was approved on 06/14/2010; OMB Number 2050–0122; expires on 06/30/2013; Approved with change.

EPA ICR Number 0328.15; Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Rule Requirements—Amendments (Final Rule); 40 CFR part 112; was approved on 06/15/2010; OMB Number 2050–0021; expires on 06/30/2013; Approved without change.

EPA ICR Number 2364.02; Affirmative Defence Requirements for Ultra-low Sulfur Diesel; 40 CFR 80.613; was approved on 06/15/2010; OMB Number 2060–0639; expires on 12/31/2010; Approved without change.

EPA ICR Number 2233.04; EPA's WaterSense Program (Renewal); was approved on 06/15/2010; OMB Number 2040–0272; expires on 06/30/2013; Approved without change.

EPA ICR Number 2302.01; EPA's Design for the Environment Formulator Product Recognition Program; was approved on 06/18/2010; OMB Number 2070–0178; expires on 06/30/2013; Approved without change.

EPA ICR Number 0794.12; Notification of Substantial Risk of Injury to Health and the Environment under TSCA Sec. 8(e); was approved on 06/18/2010; OMB Number 2070–0046; expires on 06/30/2013; Approved without change.

EPA ICR Number 2300.05; Regulation to Establish Mandatory Reporting of Greenhouse Gases (Technical Correction); 40 CFR parts 86, 89, 90, 94, 98, 600, 1033, 1039, 1042, 1045, 1048, 1051, 1054 and 1065 was approved on 06/21/2010; OMB Number 2060–0629; expires on 11/30/2012; Approved without change.

EPA ICR Number 1666.08; NESHAP for Commercial Ethylene Oxide Sterilization and Fumigation Operations; 40 CFR part 63, subparts A and O; was approved on 06/22/2010; OMB Number 2060–0283; expires on 06/30/2013; Approved without change.

EPA ICR Number 1797.05; NSPS for Standards of Performance for Storage Vessels for Petroleum Liquids for which Construction, Reconstruction or Modification Commenced after June 11, 1973, and prior to May 19, 1978, (Renewal); 40 CFR part 60, subparts A and K; was approved on 06/22/2010; OMB Number 2060–0442; expires on 06/30/2013; Approved without change.

EPA ICR Number 1064.16; NSPS for Automobile and Light Duty Truck Surface Coating Operations; 40 CFR part 60, subparts A and MM; was approved on 06/22/2010; OMB Number 2060–0034; expires on 06/30/2013; Approved without change.

EPA ICR Number 1056.10; NSPS for Nitric Acid Plants; 40 CFR part 60, subparts A and G; was approved on 06/22/2010; OMB Number 2060–0019; expires on 06/30/2013; Approved without change.

EPA ICR Number 1157.09; NSPS for Flexible Vinyl and Urethane Coating and Printing; 40 CFR part 60, subparts A and FFF; was approved on 06/22/2010; OMB Number 2060–0073; expires on 06/30/2013; Approved without change.

EPA ICR Number 1072.09; NSPS for Lead-Acid Battery Manufacturing; 40 CFR part 60, subparts A and KK; was approved on 06/24/2010; OMB Number 2060–0081; expires on 06/30/2013; Approved without change.

EPA ICR Number 0658.10; NSPS for Pressure Sensitive Tape and Label Surface Coating; 40 CFR part 60, subparts A and RR; was approved on 06/24/2010; OMB Number 2060–0004; expires on 06/30/2013; Approved without change.

EPA ICR Number 2357.03; Regulations.gov Exchange Information Collection; was approved on 06/30/2010; OMB Number 2025–0008;

expires on 12/31/2012; Approved without change.

Comment Filed

EPA ICR Number 2374.01; Corporate ID Reporting Rule; in 40 CFR part 98; OMB filed comment on 06/02/2010.

Dated: July 1, 2010.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2010–16677 Filed 7–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0548; FRL–9173–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Exhaust Emissions of Light-Duty Vehicles in Metropolitan Detroit; EPA ICR No. 2363.01, OMB Control No. 2060–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 9, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2009–0548, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, (EPA/DC), Air and Radiation Docket and Information Center, Mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Constance Hart, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, AAAQMC, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4340; fax number: (734) 214–4939; e-mail address: *hart.connie@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 10, 2009 (74 FR 65532), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2009–0548, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Exhaust Emissions of Light-duty Vehicles in Metropolitan Detroit.

ICR Numbers: EPA ICR No. 2363.01, OMB Control No. 2060–NEW.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The EPA is initiating a systematic data collection designed to improve the methods and tools used by the Agency to estimate exhaust emissions as vehicles age. Data to be collected include vehicle type, vehicle characteristics, measurements of tailpipe exhaust emissions and measurements of typical driving behavior.

The collection is a survey, to be conducted by the Office of Transportation and Air Quality (OTAQ) in the Office of Air and Radiation (OAR). This study will be designed to develop and test novel screening, sampling and measurement procedures. These approaches promise to substantially reduce the cost of exhaust emissions measurement as well as to improve the accuracy of resulting estimates.

An innovative feature of this project will be the use of roadside remote-sensing measurements to construct a pool of vehicles from which vehicles can be sampled for purposes of recruitment and measurement using portable emissions measurement systems (PEMS) and portable activity measurement systems (PAMS). The acquisition of remote-sensing measurements for hydrocarbons, carbon-monoxide, and oxides of nitrogen will provide an index of emissions for all vehicles prior to sampling and recruitment for more intensive measurement. The index is expected to facilitate recruitment of vehicles with an emphasis on rare high-emitting vehicles, and provide a means to appropriately relate measured vehicles to the overall fleet. Research questions for the project include: (1) Can remote-sensing be used as a reliable index of emissions across the range of emissions; (2) is it feasible to measure start emissions using portable instruments; (3) can the emissions index used for recruitment also serve as a means to estimate potential non-response bias; and (4) how do numbers of vehicle starts differ between the work week and the weekend.

We plan to collect remote-sensing measurements on approximately 30,000 vehicles, and from this pool, to recruit approximately 250 vehicles for measurement. Tailpipe emissions will be measured over two days under various driving conditions, and vehicle activity under typical conditions over a

period of three months. Participation in the program will be voluntary. The target population for the project will include light-duty cars and trucks certified to Tier 2 (Bin 5) or equivalent LEV–II standards (LEV).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Private owners of light-duty cars and trucks.

Estimated Number of Respondents: 850.

Frequency of Response: One-Time Event.

Estimated Total Annual Hour Burden: 1,213.

Estimated Total Annual Cost: $33,247 in labor costs. There are no capital or O&M costs.

Changes in the Estimates: As this is a new collection, there is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: July 1, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–16692 Filed 7–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0421; FRL–9173–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, Primary Aluminum Reduction Plants, and Ferroalloy Production Facilities, (Renewal) EPA ICR Number 1604.09, OMB Control Number 2060–0110

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 9, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0421, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Schaefer, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 *FR* 32581), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0421, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Secondary Brass and Bronze Production, Primary Copper Smelters, Primary Zinc Smelters, Primary Lead Smelters, and Ferroally Production Facilities (Renewal)

ICR Numbers: EPA ICR Number 1604.09, OMB Control Number 2060–0110.

ICR Status: This ICR is scheduled to expire on July 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if

applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the Provisions specified at 40 CFR part 60, subparts M, P, Q, R, S and Z. Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 100.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of secondary brass and bronze production facilities, primary copper smelters, primary zinc smelters, primary lead smelters, primary aluminum reduction plants, and ferroalloy production facilities.

Estimated Number of Respondents: 18.

Frequency of Response: Initially, occasionally, semiannually, and annually.

Estimated Total Annual Hour Burden: 4,923.

Estimated Total Annual Cost: $597,254, which includes $465,654 in labor costs, $0 in capital/startup costs, and $131,600 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in the number of hours and responses in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The burden increase of 9 hours is due to the adjustment of number of responses associated with the semiannual reports for Ferroalloy Production Facilities. The number of responses for Ferroalloy Production Facilities was correct when accounting for the total annual responses, and thus did not affect the total number of responses, but was incorrect in the calculation of burden hours. The total number of responses increased from 29 to 49 due to an adjustment of the number of reports for Primary Aluminum Reduction Plants in the total annual responses calculation. The change did not affect the calculations of burden hours.

Dated: July 1, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–16695 Filed 7–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2010–0512, FRL–9172–8, EPA ICR Number 1442.20, OMB Control Number 2050–0085]

Agency Information Collection Activities; Proposed Collection; Comment Request; Land Disposal Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November 30, 2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 7, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2010–0512, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. 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–RCRA–2010–0512. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; e-mail address: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2010–0512, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the RCRA Docket in the EPA

Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when 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 and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. 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.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are private sector and State, Local, or Tribal governments.

Title: Land Disposal Restrictions.

ICR numbers: EPA ICR No. 1442.20, OMB Control No. 2050–0085.

ICR status: This ICR is currently scheduled to expire on November 30, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for hazardous waste treatment, storage, and disposal as may be necessary to protect human health and the environment. Subsections 3004(d), (e), and (g) require EPA to promulgate regulations that prohibit the land disposal of hazardous waste unless it meets specified treatment standards described in subsection 3004(m).

The regulations implementing these requirements are codified in the *Code of Federal Regulations* (CFR) Title 40, Part 268. EPA requires that facilities maintain the data outlined in this ICR so that the Agency can ensure that land disposed waste meets the treatment standards. EPA strongly believes that the recordkeeping requirements are necessary for the agency to fulfill its congressional mandate to protect human health and the environment.

This ICR will be merged with the ICR for the LDR No-Migration Variances (OMB Control Number 2050–0062).

Burden Statement: The annual reporting burden for this ICR is roughly 85.3 hours per response. The annual recordkeeping burden for this ICR is roughly 5.96 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 195,710.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: One.

Estimated total annual burden hours: 1,166,337.

Estimated total annual costs: $131,913,786. This includes an estimated burden cost of $43,131,824 for labor and an estimated cost of $88,781,962 for capital investment and/or operation and maintenance.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 22, 2010.

Suzanne Rudzinski,

Acting Director, Office of Resource Conservation and Recovery.

[FR Doc. 2010–16625 Filed 7–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0050, FRL–9173–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Implementation of Ambient Air Protocol Gas Verification Program; EPA ICR No. 2375.01, OMB Control Number 2060–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 9, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2010–0050, to (1) EPA online using *www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov,* or by mail to: EPA Air Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Papp, Air Quality Assessment Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C304–06, Research Triangle Park, NC 27711; telephone: 919–541–2408; fax: 919–541–1903; e-mail: *papp.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 2, 2010 (40 FR 9407), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2010–0050 which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Implementation of Ambient Air Protocol Gas Verification Program.

ICR numbers: EPA ICR No. 2375.01, OMB Control No. 2060–NEW.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR includes ambient air monitoring data reporting and recordkeeping activities associated with the 40 CFR part 58, appendix A, Ambient Air Quality Surveillance Quality Assurance Regulations. These data and information are collected by state, local, and tribal air quality management agencies and reported to the EPA.

The EPA Ambient Air Quality Monitoring Program's quality assurance requirements in 40 CFR part 58, appendix A, require: "2.6 Gaseous and Flow Rate Audit Standards. Gaseous pollutant concentration standards (permeation devices or cylinders of compressed gas) used to obtain test concentrations for CO, SO_2, NO, and NO_2 must be traceable to either a National Institute of Standards and Technology (NIST) Traceable Reference Material (NTRM), NIST Standard Reference Materials (SRM), and Netherlands Measurement Institute (NMI) Primary Reference Materials (valid as covered by Joint Declaration of Equivalence) or a NIST-certified Gas Manufacturer's Internal Standard (GMIS), certified in accordance with one of the procedures given in reference 4 of this appendix. Vendors advertising certification with the procedures provided in reference 4 of this appendix and distributing gases as "EPA Protocol Gas" must participate in the EPA Protocol Gas Verification Program or not use "EPA" in any form of advertising."

These requirements give assurance to end users that all specialty gas producers selling EPA Protocol Gases are participants in a program that provides an independent assessment of the accuracy of their gases' certified concentrations. In 2010, EPA will develop an Ambient Air Protocol Gas Verification Program (AA–PGVP) that will provide end users with information about participating producers and verification results.

Each year, EPA will attempt to compare gas cylinders from every specialty gas producer being used by ambient air monitoring organizations. EPA Regions 2 and 7 have agreed to provide analytical services for verification of 40 cylinders/lab or 80 cylinders total/year. Cylinders will be verified at a pre-determined time each quarter.

In order to make the appropriate selection, EPA needs to know what specialty gas producers are being used by the monitoring organizations. Therefore, EPA needs information from each primary quality assurance organization every year on specialty gas producers being used and whether the monitoring organization would like to participate in the verification for the upcoming calendar year.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or

for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: These data and information are collected by State, local, and Tribal air quality management agencies.

Estimated Number of Respondents: 211.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 70.

Estimated Total Annual Cost: $4,582 in labor costs.

Dated: July 1, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–16694 Filed 7–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9173–5]

Control of Air Pollution From New Motor Vehicles: Announcement of Public Workshop for Heavy-Duty Diesel Engines Employing Selective Catalyst Reduction Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Workshop and Opportunity for Comment.

SUMMARY: A public workshop is being held to discuss the operation of heavy-duty engines equipped with selective catalyst reduction (SCR). EPA will be reviewing its policies regarding the operation of SCR-equipped heavy-duty diesel engines without diesel exhaust fluid (DEF), with improper DEF, or when tampering (or some other defect in the SCR system) is detected.

DATES: The workshop will be held on July 20, 2010 from 10 a.m. to 4 p.m. (PST) at the California Air Resources Board, Annex 4 Auditorium, 9528 Telstar Avenue, El Monte, California 91731, and will be conducted with the California Air Resources Board. Parties wishing to present information at the workshop are encouraged to notify Ms. Khesha Reed at the address noted below.

Any party may also submit written comments either before or after the workshop. All comments are due by August 20, 2010.

ADDRESSES: EPA will make available for public inspection materials submitted by any party at the public workshop and any other written comments submitted to the Agency. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket No. EPA–HQ–OAR–2010–0444. The docket is located at the Air Docket, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460, and may be viewed between 8 a.m., and 5:30 p.m., Monday through Friday. The telephone is (202) 566–1742. A reasonable fee may be charged by EPA for copying docket material.

Additionally, an electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter EPA–HQ–OAR–2010–0444 in "Search Documents" to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Khesha Reed, Compliance and Innovative Strategies Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460. E-mail address: *reed.khesha@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background: Several heavy duty diesel engine manufacturers have recently begun utilizing a NO_X emission control technology called selective catalyst reduction (SCR) to meet EPA standards and other requirements. SCR is an established technology that has been shown to meet stringent emissions requirements while enabling fuel efficiency benefits.

Currently certified heavy-duty engines utilizing SCR use a nitrogen containing reducing agent (aqueous urea) injected into the exhaust gas upstream of the catalyst. Other types of reducing agents may also be used by SCR technology. The reducing agent needs to be replenished periodically. Without the reducing agent, the efficiency of the SCR catalyst drops to zero and NO_X emissions can potentially increase substantially. The efficiency of the SCR system can also be affected by the use of improper reducing agent or tampering with the SCR system.

The need to replenish the reducing agent (hereafter called diesel exhaust fluid, or DEF, although the reducing agent need not be fluid) and the possibility that SCR technology could be rendered ineffective by operation on an empty DEF tank are addressed by EPA's existing regulations regarding allowable and necessary maintenance and adjustable parameters. These regulations also apply in the case where inadequate DEF could be used or where the SCR system may be subject to tampering. Certified engine configurations include provisions and inducements designed to address these regulatory concerns.

EPA has previously provided guidance to heavy-duty diesel engine manufacturers in March 2007 and December 2009 to facilitate manufacturer planning in advance of certification.[1] In addition, in November 2009 EPA published in the **Federal Register** the approval of specific maintenance intervals for DEF refills for certain manufacturers.[2]

II. Public Workshop: EPA is commencing a public process designed to provide a thorough review of EPA's policies regarding the operation of SCR-equipped heavy-duty diesel engines without DEF, with improper DEF, or when tampering (or some other defect in the SCR system) is detected for future 2011 and later model year engines, in order to ensure, among other things, that SCR-equipped engines are designed to properly control emissions as required under applicable law and regulations. Although EPA has previously provided guidance to manufactures regarding the initial introduction and certification of SCR-equipped heavy-duty diesel engines, consistent with past practice we believe it is appropriate for EPA to review and reexamine its policies as technologies are introduced into the market place. As part of this process, EPA intends to review any information that has become available to determine whether its policies regarding SCR-equipped engines should be revised. The scope of the review includes review of the "Revised Guidance for Certification of Heavy-Duty Diesel Engines Using Selective Catalyst Reduction (SCR) Technologies" dated December 30, 2009. As part of EPA's

[1] *See* "Certification Procedure for Light-Duty and Heavy-Duty Diesel Vehicles and Heavy-Duty Diesel Engines Using Selective Catalyst Reduction (SCR) Technologies" dated March 27, 2007 and the "Revised Guidance for Certification of Heavy-Duty Diesel Engines Using Selective Catalyst Reduction (SCR) Technologies" dated December 30, 2009.

[2] *See* 74 FR 57671 (November 9, 2009).

review we will take into consideration the use of other reductants, in addition to current aqueous urea DEF, and will reexamine requisite infrastructure needs, any issues regarding the emission of unregulated pollutants, and any potential safety concerns. EPA is conducting the workshop with the California Air Resources Board in order that all relevant information be timely shared and considered by all affected parties; however, any final policies reached by EPA will be independently made and based upon applicable federal law and regulations. Any representations made by the California Air Resources Board regarding this matter are not binding upon EPA.

Procedures for Public Participation: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0444, 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, Docket ID No. EPA–HQ–OAR–2010–0444, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. 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–2010–0444. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as "Confidential Business Information" (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: July 1, 2010.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 2010–16702 Filed 7–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0492; FRL–9171–8]

Release of Final Documents Related to the Review of the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The Office of Air Quality Planning and Standards (OAQPS) of EPA is announcing the availability of two final documents titled, *Quantitative Health Risk Assessment for Particulate Matter* and *Particulate Matter Urban-Focused Visibility Assessment.* These two documents describe the quantitative analyses that have been conducted as part of the review of the national ambient air quality standards (NAAQS) for particulate matter (PM).

DATES: These documents will be available on or about June 30, 2010.

ADDRESSES: The documents will be available primarily via the Internet at the following Web site: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_risk.html.*

FOR FURTHER INFORMATION CONTACT: For questions related to the final document titled, *Quantitative Health Risk Assessment for Particulate Matter,* please contact Dr. Zachary Pekar, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *e-mail: pekar.zachary@epa.gov; telephone:* 919–541–3704; *fax:* 919–541–0237.

For questions related to the final document titled, *Particulate Matter Urban-Focused Visibility Assessment,* please contact Ms. Vicki Sandiford, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *e-mail: sandiford,vicki@epa.gov; telephone:* 919–541–2629; *fax:* 919–541–0237.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for these listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities." Under section 109 of the CAA, EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to

periodically review and revise the NAAQS, if appropriate, based on the revised criteria.[1]

Presently, EPA is reviewing the NAAQS for PM. The EPA's overall plan and schedule for this review is presented in the *Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter.*[2] A draft of this integrated review plan was released for public review and comment in October 2007 and was the subject of a consultation with the Clean Air Scientific Advisory Committee (CASAC) on November 30, 2007 (72 FR 63177; November 8, 2007).[3] Comments received from that consultation and from the public were considered in finalizing the plan and in beginning the review of the air quality criteria.

As part of EPA's review of the primary and secondary PM NAAQS, the Agency conducted quantitative assessments characterizing: (1) The health risks associated with exposure to ambient PM, and (2) urban visibility impairment associated with ambient PM. The EPA's plans for conducting these assessments, including the proposed scope and methods of the analyses, were presented in two planning documents titled, *Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk* and *Exposure Assessment* and *Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Urban Visibility Impact Assessment* (henceforth, Scope and Methods Plans).[4] These documents were released for public comment in February 2009 and were the subject of a consultation with the CASAC on April 2, 2009 (74 FR 11580; March 18, 2009).

First and second external review drafts of the assessment documents were released for CASAC review and public comment in September 2009 (74 FR 46589; September 10, 2009) and January/February 2010 (75 FR 4067; January 26, 2010), respectively, and were the subjects of CASAC review meetings in October 2009 (74 FR 46586; September 10, 2009) and March 2010 (75 FR 8062; February 23, 2010), respectively. In preparing the final assessment documents, EPA has considered comments received from CASAC and the public on these earlier draft documents. The final assessment documents announced today convey the approaches taken to assess PM-related human health risks and urban visibility impairment, as well as present key results, observations, and related uncertainties associated with the quantitative analyses performed. These documents will be available on or about June 30, 2010, through the Agency's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_risk.html.*

Dated: June 25, 2010.

Jennifer Noonan Edmonds,

Acting Director.

[FR Doc. 2010–16491 Filed 7–7–10; 8:45 am]

BILLING CODE 6560–50–P

[1] *See http://www.epa.gov/ttn/naaqs/review.html* for more information on the NAAQS review process.

[2] EPA 452R–08–004; March 2008; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html.*

[3] *See http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsbyTopicCASAC!OpenView* for more information on CASAC activities related to the current PM NAAQS review.

[4] EPA–452/P–09–001 and –002; February 2009; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html.*

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0492; FRL–9171–6]

Release of Second Draft Document Related to the Review of the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of draft document for public comment.

SUMMARY: On or about June 30, 2010, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available for public comment a draft document: *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards—Second External Review Draft.* This draft document will serve to "bridge the gap" between the scientific information and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the standards as part of the review of the national ambient air quality standards (NAAQS) for particulate matter (PM).

DATES: Comments should be submitted on or before August 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0492, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2007–0492.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2007–0492.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, *Mailcode:* 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–0492.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–0492. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket

materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: For questions related to this draft document, please contact Ms. Beth Hassett-Sipple, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; *e-mail: hassett-sipple.beth@epa.gov; telephone:* 919–541–4605; *fax:* 919–541–0237.

General Information

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

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for these listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities." Under section 109 of the CAA, EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.[1]

Presently, EPA is reviewing the NAAQS for PM. The EPA's overall plan and schedule for this review is presented in the *Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter.*[2] A draft of the integrated review plan was released for public review and comment in October 2007 and was the subject of a consultation with the Clean Air Scientific Advisory Committee (CASAC) on November 30, 2007 (72 FR 63177; November 8, 2007). Comments received from that consultation and from the public were considered in finalizing the plan and in beginning the review of the air quality criteria.

As part of EPA's review of the primary (health-based) and secondary (welfare-based) PM NAAQS, the Agency has completed the *Integrated Science Assessment for Particulate Matter*[3] and two quantitative assessment documents characterizing: (1) The health risks associated with exposure to ambient PM and (2) urban visibility impairment associated with PM. The two assessment documents are titled, *Particulate Matter Urban-Focused Visibility Assessment and Quantitative Health Risk Assessment for Particulate Matter.*[4]

The second draft Policy Assessment announced today builds on the scientific and technical information available in this review as assessed in the Integrated Science Assessment and the two quantitative assessment documents identified above. This document presents factors relevant to EPA's review of the primary and secondary PM NAAQS. It focuses on both evidence- and risk-based information in evaluating the adequacy of the current PM NAAQS and identifying potential alternative standards for consideration. The second draft Policy Assessment may be accessed online on or about June 30, 2010, through EPA's TTN Web site at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pa.html.*

The EPA is soliciting advice and recommendations from the CASAC by means of a review of the second draft Policy Assessment at an upcoming public meeting of the CASAC that will be held on July 26–27, 2010 (75 FR 32763; June 9, 2010). Following the CASAC meeting, EPA will consider comments received from the CASAC and the public in preparing a final Policy Assessment.

The draft document described above does not represent and should not be construed to represent any final EPA policy, viewpoint, or determination.

Dated: June 25, 2010.

Jennifer Noonan Edwards,

Acting Director.

[FR Doc. 2010–16490 Filed 7–7–10; 8:45 am]

BILLING CODE 6560–50–P

[1] *See http://www.epa.gov/ttn/naaqs/review.html* for more information on the NAAQS review process.

[2] EPA 452R–08–004; March 2008; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html.*

[3] EPA 600/R–08/139F and EPA 600/R–08/139FA, December 2009; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_isa.html.*

[4] EPA 452/R–10–004 and EPA 452/R–10–005, June 2010; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_risk.html.*

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0443; FRL–9173–7]

EPA Responses to State and Tribal 2008 Lead Designation Recommendations: Notice of Availability and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: Notice is hereby given that the EPA has posted its responses to state and tribal designation recommendations for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) on the EPA Internet Web Site. EPA invites public comments on its responses during the comment period specified in the DATES section. EPA sent responses directly to the states and tribes on or about June 15, 2010, and plans to make final designation determinations for the 2008 Pb NAAQS by October 15, 2010.

DATES: Comments must be received on or before August 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0443, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov. Attention Docket ID No. EPA–HQ–OAR–2009–0443.*
- *Fax:* 202–566–9744. *Attention Docket ID No. EPA–HQ–OAR–2009–0443.*
- *Mail:* Air Docket, Attention Docket ID No. EPA–HQ–OAR–2009–0443, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0443. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (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 *http://www.regulations.gov* Web Site is "anonymous access" systems, 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 is unable to read your comment and contact you for clarification due to technical difficulties, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section II of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Rhonda Wright, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C504–01, Research Triangle Park, NC 27711, telephone (919) 541–1087, e-mail at *wright.rhonda@epa.gov.* For questions regarding EPA Region 1, please contact Robert McConnell, U.S. EPA, telephone (617) 918–1046, e-mail at *mcconnell.robert@epa.gov.* For questions regarding EPA Region 2, please contact Mazeeda Khan, U.S. EPA, telephone (212) 637–3715, e-mail at *khan.mazeeda@epa.gov.* For questions regarding EPA Region 3, please contact Melissa Linden, U.S. EPA, telephone (215) 814–2096, e-mail at *linden.melissa@epa.gov.* For questions regarding EPA Region 4, please contact Lynorae Benjamin, U.S. EPA, telephone (404) 562–9040, e-mail at *benjamin.lynorae@epa.gov.* For questions regarding EPA Region 5, please contact Andy Chang, U.S. EPA, telephone (312) 886–0258, e-mail at *chang.andy@epa.gov.* For questions regarding EPA Region 6, please contact Emad Shahin, U.S. EPA, telephone (214) 665–6717, e-mail at *shahin.emad@epa.gov.* For questions regarding EPA Region 7, please contact Stephanie Doolan, U.S. EPA, telephone (913) 551–7719, e-mail at *doolan.stephanie@epa.gov.* For questions regarding EPA Region 8, please contact Kevin Leone, U.S. EPA, telephone (303) 312–6227, e-mail at *leone.kevin@epa.gov.* For questions regarding EPA Region 9, please contact Ginger Vagenas, U.S. EPA, telephone (415) 972–3964, e-mail at *vagenas.ginger@epa.gov.* For questions regarding EPA Region 10, please contact Steve Body, U.S. EPA, telephone (206) 553–0782, e-mail at *body.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, e-mail at *morales.roberto@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2009–0443.

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions

or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

II. Background

The process for designating areas following promulgation of a new or revised NAAQS is contained in Clean Air Act (CAA) Section 107(d) (42 U.S.C. 7407). Following the promulgation of a new or revised standard, each Governor or Tribal Leader has an opportunity to recommend air quality designations, including the appropriate boundaries for nonattainment areas, to EPA. EPA considers these recommendations as part of its duty to promulgate the formal area designations and boundaries for the new or revised standards. By no later than 120 days prior to promulgating designations, EPA is required to notify states or tribes of any intended modification to an area designation or boundary recommendation that EPA deems necessary. On or about June 15, 2010, EPA notified states and tribes of its intended area designations for the 2008 Pb NAAQS. (Go to Section III of this notice for information relating to accessing EPA's designation recommendations.) States and tribes now have an opportunity to demonstrate why they believe a modification proposed by EPA may be inappropriate. In these responses, EPA has encouraged states and tribes to provide comments and additional information for consideration by EPA in finalizing designations. EPA plans to make final designation determinations for the 2008 Pb NAAQS by October 15, 2010.

The purpose of this notice is to solicit public comments from interested parties other than states and tribes on EPA's recent responses to the state and tribal designation recommendations for the 2008 Pb NAAQS. CAA Section 107(d) provides a process for designations that involves recommendations by states and tribes to EPA and responses from EPA to those parties, prior to EPA promulgating final designations and boundaries. EPA is not required under CAA Section 107(d) to seek public comment during the designation process, but is electing to do so for the 2008 Pb NAAQS in order to gather additional information for EPA to consider before making final designations. EPA invites public comment on its responses to states and tribes during the 30-day comment period provided in this notice. Due to the statutory timeframe for promulgating designations set out in CAA Section 107(d), EPA will not be able to consider any comments submitted after August 16, 2010, notwithstanding what may have appeared in any state-specific announcements. This notice and opportunity for public comment does not affect any rights or obligations of any state, tribe or the EPA which might otherwise exist pursuant to CAA Section 107(d).[1]

Please refer to the **ADDRESSES** section above in this document for specific instructions on submitting comments and locating relevant public documents.

In providing comments to EPA please consider the agency's charge under CAA section 107(d). Under this section, EPA is obligated to identify every area as attainment, nonattainment, or unclassifiable. Further, in establishing nonattainment area boundaries, the agency is required to identify the area that does not meet the 2008 Pb standard and any nearby area that is contributing to the area that does not meet that standard. We are particularly interested in receiving comments, supported by relevant information, if you believe that a specific geographic area that EPA is proposing to identify as a nonattainment area should not be categorized by the section 107(d) criteria as nonattainment, or if you believe that a specific area not proposed by EPA to be identified as a nonattainment area should in fact be categorized as nonattainment using the section 107(d) criteria. Please be as specific a possible in supporting your views.

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

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

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

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

III. Internet Web Site for EPA's State and Tribal Designations Recommendations and Rulemaking Information

The EPA has also established a Web Site for this rulemaking at *http://www.epa.gov/leaddesignations.* The Web Site includes EPA's state and tribal designation recommendations, information supporting EPA's preliminary designation decisions, as well as the rulemaking actions and other related information that the public may find useful.

Dated: June 30, 2010.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–16700 Filed 7–7–10; 8:45 am]

BILLING CODE 6560–50–P

[1] States have their own public comment period before sending EPA their recommendations; therefore, states may ask for comment on their designation recommendation before sending it to EPA.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9172–5]

Notice of Open Meeting of the Environmental Financial Advisory Board (EFAB)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting on August 9–10, 2010. EFAB is an EPA advisory committee chartered under the Federal Advisory Committee Act (FACA) to provide advice and recommendations to EPA on creative approaches to funding environmental programs, projects, and activities.

A meeting of the full board will be held to discuss progress with work products under EFAB's current Strategic Action Agenda and develop an action agenda to direct the Board's ongoing and new activities through FY 2011.

Environmental Finance topics expected to be discussed include: Financial Assurance: Cost Estimation; Financing EcoDistricts; State Revolving Fund Investment Options; and Investments in Clean Technology.

This meeting is open to the public, however, seating is limited. All members of the public who wish to attend the meeting must register in advance, no later than Monday, July 30, 2010.

DATES: Full Board Meeting is scheduled for August 9, 2010 from 1 p.m.–5 p.m. and August 10, 2010 from 8:30 a.m.–5 p.m.

ADDRESS: Parc 55 Hotel Wyndham, 55 Cyril Magnin Street, San Francisco, CA 94102.

REGISTRATION AND INFORMATION CONTACT: To register for this meeting or get further information, please contact Sandra Williams, U.S. EPA, at (202) 564–4999 or *williams.sandra@epa.gov.* For information on access or services for individuals with disabilities, please contact Sandra Williams. To request

accommodations for a disability, contact Sandra Keys at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: June 22, 2010.

Joshua Baylson,

Associate Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. 2010–16627 Filed 7–7–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

July 1, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 9, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward–pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information or copies of the information collection(s), contact Judith B. Herman, OMD, 202–418–0214 or email judith–b.herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1136.

Title: Spectrum Dashboard Customer Feedback.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for–profit, not–for–profit institutions, Federal Government, and state, local or tribal government.

Number of Respondents and Responses: 300 respondents; 300 responses.

Estimated Time per Response: .05 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. There is no statutory authority for this information collection.

Total Annual Burden: 15 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: Yes. The Commission has a Privacy Policy that covers those who access the FCC's web pages, at: <http://www.fcc.gov/fccprivacypolicy.html>. There is also a system of records, FCC/OMD–20, "Inter–office and Remote Access Internet E–mail Systems," which was published in the Federal Register on April 5, 2006 (65 FR 17234, 17265) and a Privacy Impact Assessment at: <http://www.fcc.gov/omd/privacyact/System_of_recors/pia–email.pdf> to cover the collection of IP addresses of those who access FCC web pages.

Nature and Extent of Confidentiality: No personally identifiable information will be obtained as part of this information collection, except the collection of IP addresses when an individual or other entity accesses the FCC's web pages.

Needs and Uses: The Commission sought and obtained emergency OMB approval for this information collection in March 2010. Emergency OMB approvals are only granted for six months. This collection is due to expire in September 2010. Therefore, the Commission is now ready to submit this collection for the regular OMB clearance. The Commission is requesting an extension (no change in the reporting requirement). The Commission has reduced the total annual burden for this collection by 1,085 hours due to 21,700 fewer respondents.

As part of the Commission's Broadband Plan, the FCC has created the Spectrum Dashboard, a database of the frequency bands from 225 MHz – 3.7 GHz available for non–federal uses, including for broadband deployment across the nation. The Spectrum Dashboard also makes information transparent and readily available to interested stakeholders (e.g., service providers, manufacturers, innovators, investors, etc.) to better enable them to gain access to spectrum and to help them assist the Commission in our spectrum policy decisions. The increased accessibility to spectrum and licensing information made possible by the Spectrum Dashboard is particularly valuable at this time as multiple stakeholders search for ways to participate in the deployment of wireless broadband throughout the nation.

The purpose of this collection is to enable individuals and others to voluntarily provide feedback on their experience with the Spectrum Dashboard. This collection will provide the Commission with unique data on how stakeholders are using the Spectrum Dashboard database and what improvements or enhancements they would like to see in future versions of the Spectrum Dashboard.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–16583 Filed 7–7–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. 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 instruments 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.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before September 7, 2010.

ADDRESSES: You may submit comments, identified by Reg H–3, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the OMB control number in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869).

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H.

Agency form number: Reg H–3.

OMB control number: 7100–0196.

Frequency: On occasion.

Reporters: State member banks.

Estimated annual reporting hours: 97,279 hours.

Estimated average hours per response: State member banks (*de novo*): recordkeeping, 40 hours. State member banks *with* trust departments: Recordkeeping, 2 hours; disclosure, 16 hours. State member banks *without* trust departments: Recordkeeping, 15 minutes; disclosure, 5 hours.

Number of respondents: 3 new State member banks (*de novo*), 224 State member banks *with* trust departments and State member trust companies, and 621 State member banks *without* trust departments.

General description of report: This information collection is mandatory pursuant the Federal Deposit Insurance Corporation Act (12 U.S.C. 325), which authorizes the Federal Reserve to require recordkeeping, disclosure and policy establishment requirements associated with Sections 208.34(c), (d), and (g) of Regulation H, and 15 U.S.C. 78w. If the records maintained by State member banks come into the possession of the Federal Reserve, they are given confidential treatment (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)) under the Freedom of Information Act.

Abstract: The Federal Reserve's Regulation H requires State member banks to maintain records for three years following a securities transaction. These requirements are necessary to protect the customer, to avoid or settle customer disputes, and to protect the institution against potential liability arising under the anti-fraud and insider trading provisions of the Securities Exchange Act of 1934.

Board of Governors of the Federal Reserve System, July 2, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–16619 Filed 7–7–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 22, 2010.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. John Kim Chuy Ng, San Juan, Philippines; to acquire voting shares of Oceanic Holding (BVI) Limited, Tortola, British Virgin Islands, and thereby indirectly acquire voting shares of Oceanic Bank Holdings, Inc., and Oceanic Bank, both of San Francisco, California.

Board of Governors of the Federal Reserve System, July 2, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–16616 Filed 7–7–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Harbor Bancorp, Inc., Edenton, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of West Town Savings Bank, Cicero, Illinois.

Board of Governors of the Federal Reserve System, July 2, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–16617 Filed 7–7–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012102.

Title: Hoegh Autoliners/EUKOR African Space Charter Agreement.

Parties: EUKOR Car Carriers, Inc. and Hoegh Autoliners AS.

Filing Parties: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement authorizes the parties to charter space to and from one another on an "as needed or as available" basis in the trades between the U.S. and Africa.

Agreement No.: 012103.

Title: CMA CGM/CSAV Victory Bridge Vessel Sharing Agreement.

Parties: CMA CGM Antilles Guyane and Compania Sud American de Vapores S.A.

Filing Party: Draughn Arbona, Esq.; Associate Counsel & Environmental Officer; CMA CGM (America) LLC; 5701 Lake Wright Drive; Norfolk, VA 23502.

Synopsis: The agreement authorizes the parties to share vessel space in the trade between the U.S. Atlantic and Gulf coast and North Europe and Mexico.

Agreement No.: 201162–006.

Title: NYSA–ILA Assessment Agreement.

Parties: International Longshoremen's Association and New York Shipping Association.

Filing Parties: Donato Caruso, Esq.; The Lambos Firm; 29 Broadway, 9th Floor; New York, NY 10006 and Andre Mazzola, Esq.; Marrinan & Mazzola Mardon, P.C.; 26 Broadway, 17th Floor; New York, NY 10004.

Synopsis: The amendment revises the assessment rate per house container within 260 miles in the Puerto Rico trade.

By Order of the Federal Maritime Commission.

Dated: July 2, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–16662 Filed 7–7–10; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–0636]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta,

GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Centers for Disease Control and Prevention (CDC) Secure Communications Network (Epi–X) (OMB No. 0929–0636 exp. 12/31/2010)—Revision—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The classification of this Information Collection (IC) is a revision of the State-Based Evaluation of the Alert Notification Component of CDC's Secure Communication Network (Epi–X) OMB Control No. 0920–0636.

This IC is being revised to improve the effectiveness of CDC communications with its public health partners during public health incident responses. These partners include public health officials and agencies at the State and local level.

From 2005–2009, CDC conducted incident specific, public health emergency response operations on average of four public health incidents a year with an average emergency response length of 48 days for each incident. The effectiveness and efficiency of CDC's response to any public health incident depends on information at the agency's disposal to characterize and monitor the incident, make timely decisions, and take appropriate actions to prevent or reduce the impact of the incident.

Available information during many public health incident responses is often incomplete, is not easily validated by State and local health authorities, and is sometimes conflicting. This lack of reliable information often creates a high level of uncertainty with potential negative impacts on public health response operations.

Secure communications with CDC's State and local public health partners is essential to de-conflict information, validate incident status, and establish and maintain accurate situation awareness. Reliable, secure communications are essential for the agency to make informed decisions, and to respond in the most appropriate manner possible in order to minimize the impact of an incident on the public health of the United States.

Epi–X is CDC's Web-based communication system for securely communicating during public health emergencies that have multi-jurisdictional impact and implications. *Epi–X* was specifically designed to provide public health decision-makers at the State and local levels a secure, reliable tool for communicating information about sensitive, unusual, or urgent public health incidents to neighboring jurisdictions as well as to CDC. The system was also designed to generate a request for epidemiologic assistance (Epi-Aid) from CDC using a secure, paperless environment.

Epi–X designers have developed functionalities that permit targeting of critical outbreak information to specific public health authorities who can act quickly to prevent the spread of diseases and other emergencies in multi-jurisdictional settings, such as those that could occur during an influenza pandemic, infection of food and water resources, and natural disasters.

CDC has recognized a need to expand the use of *Epi–X* to collect specific response related information during public health emergencies. Authorized Officials from State and local health departments impacted by the public health incident will be surveyed only by *Epi–X.* Respondents will be informed of this data collection first through an *Epi–X* Facilitator, who will work closely with *Epi–X* program staff to ensure that *Epi–X* incident specific IC is understood. The survey instruments will contain specific questions relevant to the current and ongoing public health incident and response activities.

The Web-based tool for data collection under *Epi–X* already is established for the current IC and has been in use since 2003. CDC will adapt it as needed to accommodate the data collection instruments. Respondents will receive the survey instrument as an official CDC e-mail, which is clearly labeled, "*Epi–X* Emergency Public Health Incident Information Request" The e-mail message will be accompanied by a link to an *Epi–X Forum* discussion Web page. Respondents can provide their answers to the survey questions by posting information within the discussion.

There are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
State Epidemiologists	50	100	1	5,000
City and County Health Officials	1,600	12	1	19,200
Total				24,200

Dated: June 30, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–16604 Filed 7–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–09AH]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Improving the Quality and Delivery of CDC's Heart Disease and Stroke Prevention Programs—New—Division for Heart Disease and Stroke Prevention (DHDSP), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Heart disease and stroke are among the most widespread and costly causes of death and disability in the U.S., but are also among the most preventable health problems. In 2006, CDC created the Division of Heart Disease and Stroke Prevention (DHDSP) to provide national leadership for efforts to reduce the burden of disease, disability, and death from heart disease and stroke.

Many heart disease and stroke prevention and control activities are conducted through DHDSP-funded heart disease and stroke prevention programs. The DHDSP's key partners include state and local health departments, public health organizations, community organizations, nonprofit organizations, and professional organizations. The DHDSP supports partners by conducting trainings, providing scientific guidance and technical assistance, and producing scientific information and supporting tools. For example, the DHDSP provides training to States on how to implement and evaluate their programs and provides guidance on how to best apply evidence-based practices. In addition, the DHDSP translates its scientific studies into informational products, such as on-line reports and trend data.

The DHDSP requests OMB approval of a generic clearance to support a variety of information collections needed to assess the relevance, quality and impact of DHDSP trainings, technical assistance, and products. The generic clearance will provide a common framework for many of DHDSP's planning and evaluation activities and enhance DHDSP's ability to coordinate information collection with product releases, professional conferences, and other events. The information to be collected will allow the DHDSP to identify new programmatic opportunities and respond quickly to partners' concerns in a timely manner. Whenever feasible, DHDSP will collect information electronically to reduce burden. Information may also be collected through in-person or telephone interviews or focus groups when web-based surveys are impractical or when in-depth responses are required.

Respondents will be DHDSP's partners in State and local government as well as partner organizations in the private sector. The DHDSP estimates that it will collect information each year from approximately 506 respondents through web-based surveys, approximately 406 respondents through interviews, and approximately 64 respondents through focus groups. No one type of respondent will be asked to participate in more than two surveys, interviews, or focus groups annually. The length of online surveys will be limited to 30 minutes and in-person interviews and focus groups limited to one hour or less.

CDC requests OMB approval of the generic clearance for three years. The initial generic information collection request describes plans to conduct two specific surveys. An additional information collection request, outlining purpose, respondents and methodology, will be submitted to OMB for each subsequent information collection activity.

The information to be collected will be used to determine whether DHDSP activities and products are reaching the intended audiences, whether they are deemed to be useful by those audiences, and whether DHDSP efforts improve public health practice.

There are no costs to respondents other than their time. The total estimated annualized burden hours are 723.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form type	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State and Local Health Departments	Web-based survey	306	1	30/60
	Interview	306	1	1
	Focus group	32	1	1
Private Sector Partners	Web-based survey	200	1	30/60
	Interview	100	1	1
	Focus group	32	1	1

Dated: June 30, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–16602 Filed 7–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–09AL]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

The Green Housing Study: Environmental health impacts on women and children in low-income multifamily housing—New—National Center for Environmental Health (NCEH) and Agency for Toxic Substances and Disease Registry (ATSDR)/Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This study directly supports the Healthy Homes' health protection goal of the Centers for Disease Control and Prevention (CDC). This investigation is also consistent with CDC's Health Protection Research Agenda, which calls for research to identify the major environmental causes of disease and disability and related risk factors.

The efficacy of green building design features in reducing allergens and toxic substances within the home has been assumed based on conventional wisdom. A better understanding is needed of the extent to which green-built, low-income housing actually reduces exposures to these compounds when compared to standard-built, low-income housing. In addition, this study may provide insight into how specific green building practices (e.g., use of low chemical-emitting paints and carpets) may influence levels of substances in the home (such as volatile organic compounds (VOCs). A study investigating these topics would provide a solid foundation upon which to explore green affordable housing's potential to promote healthy homes principles.

The title of this study has changed since publication of the initial 60-day **Federal Register** Notice (FRN); however, the goals remain the same. These goals will be accomplished in ongoing building renovation programs sponsored by the Department of Housing and Urban Development (HUD). In partnership with HUD, the CDC will leverage opportunities to collect survey and biomarker data from residents and to collect environmental measurements in homes in order to evaluate associations between green housing and health.

Participants will include pregnant women and children living in HUD-subsidized housing that has either been rehabilitated in a green (*e.g.,* case) or a traditional manner (*e.g.,* control) from study sites across the United States. The following are eligible for the study: (1) 688 children (age 7–12 years with asthma); (2) 688 children (less than or equal to 6 years); (3) 688 pregnant women; and (4) 688 mothers of the children enrolled. Pregnant women and children with asthma (ages 7–12 years) will donate blood samples (for assessment of allergy) and urine samples (for assessment of pesticide and VOC exposures). The children with asthma (ages 7–12 years) will be also tested for lung function and lung inflammatory markers. The length of follow-up is one year. Questionnaires regarding home characteristics and respiratory symptoms will be administered at 6-month intervals. Environmental sampling of the air and dust in the participants' homes will be conducted over a 1-year period (once in the home before rehabilitation (baseline I), and then at three time points after rehabilitation has been completed: Baseline II, 6 months, and 12 months). Environmental sampling includes measurements of air exchange rate, pesticides, VOCs, indoor allergens, fungi, temperature, humidity, and particulate matter.

Approximately 1,600 adults (800 mothers and 800 pregnant women) will complete the screening forms. We assume after screening, some women will not be eligible (an estimate of roughly 15%). With an anticipated loss to follow-up in our study of 20%, we will recruit 688 asthmatic children (age 7–12 years) and their mothers. We will also recruit 688 pregnant women. In addition, children age 0–6 years could also be enrolled if a household already has an enrolled participant. In summary, expected overall response rate could range from 69%–86% for each of the eligible types of women participating in the study from screening through the end of data collection. The number and type of respondents that will complete the questionnaires are as follows: (1) 688 mothers of enrolled children—from ages 0–6 yrs and/or children with asthma (ages 7–12 years) and (2) 688 pregnant women—with or without eligible children. All health and environmental exposure information about children will be provided by their mothers (*i.e.,* no children will fill out questionnaires). Children ages 0–6 years are only recruited if their enrolled mother is pregnant or their mother also has an enrolled child with asthma between the ages 7–12 years. The total estimated annual burden hours equals 3,878.

There is no cost to the respondents other than their time to participate in the study.

ESTIMATED ANNUALIZED BURDEN HOURS

Forms	Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Screening Questionnaire	Mothers of enrolled children/Pregnant Women.	1,600	1	10/60
Baseline Questionnaire (Home Characteristics)	Mothers of enrolled children/Pregnant Women.	1,376	1	15/60
Baseline Questionnaire (for Mother or Pregnant Women).	Mothers of enrolled children/Pregnant Women.	1,376	1	15/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Forms	Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Baseline Questionnaire (for Children with asthma 7–12 years).	Mothers of enrolled children.	688	1	15/60
Baseline Questionnaire (for Children 0–6 years)	Mothers of enrolled children.	688	1	15/60
3- and 9-month Phone contact	Mothers of enrolled children/Pregnant Women.	1,376	2	5/60
6- and 12-month Follow-up Questionnaire (for environment).	Mothers of enrolled children/Pregnant Women.	1,376	2	10/60
6- and 12-month Follow-up Questionnaire (for women)	Mothers of enrolled children/Pregnant Women.	1,376	2	10/60
6- and 12-month Follow-up Questionnaire (for Children with asthma 7–12 years).	Mothers of enrolled children.	688	2	10/60
6- and 12-month Follow-up Questionnaire (for children 0–6).	Mothers of enrolled children.	688	2	10/60
Time/Activity form (for Children with asthma 7–12 years).	Mothers of enrolled children.	688	4	5/60
Time/Activity form (for Children 0–6 years)	Mothers of enrolled children.	688	4	5/60
Time/Activity form (for Pregnant women or mothers)	Mothers of enrolled children/Pregnant Women.	1,376	4	5/60
Post-delivery questionnaire	Pregnant Women	688	1	5/60

Dated: June 30, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–16601 Filed 7–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0434]

Guidance for Humanitarian Device Exemption Holders, Institutional Review Boards, Clinical Investigators, and Food and Drug Administration Staff; Humanitarian Device Exemption Regulation; Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Humanitarian Device Exemption (HDE) Regulation: Questions and Answers." This guidance answers commonly asked questions about Humanitarian Use Devices (HUDs) and applications for HDEs.

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 guidance document entitled "Humanitarian Device Exemption (HDE) Regulation: Questions and Answers" to the Division of Small Manufacturers, International, and Consumer Assistance (DSMICA), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg.66, rm. 4613, Silver Spring, MD 20993–0002 or to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to CDRH at 301–847–8149. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the 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: Sheila Brown, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1651, Silver Spring, MD 20993–0002, 301–796–6563, or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance answers commonly asked questions about HUDs and applications for HDE authorized by section 510(m)(2) of the Federal Food, Drug and Cosmetic Act (the act) (21 U.S.C. 360(m)(2)). This update of the version issued in 2006 reflects additional requirements set forth in the Pediatric Medical Device Safety and Improvement Act of 2007 (Public Law 110–85). The Pediatric Medical Device Safety and Improvement Act of 2007 includes a provision requiring that all original HDE applications include both a description of any pediatric subpopulations that suffer from the disease or condition that the device is intended to treat, diagnose, or cure, and the number of affected pediatric patients (new section 515A(a)(2) of the act). It also amends section 520(m) of the act to exempt some HUDs from the prohibition on profit (new section 520(m)(6) of the act). Specifically, HDE applications indicated for use in pediatric patients that are approved on or after September 27, 2007, may be assigned an annual distribution number (ADN) and be sold for profit, subject to certain restrictions. Finally, the Pediatric Medical Device Safety and Improvement Act of 2007 includes a provision requiring that the agency provide guidance to Institutional Review Boards (IRBs) on the review of HUDs. This update of the HDE guidance

includes 29 specific questions and answers for IRBs as well as guidance to HDE holders on whether and how they may become eligible to receive profit from the sale of their device. In the **Federal Register** of August 5, 2008 (73 FR 45460), FDA published a 60-day notice requesting public comment. The comment period closed on November 3, 2008. FDA published a 30-day notice on September 30, 2009 (74 FR 50214), but republished a 30-day notice on February 18, 2010 (75 FR 7270), to provide a more descriptive response to the comments received in response to the August 5, 2008, notice. This document supersedes: Humanitarian Device Exemption (HDE) Regulation: Questions and Answers, issued July 18, 2006.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the "HDE Regulation: Questions and Answers." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. To receive "HDE Regulation: Questions and Answers," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1668 to identify the guidance you are requesting. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov* or the CBER Internet site at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control number 0910–0661, May 31, 2013, expiration date.

V. 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.

Dated: July 1, 2010.

Nancy Stade,

Acting Associate Director for Regulations and Policy, Center for Devices and Radiological Health.

[FR Doc. 2010–16548 Filed 7–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public, in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel: Therapeutic Application of Dyrk1A Inhibitors for Down Syndrome.

Date: July 26, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01G, Bethesda, MD 20892–7510, (301) 435–6889, *ravindrn@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: June 30, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16472 Filed 7–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Health Resources and Services Administration

CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC and HRSA announce the following committee meeting.

Time and Date: 2 p.m.–3:30 p.m., July 29, 2010.

Place: Teleconference. To participate, please dial (877) 952–1988 and enter passcode 2162797 for access.

Status: Open to the public, limited only by availability of telephone ports.

Purpose: This Committee is charged with advising the Director, CDC and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health professionals and the public about HIV/AIDS and other STDs.

Matters To Be Discussed: The purpose of the teleconference is for CHACHSPT to deliberate and discuss the outcomes of a CDC/HRSA Advisory Committee workgroup that will convene on July 8, 2010. The workgroup will conduct a program review to provide information to CHACHSPT on the strategic realignment of funding to support priorities in sexual health and STD disparities among racial and ethnic minorities. The objectives of the workgroup are: (1) To identify to CHACHSPT future opportunities to accelerate the impact in health disparities through programs, policy, and research and public health ethics; (2) To provide information to CHACHSPT regarding potential use of realigned funding; and, (3) To provide key principles (e.g., program, policy, research) to be considered by CHACHSPT in the development of a new funding opportunity announcement for the use of realigned resources.

For More Information Contact: Margie Scott-Cseh, CDC, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB

Prevention, 1600 Clifton Road, NE., Mailstop E–07, Atlanta, Georgia 30333, Telephone (404) 639–8317.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register Notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 30, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–16613 Filed 7–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, Announces the Following Meeting

Name: ICD–9–CM Coordination and Maintenance Committee meeting.

Time and Date: 9 a.m.–4:30 p.m., September 15–16, 2010.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its second meeting of the 2010 calendar year cycle on Wednesday and Thursday September 15–16, 2010. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification.

Matters To Be Discussed

Section 10109(c) of the Patient Protection and Affordable Care Act and the Reconciliation Act of 2010 (PPACA) requires the Secretary of Health and Human Services (HHS) to task the C&M Committee to convene a meeting before January 1, 2011, to receive stakeholder input regarding the crosswalk between the Ninth and Tenth Revisions of the International Classification of Diseases (ICD–9, and ICD–10, respectively), posted to the CMS Web site at *http://www.cms.gov/ICD10,* for the purpose of making appropriate revisions to said crosswalk. Section 10109(c) further states that any revised crosswalk be treated as a code set for which a standard has been adopted by the Secretary, and that revisions to this crosswalk be posted to the CMS Web site.

The C&M Committee will use the first half of the first day of the September C&M Committee meeting, 9 a.m. to 12:30 p.m. Wednesday, September 15, 2010, to fulfill the above-referenced PPACA requirements for this meeting to be held prior to January 1, 2011, and receive public input regarding the above-referenced crosswalk revision. No other meeting will be convened by the C&M Committee for this purpose. Interested parties and stakeholders should be prepared to submit their written comments and other relevant documentation at the meeting, or no later than November 12, 2010 to the following addresses:

Pat Brooks, RHIA, Senior Technical Advisor, Centers for Medicare & Medical Services, Hospital and Ambulatory Policy Group, Mail Stop C4–08–06, 7500 Security Boulevard, Baltimore, MD 21244–1850. *Patricia.brooks2@cms.hhs.gov.*

Donna Pickett, RHIA, MPH, Medical Systems Administrator, National Center for Health Statistics, Centers for Disease Control and Prevention, Classifications and Public Health Data Standards, 3311 Toledo Road, Room 2337, Hyattsville, MD 20782. *DPickett@cdc.gov.*

Additional Information: Additional information regarding the tentative diagnosis and procedures topics will be published in a separate notice one month prior to the meeting.

Notice: Because of increased security requirements CMS has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show an official form of picture I.D., (such as a drivers license), and sign-in at the security desk upon entering the building.

Those who wish to attend a specific ICD–9–CM C&M meeting in the CMS auditorium must submit their name and organization for addition to the meeting visitor list. Those wishing to attend the September 15–16, 2010 meeting must submit their name and organization by September 10, 2010 for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting. Those who attended previous ICD–9–CM C&M meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you attend. Register to attend the meeting on-line at: *http://www.cms.hhs.gov/apps/events/.*

Notice: This is a public meeting, however, due to fire code requirements seating may be limited.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 30, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–16610 Filed 7–7–10; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Request for Nominations of Candidates To Serve on the Board of Scientific Counselors (BSC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS)

The NCEH/ATSDR is soliciting nominations for possible membership on the BSC. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agencies' mission to protect and promote people's health. The Board provides advice and guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the Board's objectives. Nominees will be selected from experts having experience in preventing human diseases and disabilities caused by environmental conditions. Experts in the disciplines of toxicology, epidemiology, environmental or occupational medicine, behavioral science, risk assessment, exposure assessment, and experts in public health and other related disciplines will be considered. Consideration is given to representation from diverse geographic areas, gender, ethnic and minority groups, and the disabled. Members may be invited to

serve up to four-year terms. Nominees must be U.S. citizens.

The following information must be submitted for each candidate: Name, affiliation, address, telephone number, and current curriculum vitae. E-mail addresses are requested if available.

Nominations should be sent, in writing, and postmarked by November 30, 2010 to: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, CDC, 4770 Buford Highway (MS–F61), Chamblee, Georgia 30341. (E-mail address: *sym6@CDC.GOV*). Telephone and facsimile submissions cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

Dated: June 28, 2010.

Elaine Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–16608 Filed 7–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0058]

National Protection and Programs Directorate; National Infrastructure Advisory Council

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of Federal Advisory Council Meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, July 13, 2010, at the National Press Club's Ballroom, 529 14th Street, NW., Washington, DC 20045.

DATES: The NIAC will meet Tuesday, July 13, 2010, from 1:30 p.m. to 4:30 p.m. Please note that the meeting may close early if the committee has completed its business. For additional information, please consult the NIAC Web site, *http://www.dhs.gov/niac*, or contact the NIAC Secretariat by phone at 703–235–2888 or by e-mail at *NIAC@dhs.gov.*

ADDRESSES: The meeting will be held at the National Press Club's Ballroom, 529 14th Street, NW., Washington, DC 20045. While we will be unable to accommodate oral comments from the public, written comments may be sent to Nancy J. Wong, Department of Homeland Security, National Protection and Programs Directorate, 245 Murray Lane, SW., Mail Stop 0607, Arlington, VA 20598–0607. Written comments should reach the contact person listed no later than July 12, 2010. Comments must be identified by DHS–2010–0058 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: NIAC@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 703–603–5098.
- *Mail:* Nancy J. Wong, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, SW., Mail Stop 0607, Arlington, VA 20598–0607.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NIAC, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Wong, National Infrastructure Advisory Council Designated Federal Officer, Department of Homeland Security, telephone 703–235–2888.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The NIAC shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

Pursuant to 41 CFR 102–3.150(b), this notice was published late as a result of exceptional circumstances. An administrative processing error prevented earlier publication, and the Department determined that it would be impracticable to reschedule the substantive activity scheduled for this meeting. In order to allow the greatest possible public participation, the Department has extended the usual deadline for public participants to submit written comments. As noted above, that date is July 12, 2010.

The NIAC will meet to address issues relevant to the protection of critical infrastructure as directed by the President. At this meeting, the committee will receive work from two NIAC working groups to review, deliberate on, and provide further direction to the working groups.

The meeting agenda is as follows:

I. Opening of Meeting
II. Roll Call of Members
III. Opening Remarks and Introductions
IV. Approval of April 13, 2010 Minutes
V. Working Group Status: *A Framework for Establishing Critical Infrastructure Resilience Goals*
VI. Working Group Status: *Optimization of Resources for Mitigating Infrastructure Disruptions*
VII. New Business
VIII. Closing Remarks
IX. Adjournment

Procedural

While this meeting is open to the public, participation in the National Infrastructure Advisory Council deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the NIAC Secretariat at 703–235–2888 as soon as possible.

Signed: July 1, 2010.

Nancy J. Wong,

Designated Federal Officer for the NIAC.

[FR Doc. 2010–16713 Filed 7–7–10; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2009–0112]

Privacy Act of 1974; Department of Homeland Security/ALL–029 Civil Rights and Civil Liberties Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a Department of Homeland Security system of records titled, "Department of Homeland Security Office for Civil Rights and Civil Liberties–001 Matters System of Records," January 6, 2004. The system name is being changed to, "Department of Homeland Security/ALL–029 Civil Rights and Civil Liberties Records

System of Records." This name change, along with other changes to the system, are made to capture the expansion of the overall system of records to include both the Department Office for Civil Rights and Civil Liberties, as well as all component offices that perform civil rights and civil liberties functions, and staff of components who do not have a designated civil rights and civil liberties office but who do perform related civil rights and civil liberties functions (collectively referred to as "civil rights and civil liberties staff"). The Department's civil rights and civil liberties staff advise Departmental and/or component leadership, personnel, and partners about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions and implementation of those decisions. Civil rights and civil liberties staff also review and assess information concerning abuses of civil rights, civil liberties, such as profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department of Homeland Security. The Department's civil rights and civil liberties staff also ensure that all Federally-assisted and Federally-conducted programs or activities of the Department comply with the provisions of Title VI of the Civil Rights Act of 1964. The Department's civil rights and civil liberties staff investigate complaints, including: Allegations that individuals acted under color of law or otherwise abused their authority; discrimination; profiling; violations of the confidentiality provisions of the Violence Against Women Act; conditions of detention; treatment; due process; and watch list issues.

As a result of the biennial review of this system, updates have been made to change the system name to "Department of Homeland Security/ALL–029 Civil Rights and Civil Liberties Records System of Records" to reflect that the system is a Department-wide system of records, as well as updates to the: Categories of records; routine uses; retention and disposal; and Privacy Act exemptions.

Exclusion is made from this system for Office of Inspector General records relating to civil rights and civil liberties. Office of Inspector General records are covered by Department of Homeland Security/Office of Inspector General–002 Investigative Records System of Records, October 28, 2009.

This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before August 9, 2010. This new system will be effective August 9, 2010.

ADDRESSES: You may submit comments, identified by docket number [DHS–2009–0112] by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: For Headquarters: Complaints Manager (202–357–8178), Office for Civil Rights and Civil Liberties, Department of Homeland Security, 1201 New York Avenue, NW., Washington, DC 20528. For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under "contacts." For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Homeland Security's (DHS) civil rights and civil liberties staff, including components, as well as staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions (civil rights and civil liberties staff), rely on the DHS/Civil Rights and Civil Liberties (CRCL)–001 Matters System of Records (69 FR 70464, December 6, 2004) and other component specific systems of records, for the collection and maintenance of records that concern the Department's civil rights and civil liberties records. The system name is being changed to "DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records" to reflect that the system is a Department-wide system of records and that all DHS civil rights and civil liberties records will now be covered by the DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records. This name change, along with other changes to the system, are made to capture the expansion of the overall system of records including the Department's CRCL Office, as well as component civil rights and civil liberties staff, staff of components who do not have a designated civil rights and civil liberties office but who do perform related functions, and to meet investigative and reporting responsibilities related to civil rights and civil liberties. The DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records is the baseline system for civil rights and civil liberties activities, as led by the DHS Officer for Civil Rights and Civil Liberties, for the Department.

Civil rights and civil liberties complaints are initially reviewed to determine if the Department has jurisdiction over the alleged complaint. If the Department has jurisdiction and accepts the complaint, basic information about the case is maintained and processed within the DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records. Information in this system may include, but is not limited to: Name; Social Security number or other identifier; address; phone number; alien registration number and other identifying data as may be necessary to review the complaint. If the complainant provides more personally identifiable information (PII) than is necessary, the information is not captured, but may remain in the paper file as information provided by the complainant.

Civil rights and civil liberties records may be referred to the Office of Inspector General (OIG) for handling under the Inspector General Act of 1978, as amended. The OIG decides whether it will pursue the case, or decline to investigate it and refer it back to CRCL or component civil rights and civil liberties office, staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions, for appropriate action. Any resulting OIG records are excluded from this system and are part of the DHS/OIG–002 Investigative Records System of Records (74 FR 55569, October 28, 2009).

The data collected in component civil rights and civil liberties offices or by staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions, are part of this system of records and are managed on a component by component basis and may or may not be reviewed or maintained by the CRCL Office. Component civil rights and civil liberties offices, and staff of components

who do not have a designated civil rights and civil liberties office, but who do perform related functions, may consult and advise the CRCL Office on civil rights and civil liberties issues within the component, but are handled at the component level unless formally elevated to the CRCL Office.

The purpose of this system is to allow the DHS Officer for Civil Rights and Civil Liberties, component civil rights and civil liberties staff, and staff of components who do not have a designated civil rights and civil liberties office but who do perform related functions, to maintain relevant information necessary to review complaints or comments about alleged civil rights or civil liberties violations, or racial, ethnic, or religious profiling related to the Department's activities. The system will also track and maintain investigative files and records of complaint resolution and other issues, and facilitate oversight and accountability of the Department's civil rights and civil liberties complaint resolution mechanisms. DHS is authorized to implement this program primarily through 6 U.S.C. 345; 5 U.S.C. 301; 49 U.S.C. 114; 44 U.S.C. 3101; section 803 of Public Law 110–53; E.O. 12958, as amended. This system has an effect on individual privacy that is balanced by the need to address civil rights and civil liberties issues and matters within the Department. Risk is mitigated by limiting access to civil rights and civil liberties staff and other officials who need the information in the course of performing their duties. Routine uses contained in this notice include sharing with the Department of Justice (DOJ) for legal advice and representation; to a congressional office at the request of an individual; to the National Archives and Records Administration (NARA) for records management; to contractors in support of their contract assignment to DHS; to Federal, State, local and other governmental partners to enforce and prosecute laws and regulations; to agencies, organizations or individuals for the purpose of audit; to agencies, entities, or persons during a security or information compromise or risk, to another Federal agency for labor and employment relations; to an agency, organization, or individual when there could potentially be a risk to an individual; to former employees of the Department while responding to inquiries; to the Office of Management and Budget (OMB), DOJ or other agencies for advice; to other agencies or organizations for redress; to the Department of Transportation (DOT) and its operating administrations for Transportation Security Administration (TSA) records and functions; and to the news media in the interest of the public. A review of this system is being conducted to determine if the system of records collects information under the Paperwork Reduction Act.

As a result of the biennial review of this system, updates have been made to change the system name to "Department of Homeland Security/ALL–029 Civil Rights and Civil Liberties Records System of Records" to reflect that the system is a Department-wide system of records; categories of records to reflect the addition of Social Security number; routine uses to reflect the addition of sharing with the DOT for legacy TSA records; retention and disposal to reflect the NARA retention and disposal policy and description; and the addition of exemption (k)(3) under the Privacy Act to include records at the U.S. Secret Service in conjunction with the protection of the President of the United States.

Exclusion is made from this system for Office of Inspector General records relating to civil rights and civil liberties. Office of Inspector General records are covered by DHS/OIG–002 Investigative Records System of Records, October 28, 2009.

This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ALL–029 Civil Rights and Civil Liberties Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to OMB and to Congress.

System of Records

DHS/ALL–029

SYSTEM NAME:

Department of Homeland Security/ALL–029 Civil Rights and Civil Liberties Records System of Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive, and classified.

SYSTEM LOCATION:

Records are maintained at the Department Office for Civil Rights and Civil Liberties (CRCL), component civil rights and civil liberties offices, and within offices of a component that does not have a designated civil rights and civil liberties office, but these functions are dispersed within other offices of the component, in Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

Persons who contact the CRCL or component civil rights and civil liberties staff, to allege abuses of civil rights and civil liberties, or to allege racial, ethnic, or religious profiling by DHS, its employees, contractors, grantees, or others acting under the authority of the Department; persons alleged to be involved in civil rights or civil liberties abuses or racial, ethnic, or religious profiling, victims or witnesses to such abuse; third parties not directly involved in the alleged incident, but identified as relevant persons to an investigation; and DHS employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include:

Information relating to allegations of abuses of civil rights, civil liberties, and racial, ethnic, and religious profiling by

Department employees and officials will be collected, as well as similar allegations relating to persons or entities under Department control (such as contractors or programs). Basic information about complainants will be collected, including, but not limited to:

- Complainant's name;
- Complainant's home and work mailing address;
- Complainant's home, cell and work telephone and fax numbers;
- Complainant's home and work e-mail address;
- Complainant's social security number or alien registration number, if necessary and appropriate;
- Name of representative filing a claim on behalf of a complainant;
- Allegation occurrence date and time;
- Allegation facility name and location;
- DHS component referenced;
- Information on a complainant's country of origin/race/religion (CRCL does not solicit this information, it is tracked if individuals provide it);
- Allegation details, primary and secondary issues, and primary and secondary basis;
- Other information that may appear in the system or in the file folder on a case-by-case basis might include:
  - Photographic facial images;
  - Bank account numbers;
  - Vehicle license plate information; and
  - Civil or criminal history information.
- Paper investigative files and documents depending on the particular investigation, but may include:
  - Letters, memoranda, and other documents alleging abuses of civil rights, civil liberties, and profiling from complainants;
  - Internal letters, memoranda, and other communications within DHS;
  - Results of an investigation of allegations;
  - Transcripts, interview notes, investigative notes;
  - Documentation concerning requests for additional information needed to complete the investigation;
  - Medical records;
  - Copy of passport;
  - Evidentiary documents and material, comments, and reports relating to the alleged abuses and to the resolution of the complaint; and
  - Similar information regarding witnesses, persons involved in the alleged incident, or any other persons with relevant information regarding the alleged abuses may also be collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

6 U.S.C. 345; 5 U.S.C. 301; 49 U.S.C. 114; 44 U.S.C. 3101; section 803 of Public Law 110–53; E.O. 12958, as amended.

PURPOSE(S):

The purpose of this system is to allow CRCL, component civil rights and civil liberties staff, and staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions, to maintain relevant information necessary to review complaints or comments about alleged civil rights or civil liberties violations, including racial, ethnic, or religious profiling related to the Department's activities. The system will also track and maintain investigative files and records of complaint resolution and other issues, and facilitate oversight and accountability of the Department's civil rights and civil liberties complaint resolution mechanisms.

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, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), (including United States Attorney Offices, or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;
2. Any employee of DHS in his/her official capacity;
3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or
4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;
2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that rely upon the compromised information; and
3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use is subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To another Federal agency with responsibility for labor or employment relations or other issues, including Equal Employment Opportunity issues, when that agency has jurisdiction over issues reported to CRCL, or component civil rights and civil liberties staff, and staff of components who do not have a designated civil rights and civil liberties office, but who do perform related functions.

I. To an organization or individual in either the public or private sector, either foreign or domestic, where there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life or property.

J. To a former employee of the Department for purposes of responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To the Office of Management and Budget (OMB), the DOJ, or the Office of Special Counsel (OSC), to obtain advice regarding statutory and other requirements related to civil rights and civil liberties.

L. To a Federal, State, territorial, Tribal, local, international, or foreign government agency or entity for the purpose of consulting with that agency or entity: 1. To assist in making a determination regarding redress for an individual in connection with the operations of a DHS component or program; 2. for the purpose of verifying the identity of an individual seeking redress in connection with the operations of a DHS component or program; or 3. for the purpose of verifying the accuracy of information submitted by an individual who has requested such redress on behalf of another individual.

M. To a Federal agency or entity that furnished a record or information for the purpose of permitting that agency or entity to make a decision regarding access to or correction of the record or information or to a Federal agency or entity that has information relevant to the redress request for purposes of obtaining guidance, additional information, or advice from such Federal agency or entity regarding the handling of this particular redress request.

N. To third parties lawfully authorized in connection with a Federal government program, which is authorized by law, regulation, or rule, but only the information necessary and relevant to effectuate or to carry out a particular redress result for an individual and disclosure is appropriate to enable these third parties to carry out their responsibilities related to the Federal government program, such as when the name and appropriate associated information about an individual who has been cleared and distinguished from a known or suspected threat to aviation security, is shared with the airlines to prevent future delays and disruptions for that individual while traveling.

O. To the Department of Transportation (DOT) and its operating administrations when relevant or necessary to (1) ensure safety and security in any mode of transportation; (2) enforce safety- and security-related regulations and requirements; (3) assess and distribute intelligence or law enforcement information related to transportation security; (4) assess and respond to threats to transportation; (5) oversee the implementation and ensure the adequacy of security measures at airports and other transportation facilities; (6) plan and coordinate any actions or activities that may affect transportation safety and security or the operations of transportation operators; or (7) the issuance, maintenance, or renewal of a license, certificate, contract, grant, or other benefit.

P. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records may be retrieved by name, incident code, social security number or other unique personal identifier.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Referred issues are sent to DHS components for resolution. Components will maintain the record copy in accordance with the component's related record disposition schedule. CRCL will maintain a reference copy containing the original complaint, all related and relevant documents, and the component's memorandum of resolution in accordance with records schedule N1–563–07–6, b.1 and will destroy or delete seven years after resolution or closure of the case.

Retained issues are either maintained by CRCL because of the significance of the issue, which may result in policy change, or issues retuned from the component for resolution in accordance with N1–563–07–6, b.2 and will destroy or delete seventy-five years after resolution or closure of the case.

Significant case files involve allegations made against senior DHS officials; attract national media or congressional attention; present significant or novel questions of law or policy; and result in substantive changes in DHS policies and procedures. Significant case files will be selected by the Headquarters and component civil rights and civil liberties offices based on these criteria. In accordance with N1–563–07–6, b.3 records are maintained through the end of fiscal year in which the significant case file is closed. Records are transferred to NARA five years after the case is closed according to NARA transfer guidance and regulations.

SYSTEM MANAGER AND ADDRESS:

For DHS: Complaints Manager (202–357–8178), Office for Civil Rights and Civil Liberties, Department of Homeland Security, 1201 New York Avenue, NW., Washington DC 20528.

For components of DHS, the System Manager can be found at *http://www.dhs.gov/foia* under "contacts."

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it

is a law enforcement system. However, CRCL, component civil rights and civil liberties offices, and staff of components who do not have a designated civil rights and civil liberties office but who do perform related functions, will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the CRCL FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts." If an individual believes more than one component maintains Privacy Act records concerning him or her the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive, SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information is collected from individuals who file complaints, eyewitnesses, third parties, DHS employees and/or contractors, illegal aliens involved in the circumstances that gave rise to the complaint, open sources such as non-fee Internet sources and newspapers, and other entities with information pertinent to the matter under investigation. The information is received via correspondence, telephone calls, e-mails, and facsimiles.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security proposes to exempt certain portions of this system relating to ongoing investigations and national security activities from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5).

Dated: June 30, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–16569 Filed 7–7–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–694, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–694, Notice of Appeal of Decision Under Section 210 or 245A of the Immigration and Nationality Act; OMB Control No. 1615–0034.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 22, 2010, at 75 FR 21014, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 9, 2010. This process is conducted in accordance with 5 CFR 1320.10.

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 Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0034 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Notice of Appeal of Decision Under Section 210 or 254A of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–694; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* This information collection will be used by USCIS in considering appeals of denials or termination of temporary and permanent residence status by legalization applicants and special agricultural workers, under sections 210 and 245A of the Immigration and Nationality Act, and related applications for waiver of grounds of inadmissibility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,192 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 596 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210; Telephone 202–272–8377.

Dated: July 1, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–16525 Filed 7–7–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0117

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information for 30 CFR part 778—Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by August 9, 2010, in order to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OIRA_Docketomb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0117 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John A. Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to approve the collection of information for 30 CFR part 778—Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is displayed in 30 CFR 778.8 (1029–0117).

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on March 30, 2010 (75 FR 15717). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR part 778—Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.

OMB Control Number: 1029–0117.

Summary: Section 507(b) of Public Law 95–87 provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property affected, their compliance status and history. This information is used to insure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 2,554.

Total Annual Burden Hours: 7,623.

Send comments on the agency need for the collection of information to perform its mission; the accuracy of our burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the offices listed in the **ADDRESSES** section. Please refer to OMB control number 1029–0117 in all correspondence.

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.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 2010–16464 Filed 7–7–10; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Call for Nominations to the National Geospatial Advisory Committee

AGENCY: U.S. Geological Survey, Interior.

ACTION: Call for Nominations, National Geospatial Advisory Committee.

SUMMARY: The Department of the Interior is seeking nominations to serve on the National Geospatial Advisory Committee (NGAC). The NGAC is a Federal Advisory Committee established

under the authority of the Federal Advisory Committee Act (FACA). The Committee provides advice and recommendations to the Federal Geographic Data Committee (FGDC), through the FGDC Chair (the Secretary of the Interior or designee), related to management of Federal geospatial programs, the development of the National Spatial Data Infrastructure (NSDI), and the implementation of Office of Management and Budget (OMB) Circular A–16 and Executive Order 12906. The Committee reviews and comments upon geospatial policy and management issues and provides a forum to convey views representative of non-Federal stakeholders in the geospatial community.

DATES: Nominations to participate on this Committee must be received by August 24, 2010.

ADDRESSES: Send nominations electronically to *ngacnominations@fgdc.gov,* or by mail to John Mahoney, U.S. Geological Survey, U.S. Department of the Interior, 909 First Avenue, Suite 800, Seattle, WA 98104. Nominations may be submitted on behalf of others, or individuals may self-nominate. Nominations should include:

1. A nomination letter summarizing the nominee's qualifications and interest in Committee membership and describing the nominee's ability to represent a stakeholder group.
2. A biographical sketch, resume, or vita.
3. One letter of reference and a list of two additional references with contact information.
4. Contact information for the nominee (name, title, organization, mailing address, e-mail address, phone number).

Additional information and instructions about the nomination process are posted on the NGAC Web page at *http://www.fgdc.gov/ngac.*

FOR FURTHER INFORMATION CONTACT: John Mahoney, USGS (206–220–4621).

SUPPLEMENTARY INFORMATION: The Committee conducts its operations in accordance with the provisions of the FACA. It reports to the Secretary of the Interior through the Chair of the FGDC Steering Committee and functions solely as an advisory body. The Committee provides recommendations and advice to the Department and the FGDC on policy and management issues related to the effective operation of Federal geospatial programs.

The NGAC includes 25–30 members, selected to generally achieve a balanced representation of the viewpoints of the various partners involved in national geospatial activities. NGAC members are appointed for staggered terms, and approximately one-half of the seats on the committee will be appointed during this round of appointments.

Nominations will be reviewed by the FGDC. Additional information may be requested from nominees. Final selection and appointment of committee members will be made by the Secretary of the Interior. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

The Committee meets approximately 3–4 times per year. Committee members will serve without compensation. Travel and per diem costs will be provided for Committee members by USGS. The USGS will provide necessary support services to the Committee. Committee meetings will be open to the public. Notice of committee meetings will be published in the **Federal Register** at least 15 days before the date of the meeting. The public will have an opportunity to provide input at these meetings.

In accordance with FACA, a copy of the Committee's charter will be filed with the Committee Management Secretariat, General Services Administration. The current version of the NGAC charter is available at *http://www.fgdc.gov/ngac.*

Dated: June 30, 2010.

Ivan DeLoatch,

Staff Director, Federal Geographic Data Committee.

[FR Doc. 2010–16594 Filed 7–7–10; 8:45 am]

BILLING CODE 4310–AM–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Energy Independence and Security Act (Pub. L. 110–140)

AGENCY: U.S. Geological Survey.

ACTION: Notice of Publication of a Carbon Dioxide Storage Resource Assessment Methodology.

SUMMARY: In 2007, the Energy Independence and Security Act (Pub. L. 110–140) directed the United States Geological Survey (USGS) to conduct a national assessment of potential geologic storage resources for carbon dioxide (CO_2). The first requirement stipulated in the legislation was to develop a methodology to estimate storage potential that could be applied uniformly to geologic formations across the United States, and then to announce the publication of the methodology in the **Federal Register**. The methodology, "A Probabilistic Assessment Methodology for the Evaluation of Geologic Carbon Dioxide Storage," was published as an Open-File Report by the USGS and can be downloaded from: *http://pubs.usgs.gov/of/2010/1127.* This new methodology incorporates comments from the public, the heads of affected Federal and State agencies, and technical experts from Federal agencies, institutions of higher education, nongovernmental organizations, State organizations, industry, and international geoscience organizations, as required by the legislation. The new methodology will allow the USGS to assess the geologic CO_2 storage resource potential for the United States. The results of the USGS national assessment will provide important information to evaluate the potential for CO_2 storage as a mitigation option for global climate change.

Inquiries: If other parties are interested in learning more about the methodology, USGS CO_2 storage assessment activities, or would like to be mailed a hard copy, please contact Peter Warwick, USGS, 12201 Sunrise Valley Drive, MS 956, Reston, VA 20192, voice (703) 648–6469, fax (703) 648–6419, or e-mail *pwarwick@usgs.gov.*

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the requirements of Section 711 of Public Law 110–140.

Dated: June 28, 2010.

Brenda Pierce,

Chief Scientist (acting) and Energy Resources Program Coordinator.

[FR Doc. 2010–16236 Filed 7–7–10; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP01000 L1430000–EU000; NMNM–121140]

Notice of Realty Action: Proposed Direct Sale of Public Land, Chaves County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell two small parcels totaling 60 acres in Chaves County, New Mexico. These parcels are being proposed for direct sale to the Roswell Gun Club at no less than the appraised fair market value (FMV) to resolve inadvertent, unauthorized use

and occupancy of public lands. The sale is pursuant to Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) and is consistent with the BLM Roswell Resource Management Plan dated October 1997, as amended. No significant resource values will be affected by disposal of these parcels from Federal ownership.

DATES: Interested parties may submit written comments to the BLM at the address stated below. To ensure consideration in the environmental analysis of the proposed sale, comments must be received by the BLM no later than August 23, 2010.

ADDRESSES: Written comments regarding the proposed sale should be addressed to the BLM, Field Manager, Roswell Field Office, 2909 West Second, Roswell, New Mexico 88201. Environmental and other documentation associated with this proposal is available for review at this address as well.

FOR FURTHER INFORMATION CONTACT: Angel Mayes, Assistant Field Manager, Lands and Minerals, at the above address or telephone (575) 627–0250 or e-mail *angel_mayes@nm.blm.gov.*

SUPPLEMENTARY INFORMATION: The following parcels of public lands in Chaves County, New Mexico proposed for direct sale are described as:

New Mexico Principal Meridian

T. 9 S., R. 24 E.,

Sec. 26, W½NW¼SE¼;

Sec. 35, N½NE¼NE¼, NE¼NW¼NE¼ and SE¼NE¼NE¼.

The area described contains 60 acres, more or less, in Chaves County.

The parcels are 5 miles northeast of the City of Roswell in an area south of U.S. Highway 70 and north of the Old Clovis/Roswell Highway. Access to the parcels is off of U.S. Highway 380. This is a mostly undeveloped area and a large portion of the land in the immediate proximity of the subject property is currently owned by the New Mexico Military Institute and the Roswell Gun Club. The unauthorized, inadvertent uses on these parcels consist of a two-track roadway, which provides access to the existing Roswell Gun Club, firing ranges, sightings-in range, small arms firing range, and various earthen berms. The authority for the sale is Section 203 of the FLPMA (43 U.S.C. 1713) and regulations found at 43 CFR 2710. Regulations contained in 43 CFR 2711.3–3 make allowances for direct sales when a competitive sale is inappropriate and when the public interest would best be served by a direct sale. In accordance with 43 CFR 2710.0–6(3)(iii) and 43 CFR 2711.3–3(5), the BLM authorized officer finds that the public interest would be best served by resolving the inadvertent unauthorized use and occupancy of BLM-managed lands by direct sale to a landowner whose improvements occupy portions of the parcels and to protect existing equities in the land.

The parcels are not required for Federal purposes, and the 1997 BLM Roswell Resource Management Plan, as amended, provides for disposal in support of unauthorized use through sale to resolve long-standing trespass if the disposal criteria are met. Therefore, the parcels meet the qualifications for disposal from Federal ownership. The disposal (sale) of the parcels would serve the public interest for private economic development which outweighs other public objectives and values with respect to these parcels. Upon publication of this Notice, the land will be segregated from all forms of appropriation under the public land laws, including the mining laws, except the sale provisions of FLPMA. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of segregation, or July 9, 2012, whichever occurs first, unless the segregation period is extended by the BLM State Director, New Mexico, in accordance with 43 CFR 2711.1–2(d) prior to the termination date. Upon publication of this notice and until completion of the sale, the BLM will not accept land use applications regarding these parcels.

Federal law requires purchasers to be citizens of the United States, 18 years of age or older; or, in the case of corporations, to be subject to the laws of any State or of the United States; a State, State instrumentality or political subdivision authorized to hold property or an entity legally capable of conveying lands or interests therein under the laws of the State of New Mexico. The purchaser will be allowed 30 days from receipt of a written offer from the BLM to submit a deposit of 30 percent of the appraised FMV of the parcels, and 180 days thereafter to submit the balance. Payment must be in the form of a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the U.S. Department of the Interior BLM. Personal checks will not be accepted. Failure to meet conditions established for this sale will void the sale and any monies received will be forfeited. If the balance of the purchase price is not received within the 180 days, the deposit shall be forfeited to the United States and the parcels withdrawn from sale.

Any patent issued will contain the following numbered reservations, covenants, terms and conditions:

1. A reservation of a right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, (26 Stat. 391; 43 U.S.C. 945);

2. A reservation of a right-of-way, NMLC–065823, issued July 17, 1948, without expiration, to the New Mexico State Highway Department and Transportation Department for the construction and maintenance for U.S. Highway 70;

3. A reservation of a right-of-way, NMNM–122357, issued pursuant to the Act of October 21, 1976, (43 U.S.C. 1761); located in the W½NW¼SE¼ of Section 26, T. 9 S., R. 24 E., NMPM, New Mexico. The right-of-way has been issued to the United States of America, administered through the BLM, or its assigns, giving the BLM the right to use an existing roadway for the purpose of administrative access to public lands located south of the subject properties. The right-of-way is 1,378.34 feet in length by 30 feet in width for approximately .94 acres more or less;

4. A reservation of a right-of-way, NMNM 055592, issued by the United States on May 25, 1983, expiring May 25, 2023, to Qwest Corporation for the construction, maintenance, and operation of a buried telephone line located in the NW¼SE¼ section 26, T. 9 S., R. 24 E., NMPM, New Mexico;

5. A reservation of all minerals and mineral interests for and under the subject parcels by the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe;

6. A notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), holding the United States harmless from any release of hazardous materials that may have occurred as a result of any authorized or unauthorized use of the property by other parties; and

7. Any additional terms and conditions that the authorized officer deems appropriate to ensure proper land use and protection of the public interest.

No warranty of any kind, expressed or implied, is given by the United States as to the title, physical condition, or potential uses of the parcels of land proposed for sale, and the conveyance

will not be on a contingency basis. In order to determine the value, through appraisal, certain extraordinary assumptions may be made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice of Realty Action, the BLM gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of: (1) All applicable Federal, State, or local government laws, regulations, or policies that may affect the subject parcels or its future uses; and (2) existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware of those laws, regulations and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or State law or regulations that may impact the future use of the properties. If the parcels lack access from a public road or highway, they will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Public Comments: For a period until August 23, 2010, interested parties and the general public may submit, in writing, any comments concerning the parcels being considered for direct sale, including notification of any encumbrances or other claims relating to the parcels, to the BLM Roswell Field Office Field Manager at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Comments, including names and street address of respondents, will be available for public review at the BLM Roswell Field Office during regular business hours. Individual respondents may request confidentiality. 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.

Authority: 43 CFR 2711.

Charles Schmidt,

Field Manager, Roswell.

[FR Doc. 2010–16605 Filed 7–7–10; 8:45 am]

BILLING CODE 4310–VA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON05000–L14300000–ES0000; COC–73764]

Notice of Realty Action: Recreation and Public Purposes Act Classification; Rio Blanco County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and subsequent conveyance under the provisions of the Recreation and Public Purposes Act (R&PP), as amended, approximately 19.98 acres of public land in Rio Blanco County, Colorado. Rangely District Hospital proposes to use the land for a hospital.

DATES: Interested parties may submit written comments regarding the proposed lease/conveyance or classification on or before August 23, 2010.

ADDRESSES: Comments should be sent to the Field Manager, BLM White River Field Office, 220 East Market Street, Meeker, Colorado 81641.

FOR FURTHER INFORMATION CONTACT: Stacey Burke, Realty Specialist, at the address above, by telephone at (970) 878–3827, or by e-mail at: *Stacey_Burke@blm.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, (43 U.S.C. 315(f)) and Executive Order No. 6910, the following described public land in Rio Blanco County, Colorado, has been examined and found suitable for classification for lease and subsequent conveyance under the provisions of the R&PP Act, as amended, (43 U.S.C. 869 *et seq.*):

Sixth Principal Meridian

T. 1 N., R. 102 W.,
Sec. 2, lots 10 and 23.

The area described contains approximately 19.98 acres in Rio Blanco County, Colorado.

In accordance with the R&PP Act, Rangely District Hospital filed an R&PP application to develop the above-described land as a hospital with a parking area and helipad. The land is not needed for any Federal purpose. The lease and subsequent conveyance is consistent with the BLM White River Record of Decision and Approved Resource Management Plan dated July 1, 1997, and would be in the public interest. The lease/conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will be subject to the following terms, conditions, and reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, along with all necessary access and exit rights.
3. A right-of-way, across the above-described lands, for a natural gas pipeline granted to Public Service Company of Colorado, its successors or assigns, by right-of-way COC–1972 pursuant to the Act of February 25, 1920 (41 Stat. 0437, 30 U.S.C. 185, sec. 28).
4. A right-of-way, across the above-described lands, for a natural gas pipeline granted to Northwest Pipeline, its successors or assigns, by right-of-way COC–61016 pursuant to the Act of February 25, 1920 (41 Stat. 0437, 30 U.S.C. 185, sec. 28).
5. A right-of-way, across the above-described lands, for a road granted to the Town of Rangely, its successors or assigns, by right-of-way COC–26770 pursuant to the Act of July 26, 1866 (Revised Stat. 2477, 43 U.S.C. 932).
6. A right-of-way, across the above-described lands, for water utilities granted to the Town of Rangely, its successors or assigns, by right-of-way COC–23658B pursuant to the Act of February 15, 1901 (90 Stat. 2776, 43 U.S.C. 1761).
7. A right-of-way, across the above-described lands, for a bike path granted to the Town of Rangely, its successors or assigns, by right-of-way COC–50035 pursuant to the Act of October 21, 1976 (31 Stat. 0790, 43 U.S.C. 959).
8. Any other valid rights-of-way that may exist at the time of lease or conveyance.
9. All valid existing rights documented on the official public land records at the time of patent issuance.
10. Indemnification Term: The lessee or patentee, its successors or assigns, by

accepting a lease or patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present, or future acts or omissions of the lessee or patentee, its employees, agents, contractor, or lessees, or any third party, arising out of, or in connection with, the lessee or patentee's use, occupancy or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the lessee or patentee and its employees, agents, contractors or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the leased or patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State and local laws and regulations that are now, or may in the future, become applicable to the real property; (2) judgments, claims, or demands of any kind assessed against the United States; (3) costs, expenses, or damages of any kind incurred by the United States; (4) releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s) as defined by Federal or State environmental laws, off, on, into, or under land, property, and other interests of the United States; (5) activities by which solids or hazardous substances or wastes, as defined by Federal and State environmental laws are generated, released, stored, used, or otherwise disposed of on the leased or patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substance(s) or waste(s); or (6) natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the real property should the lease or patent be transferred to another party and may be enforced by the United States in a court of competent jurisdiction.

11. CERCLA Term: "Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(h)) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), notice is hereby given that the above-described parcel has been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property."

Upon publication of this notice in the **Federal Register,** the parcel will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Classification Comments: Interested persons may also submit comments on the application of the lands as suitable for development as hospital facilities. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested persons may also submit comments on the application, including the notification of the BLM of any encumbrances or other claim relating to the parcel, and regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to lease/convey the land under the R&PP Act, or any other factors not directly related to the suitability of the land for public hospital facilities. Any adverse comments will be reviewed by the BLM Colorado State Director. In the absence of any adverse comments, this realty action will become effective on September 7, 2010. The land will not be offered for lease/conveyance until after the classification becomes effective. Only written comments submitted by postal service or overnight mail to the Field Manager, BLM White River Field Office, will be considered properly filed. E-mail, facsimile, or telephone comments will not be considered properly filed. Documents related to this action are on file at the BLM White River Field Office at the address above and may be reviewed by the public at their request. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised 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.

Authority: 43 CFR 2741.5.

Helen M. Hankins,

State Director.

[FR Doc. 2010–16603 Filed 7–7–10; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–725]

In the Matter of Certain Caskets; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 4, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Batesville Services, Inc. of Batesville, Indiana. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain caskets by reason of infringement of certain claims of U.S. Patent No. 5,611,124 ("the '124 patent"); U.S. Patent No. 5,727,291 ("the '291 patent"); U.S. Patent No. 6,836,936 ("the '936 patent"); U.S. Patent No. 6,976,294 ("the '294 patent"); and U.S. Patent No. 7,340,810 ("the '810 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for

this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin G. Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2221.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 1, 2010, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain caskets that infringe one or more of claims 1, 13, 27, and 44–53 of the '124 patent; claims 1, 6, 8, 9, 16, 17, 19, and 21 of the '291 patent; claims 1 and 2 of the '936 patent; claims 1, 2, 5–8, 11, and 12 of the '294 patent; and claims 1, 2, 4, and 5 of the '810 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Batesville Services, Inc., One Batesville Boulevard, Batesville, Indiana 47006.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Ataudes Aguilares, S. de R.L. de C.v., Volcan Osorno 5829 C.P. 44250, Huentitan El Bajo, Guadalajara, Jal., Mexico.

(c) The Commission investigative attorney, party to this investigation, is Kevin G. Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: July 2, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–16638 Filed 7–7–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–44 (Third Review)]

Sorbitol From France; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675d(c)) (the Act), that revocation of the antidumping duty order on sorbitol from France, would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on July 1, 2009 (74 FR 31762, July 2, 2009) and determined on October 6, 2009 that it would conduct a full review. Notice of the scheduling of the Commission's review 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 December 17, 2009 (74 FR 66992). The hearing was held in Washington, DC, on May 11, 2010, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on July 1, 2010.[2] The views of the Commission are contained in USITC Publication 4164 (June 2010), entitled *Sorbitol from France (Inv. No. 731–TA–44 (Third Review).*

By order of the Commission.

Issued: July 1, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–16649 Filed 7–7–10; 8:45 am]

BILLING CODE 7020–02–P

[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] The Commission determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675 (c)(5) (B).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070B (Review)]

Certain Tissue Paper Products From China

Determination

On the basis of the record [1] developed in the subject five-year review, 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 order on certain tissue paper products from China 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]

[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 Okun and Commissioner Pearson found two domestic like products—consumer tissue paper and bulk tissue paper. They determined that revocation of the antidumping duty order on bulk tissue paper would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. They also determined that revocation of the antidumping duty order on consumer tissue paper would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on February 1, 2010 (75 FR 5115) and determined on May 7, 2010 that it would conduct an expedited review (75 FR 28061, May 19, 2010).

The Commission transmitted its determination in this review to the Secretary of Commerce on July 1, 2010. The views of the Commission are contained in USITC Publication 4165 (July 2010), entitled *Certain Tissue Paper Products from China: Investigation No. 731–TA–1070B (Review).*

By order of the Commission.

Issued: July 1, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–16650 Filed 7–7–10; 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 ("CERCLA")

Notice is hereby given that on July 1, 2010, a proposed Consent Decree in the *United States* v. *CSX Transportation, Inc.,* Civil Action No. 2:10–cv–418–FtM–29SPC, was lodged with the United States District Court for the Middle District of Florida, Ft. Myers Division.

In this action the United States sought judgment against defendant in favor of the United State for all previously un-reimbursed costs incurred by the United States in response to the release or threatened release of hazardous substances at Nocatee Hull Creosote Superfund Site (the "Site"). The Site is comprised of three separate areas: A 38 acre former creosote wood treatment "Plant Area" located on the west side of Hull Avenue, a 35 acre portion of the adjacent "Peace River Flood Plain Area" to the west, and a 63 acre rural residential "Oak Creek Area" on the east side of Hull Avenue in Hull, Desoto County, FL.

Under the terms of the Consent Decree, CSX will undertake the remedial action selected by the United States Environmental Agency for the Site. Further, the terms of the Consent Decree require CSX to reimburse the United States for past costs, all future oversight costs, plus interest, incurred or to be incurred in the future by the government in connection with the remedial action at the Site.

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. *CSX Transportation, Inc.,* D.J. Ref. 90–11–3–09690.

The Consent Decree may be examined at the Office of the United States Attorney, Middle District of Florida, 2110 First Street, Suite 3–137, Ft. Myers, Florida 33901, and at the U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303. 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 $13.25 (25 cents per page reproduction cost) for a copy of the Consent Decree without appendices, or $65.75 (25 cents per page reproduction cost) for a copy of the Consent Decree including appendices, payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–16679 Filed 7–7–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Air Act, and Chapter 11 of the United States Bankruptcy Code

Notice is hereby given that on July 1, 2010, a proposed Settlement Agreement ("Agreement") in *In re Quebecor World (USA) Inc., et al.,* Case No. 08–10152(JMP) (Bankr. S.D.N.Y.), was lodged with the United States Bankruptcy Court for the Southern District of New York. The Agreement was entered into by the United States, on behalf of the United States Environmental Protection Agency ("EPA"), Quebecor World (USA) Inc. (known as World Color (USA) Corp. since confirmation of the Plan of Reorganization and acquired by Quad/Graphics Inc. on or about July 2, 2010), and certain of its direct and indirect subsidiaries (the "Debtors"), the State of Illinois, the Lenz PRP RD/RA Work Group, a group of potentially responsible parties ("PRPs") at the Lenz Oil Services Site in Lamont, Illinois, the Keystone Site Original Generator Defendants, a group of PRPs at the Keystone Landfill Site in Union Township, Pennsylvania, and Ringier, A.G., an indemnitor of certain of the Debtors. The Agreement relates to liabilities of the Debtors under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.* ("CERCLA") and under the Clean Air Act, 42 U.S.C. 7401 *et seq.*

The Agreement provides that EPA will have allowed general unsecured claims in the following amounts with respect to the following four Liquidated Sites: (1) $195,500 in connection with the Peterson/Puritan, Inc. Superfund Site in Lincoln and Cumberland, Rhode Island, (2) $175,412.76 in connection with the Solvent Recovery Service of New England Superfund Site in Southington, Connecticut, (3) $1,000 in connection with the LWD, Inc. Superfund Site in Calvert City, Kentucky, and (4) $2,701.12 in connection with the Lake Calumet Cluster Superfund Site located in Chicago, Illinois. In addition, Ringier, A.G. has agreed to make a cash payment to EPA, in the amount of $38,617.58, in connection with the Lake Calumet Cluster Superfund Site. Under the Agreement, EPA has agreed not to bring an action, under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and 7003 of RCRA, 42 U.S.C. 6973, against the Debtors with respect to the Liquidated Sites, or against Ringier, A.G., in its capacity as the indemnitor of one or more of the Debtors, with respect to the Lake Calumet Cluster Site or the Lenz Oil Services Site, with respect to conduct of the Debtors occurring after the date of lodging of the Agreement.

The Agreement also has provisions related to the liability of the Debtors in connection with two Consent Decree Sites—the Keystone Landfill Site and the Lenz Oil Services Site—where certain of the Debtors, as well as other PRPs, have entered into consent decrees

with EPA requiring the implementation of remedial actions at such sites.

Under the agreement, EPA has also agreed that the liability of the Debtors under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, arising from prepetition acts at the three Discharged Sites—the Byron Salvage Yard Site in Ogle County, Illinois, the Operating Industries Site in Monterey Park, California, and the Calumet Containers Site in Hammond, Indiana—were discharged under Section 1141 of the Bankruptcy Code by the Plan of Reorganization and the Confirmation Order.

The Agreement also provides that the liability of the Debtors at the following Excluded Sites will not be affected by the Settlement Agreement: (1) The Bulk Terminals Site in Louisville, Kentucky; (2) the Constitution Road Site in Atlanta, Georgia; (3) the M&J Solvents Site in Atlanta, Georgia; (4) the Seaboard Chemical Corp. Site in Jamestown, North Carolina; (5) the Frontier Chemical Waste Processing Site in Niagara Falls, New York; (6) the Somersville Road Site in Contra Costa County, California; (7) the Crymes Landfill Site in Tucker, Georgia; (8) the Interstate Pollution Control Site in Rockford, Illinois; (9) the Old Land Reclamation Landfill Site in Depew, New York; (10) the GBF Pittsburgh Landfill Site in Contra Costa, California; (11) the Chemical Control Corp. Site in Elizabeth, New Jersey; and (12) the Brampton Road Site in Garden City, Georgia.

With respect to any Debtor-Owned Sites, the Agreement provides that the claims of EPA and the State of Illinois against the Debtors related to postpetition cleanup costs, as well as actions seeking to compel performance of any cleanup action at such sites, shall not be discharged under Section 1141 of the Bankruptcy Code or impaired or affected by the Plan of Reorganization or the Confirmation Order.

Finally, the Agreement provides, with respect to Additional Sites—defined as all sites that are not Liquidated Sites, Debtor-Owned Sites, Consent Decree Sites, Discharged Sites, or Excluded Sites—that all liabilities of the Debtors to EPA under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C. 6973, arising from prepetition acts, shall be addressed as follows: EPA may not issue unilateral orders or seek injunctions against the Debtors, under Section 106 of CERCLA, 42 U.S.C. 9606 or Section 7003 of RCRA, 42 U.S.C. 6973, with respect to such sites, but EPA may seek to resolve Debtors' liability, or have such liability adjudicated, to a Determined Amount. The Agreement provides that the Debtors will pay EPA a Distribution Amount, which is based on the amount the Debtors would have paid to EPA if, at the time of the bankruptcy proceeding, EPA had an allowed general unsecured claim equal to the Determined Amount.

The Agreement also provides that EPA will have a general unsecured claim in the amount of $183,109 in connection with EPA's claim that one of the Debtors—Quebecor World Retail Printing Corp. (known as World Color Retail Printing Corp. since confirmation of the Plan of Reorganization and acquired by Quad/Graphics Inc. on or about July 2, 2010)—is liable for civil penalties for violations of the Clean Air Act at its facility located in Taunton, Massachusetts.

For a period of 30 days from the date of this publication, the Department of Justice will receive comments relating to the Agreement. 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, and should refer to *In re Quebecor World (USA) Inc., et al.,* Case No. 08–10152(JMP) (Bankr. S.D.N.Y.) and D.J. Ref. No. 90–11–2–09461. A copy of the comments should be sent to Donald G. Frankel, Department of Justice, Environmental Enforcement Section, One Gateway Center, Suite 616, Newton, MA 02458 or e-mailed to him at *donald.frankel@usdoj.gov.*

The Agreement may be examined at the Office of the United States Attorney, Southern District of New York, 86 Chambers Street, Third Floor, New York, NY 10007 (contact Jeannette A. Vargas at 212–637–2678). During the public comment period, the Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Agreement from the Consent Decree Library, please enclose a check in the amount of $12.00 (25 cents per page reproduction cost) payable to the U.S. Treasury (if the request is by fax or e-mail, forward a check to the Consent Decree library at the address stated above). Commenters may request an opportunity for a public meeting, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–16678 Filed 7–7–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0022]

Student Data Form; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Student Data Form.

DATES: Comments must be submitted (postmarked, sent, or received) by September 7, 2010.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket Number OSHA–2010–0022, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for this Information Collection Request (ICR) (OSHA–2010–0022). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available

online at *http://www.regulations.gov*. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled "**SUPPLEMENTARY INFORMATION.**"

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Ave., NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimal burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657). The OSH Act authorizes the Occupational Safety and Health Administration ("OSHA" or the "Agency") to conduct education and training courses (29 U.S.C. 670). These courses must educate an adequate number of qualified personnel to fulfill the purposes of the OSH Act, provide them with short-term training, inform them of the importance and proper use of safety and health equipment, and train employers and workers to recognize, avoid, and prevent unsafe and unhealthful working conditions.

Under Section 21 of the OSH Act, the OSHA Training Institute (the "Institute") provides basic, intermediate, and advanced training and education in occupational safety and health for Federal and State compliance officers, Agency professionals and technical-support personnel, employers, workers, organizations representing workers and employers, educators who develop curricula and teach occupational safety and health courses, and representatives of professional safety and health groups. The Institute provides courses on occupational safety and health at its national training facility in Arlington Heights, Illinois.

Students attending Institute courses complete the one-page Student Data Form (OSHA Form 182) on the first day of class. The form provides information under five major categories titled "Course Information," "Personal Data," "Employer Data," "Emergency Contacts," and "Student Groups." The OSHA Directorate of Training and Education (the "Directorate") compiles, for each fiscal year, the following information from the "Course Information" and "Student Groups" categories: Total student attendance at the Institute; the number of students attending each training course offered by the Institute; and the types of students attending these courses (for example, students from Federal or State occupational safety and health agencies). The Directorate uses this information to demonstrate, in an accurate and timely manner, that the Agency is providing the training and worker education mandated by Section 21 of the Act. OSHA also uses this information to evaluate training output, and to make decisions regarding program/course revisions, budget support, and tuition costs.

The Agency uses the information collected under the "Course Information," "Personal Data," and "Employer Data" to identify private sector students so that it can collect tuition costs from them or their employers as authorized by 31 U.S.C. 9701 ("Fees and Charges for Government Services and Things of Value"); Office of Management and Budget Circular A–25 ("User Charges"); and 29 CFR part 1949 ("Directorate of Training and Education, Occupational Safety and Health Administration"). The information in the "Personal Data" and "Emergency Contacts" categories permits OSHA to contact students who are residing in local hotels/motels if an emergency arises at their home or place of employment, and to alert supervisors/alternate contacts of a trainee's injury or illness.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Student Data Form. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Student Data Form.

OMB Number: 1218–0172.

Affected Public: Individuals; business or other for-profit organizations; Federal government; State, Local, or Tribal governments.

Number of Respondents: 2,000.

Frequency: On occasion.

Total Responses: 2,000.

Average Time per Response: 5 minutes (.08 hour).

Estimated Total Burden Hours: 160 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this

ICR (OSHA Docket No. OSHA–2010–0022). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (*see* the section of this notice titled "**ADDRESSES**"). The additional materials must clearly identify your electronic comments by your name, date, and docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov*. This document, as well as news releases and other relevant information, also are available at OSHA's webpage at *http://www.osha.gov.*

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, on July 1, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–16560 Filed 7–7–10; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before August 9, 2010. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records

that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Education, Office of Communications and Outreach (N1–441–09–6, 13 items, 3 temporary items). Master files of electronic information systems that contain applications and other records relating to agency award programs. Also included are background files relating to the awards process, including materials submitted to support applications. Proposed for permanent retention are substantive records relating to awards programs, such as the Presidential Scholars Program, the Blue Ribbon Schools Program, and similar recognition programs. Included are such records as publications, photographs and other audiovisual records relating to awards ceremonies, and lists of awardees.

2. Department of Health and Human Services, Administration for Children and Families (N1–292–09–3, 1 item, 1 temporary item). Master files of an electronic information system that contains evaluations of Head Start program grantees.

3. Department of Health and Human Services, Food and Drug Administration (N1–88–09–7, 11 items, 8 temporary items). Records relating to emergencies and incidents that are not significant, including associated data from electronic information systems; summary incident reports; records relating to events of interest that pertain to non-regulated products; and records that relate to requests for the classification of products, including an electronic tracking system. Proposed for permanent retention are such records as weekly reports of significant incidents and management files relating to significant emergencies and incidents.

4. Department of Health and Human Services, Food and Drug Administration (N1–88–09–8, 11 items, 6 temporary items). Records relating to planning and policy development, including such records as tracking files relating to strategic plans and performance plans, project case files, internal informational materials, analyses of public comments, and master files containing public comments and public comment summaries. Proposed for permanent retention are such records as strategic plans, annual performance plans, submissions to Congress and the Office of Management and Budget, and policy development documents.

5. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (N1–511–09–4, 2 items, 2 temporary items). Master files of an electronic information system that contains performance data relating to recipients of substance abuse prevention and treatment grants as well as prevention-related training course materials.

6. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–09–4, 1 item, 1 temporary item). Master files of an electronic information system that contains biographical and other data used to establish relationship patterns among individuals and organizations that may be indicative of violations of customs and immigration laws or terrorist activity.

7. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–13, 1 item, 1 temporary item). Master files of an electronic information system that contains data on non-immigrants who are in the United States for educational purposes or to participate in exchange programs. Similar information contained in a predecessor electronic system was previously approved for disposal.

8. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–10–14, 2 items, 2 temporary items). Master files and statistical reports associated with an electronic information system that contains tips related to the possible exploitation of children for sexual purposes.

9. Department of Justice, Civil Division (N1–60–09–39, 2 items, 2 temporary items). Management records and Web site content relating to the Division's intranet site.

10. Department of Justice, Justice Management Division (N1–60–10–6, 4 items, 1 temporary item). Background files relating to the preparation of organization, mission and functions manuals. Copies of manuals, organization charts, and case files that relate to organizational planning are proposed for permanent retention.

11. Department of Justice, Justice Management Division (N1–60–10–18, 1 item, 1 temporary item). Case files relating to reviews of physical, information technology, personnel, and document security programs within the agency as well as programs that relate to continuity of operations and health and safety.

12. Department of Justice, Executive Office of U.S. Trustees (N1–60–09–33, 1 item, 1 temporary item). Master files of an electronic information system used to track audits of bankruptcy cases.

13. Department of Justice, Executive Office of U.S. Trustees (N1–60–09–51, 1 item, 1 temporary item). Master files of an electronic information system used to track significant events relating to bankruptcy cases.

14. Department of Justice, Federal Bureau of Investigation (N1–65–09–31, 21 items, 21 temporary items). Records, including electronic data, pertaining to the National Name Check Program. Included are records relating to such matters as requests, responses to requests, audits, quality assurance activities, operating procedures, and training.

15. Department of State, Bureau of International Information Programs (N1–59–10–8, 1 item, 1 temporary item). Information management resources files, including such records as planning documents pertaining to goals and objectives and records relating to performance measures and procedures.

16. Department of the Treasury, Departmental Offices (N1–56–10–2, 11 items, 8 temporary items). Records of the Office of the General Counsel, including such records as attorney working files, document production records, routine litigation files, and legislation files. Proposed for permanent retention are files relating to significant litigation, General Counsel memoranda and opinions, and files on significant financial transactions.

17. Department of the Treasury, Internal Revenue Service (N1–58–09–105, 2 items, 2 temporary items). Master files and documentation associated with an electronic information system used to support the work of revenue agents and specialists by managing such matters as appointments and information requests, time spent on individual cases, and other activities.

18. Department of Veterans Affairs, Veterans Benefits Administration (N1–15–10–5, 1 item, 1 temporary item). Master files of an electronic information system that contains program data concerning home loan programs.

19. Export-Import Bank of the United States, Agency-wide (N1–275–09–7, 1 item, 1 temporary item). Master files of an electronic information system used to review applications for the Bank's various financial products.

20. Export-Import Bank of the United States, Agency-wide (N1–275–09–9, 5 items, 5 temporary items). Records relating to the Bank's public Web site, including Web content and records that pertain to Web site management and operations.

21. Export-Import Bank of the United States, Agency-wide (N1–275–09–10, 1 item, 1 temporary item). Records of a Web-based electronic system that allows exporters, brokers, and financial institutions to transact business with the Bank electronically.

22. Export-Import Bank of the United States, Agency-wide (N1–275–10–1, 1 item, 1 temporary item). Master files of an electronic information system used to track, evaluate, and pay claims against the Bank's financial products.

23. Federal Maritime Commission, Bureau of Certification and Licensing (N1–358–09–2, 3 items, 3 temporary items). Reading files and subject files relating to day to day operational activities regarding the certification and licensing of ocean liners.

24. Federal Maritime Commission, Bureau of Trade Analysis (N1–358–09–8, 2 items, 2 temporary items). Master files of an electronic information system that contains data relating to the processing of carrier and marine terminal agreements and includes partial copies of the agreements.

25. Office of the Director of National Intelligence, Office of the Executive Secretary (N1–576–09–7, 7 items, 3 temporary items). Non-substantive correspondence and working papers, as well as reference material. Proposed for permanent retention are correspondence, subject files, substantive working papers, and other records of the Director, Principal Deputy, and other high officials.

26. Office of the Director of National Intelligence, National Intelligence Council (N1–576–09–8, 22 items, 7 temporary items). Facilitative files accumulated by working groups, non-substantive working papers and background files, work flow tracking systems, reference files, and other records of a routine administrative nature. Proposed for permanent retention are such records as files of the Chairman, intelligence publications, threat assessment case files, substantive working papers, National Intelligence Board records, and other records that document mission-related activities.

27. Office of the Director of National Intelligence, National Counterterrorism Center (N1–576–08–1, 18 items, 7 temporary items). Administrative records, including such files as work flow tracking systems, records documenting access to classified information, non-substantive working papers, and extra copies of issuances. Proposed for permanent retention are such records as files of the Director and immediate staff offices, finished intelligence reports and related background files, press releases, speeches, organization charts and organizational planning records, histories, and substantive working papers.

28. Small Business Administration, Office of the Chief Information Officer (N1–309–10–1, 5 items, 5 temporary items). Records relating to Business.gov, a Web site sponsored by the agency that provides information to small businesses concerning State and local licensing and permit requirements, loan and grant programs, and other matters. Included are such records as Web site content and operations records and policy and procedural records.

29. Tennessee Valley Authority, Agency-wide (N1–142–10–1, 88 items, 75 temporary items). Records including power generation and power transmission studies and analyses, energy-related contracts and related financial documentation, resource and power rate analyses and studies, equipment maintenance files, regulatory compliance records, agency management files, program and fiscal audits, litigation case files, human resource analyses and studies, human resource planning and performance measurement files, training files, budget forecasting records, budget analyses and studies, financial projections and analyses, property status and value files, facilities and equipment files, environmental assessment and mitigation records, pollution prevention and abatement files, energy conservation program management plans, safety inspections and incident reports, security procedures, public relations policies and procedures, news releases and scripts of media presentations, lab notebooks, annual reports, research reports, and research summary reports. Proposed for permanent retention are environmental and energy-related research records, empirical studies, environmental impact statements, budget and financial records, agency organization files, significant litigation case files, environmental compliance documentation, official publications, and records documenting such activities as policy development, budget development, congressional and public relations, and project management.

Dated: June 30, 2010.

Sharon Thibodeau,

Deputy Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2010–16509 Filed 7–7–10; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0064]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on April 16, 2010.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 25—Access Authorization for Licensee Personnel.

3. *Current OMB approval number:* 3150–0046.

4. *The form number if applicable:* N/A.

5. *How often the collection is required:* On Occasion.

6. *Who will be required or asked to report:* NRC-regulated facilities and other organization requiring access to NRC-classified information.

7. *An estimate of the number of annual responses:* 918.

8. *The estimated number of annual respondents:* 78.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 365.

10. *Abstract:* NRC-regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided NRC-classified information and material.

A copy of the final supporting statement may be viewed free of charge

at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 9, 2010. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Christine J. Kymn, Desk Officer, Office of Information and Regulatory Affairs (3150–0046), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Christine.J.Kymn@omb.eop.gov* or submitted by telephone at (202) 395–4638.

The NRC Clearance Officer is Tremaine Donnell, (301) 415–6258.

Dated at Rockville, Maryland, this 1st day of July 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–16624 Filed 7–7–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–011; NRC–2008–0252]

Southern Nuclear Operating Company et al.; Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Early Site Permit Issued to Southern Nuclear Operating Company et al., for Vogtle Electric Generating Plant ESP Site Located In Burke County, GA

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Terri Spicher, Project Manager, AP1000 Branch 1, Division of New Reactors Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–1670; fax number: (301) 415–6323; e-mail: *Terri.Spicher@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Early Site Permit (ESP) No. ESP–004, issued on August 26, 2009, to Southern Nuclear Operating Company (SNC) and several co-applicants (Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia), for the Vogtle Electric Generating Plant (VEGP) ESP site located in Burke County, Georgia. The license amendment request (LAR) was submitted by letter dated May 24, 2010, and was supplemented by a letter dated June 2, 2010. In particular, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 52.39(e), the request seeks to amend the ESP Site Safety Analysis Report (SSAR) to change the classification of backfill over the slopes of the Units 3 and 4 excavations from Category 1 and 2 backfill to engineered granular backfill (EGB).

NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The NRC staff's review of the safety aspects of the amendment request will be documented in a separate safety evaluation report (SER); if warranted by the results of that evaluation, the amendment would be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed amendment is to authorize a change to the early site permit issued to SNC for the Vogtle Electric Generating Plant ESP site located in Burke County, Georgia. Specifically, the proposed amendment would modify the Vogtle Electric Generating Plant ESP SSAR to change the classification of backfill over the slopes of the Units 3 and 4 excavations from Category 1 and 2 backfill to EGB.

The NRC staff has prepared an EA in support of its review of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action. The LAR would not change the total quantity or locations of backfill material to be obtained from onsite sources, and the impacts of acquiring EGB from the specified areas located within the VEGP site would remain within the scope of environmental impacts previously analyzed in the Final Environmental Impact Statement (FEIS) for the VEGP ESP and in the EAs for Amendments 1 and 2 to the VEGP ESP and LWA, and found not to be significant. Accordingly, the NRC staff has determined that there would be no significant environmental impacts associated with granting the LAR request.

III. Finding of No Significant Impact

On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

The ESP amendment request is available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, persons can access the NRC's Agency-wide Documents Access and Management System (ADAMS). The ADAMS accession number for the May 24, 2010, amendment request is ML101470213 and the accession number for the June 2 supplement is ML101550510. The ADAMS accession number for the EA is ML101660076. The ADAMS accession numbers for the ESP FEIS are ML082240145 and ML082240165, ML082260203, and ML082550040. The ADAMS accession numbers for the EAs for Amendment 1 and Amendment 2 to the ESP are ML101380114 and ML101670592, respectively. If persons do not have access to ADAMS or have problems accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, or 301–415–4737, or via e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 28th day of June 2010.

For the Nuclear Regulatory Commission,

Jeffrey Cruz,

Chief, AP1000 Branch 1, Division of New Reactors Licensing, Office of New Reactors.

[FR Doc. 2010–16631 Filed 7–7–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–338; NRC–2010–0246]

Virginia Electric and Power Company: North Anna Power Station, Unit No. 1 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Exemption from Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix R, Section III.O, "Oil collection system for reactor coolant pump," for Facility Operating License No. NPF–4, issued to Virginia Electric and Power Company (the licensee), for operation of the North Anna Power Station, Unit 1 (NAPS Unit 1), located in Louisa County, Virginia. Therefore, as required by 10 CFR 51.21, the NRC prepared an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt NAPS Unit 1 from the requirement that the reactor coolant pumps (RCPs) be equipped with an oil collection system (OCS) if the containment is not inerted during normal operation and such collection systems shall be capable of collecting lube oil from all potential pressurized and unpressurized leakage sites in the RCP lube oil systems. Specifically, NAPS Unit 1 would be granted an exemption from the collection of minor oil misting by the OCS.

The proposed action is in accordance with the licensee's application dated April 23, 2010, as supplemented by letter dated May 13, 2010.

The Need for the Proposed Action

The proposed action is needed to address expected minor uncollected oil misting from RCP motors and not allow oil pooling to occur outside the OCS.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concluded that the proposed action (*i.e.* to exempt NAPS Unit 1 from expected minor uncollected oil misting from RCP motors and to not allow oil pooling to occur outside the OCS) would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The proposed action will not significantly increase the probability or consequence of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with this proposed action.

Based on the nature of the exemption, the proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historic and cultural resources. There would be no noticeable effect on socioeconomic conditions in the region. Therefore, no changes or different types of non-radiological environmental impacts are expected as a result of the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action:

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the "no action" alternative are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the "Final Environmental Statement Related to the Continuation of Construction and the Operation of NAPS Units 1 and 2, and the Construction of Units 3 and 4," issued in 1973, as supplemented through the "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplement 7 Regarding NAPS Units 1 and 2—Final Report (NUREG–1437, Supplement 7)," dated November 2002.

Agencies and Persons Consulted

In accordance with its stated policy, on June 7, 2010, the NRC staff consulted with the Virginia State official, Mr. Les Foldesi, Director, Division of Radiological Health of the Virginia Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 23, 2010, as supplemented by letter dated May 13, 2010. 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 O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Document Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site: *http://www.nrc.gov/reading-rm/adams.html.*

Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of June 2010.

For the Nuclear Regulatory Commission.

V. Sreenivas,

Project Manager, Plant Licensing Branch II–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–16630 Filed 7–7–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–391; NRC–2008–0369]

Tennessee Valley Authority; Notice of Receipt of Updated Antitrust Information and Opportunity for Public Comment

By letter dated May 13, 2010, the Tennessee Valley Authority (TVA) submitted antitrust information in conjunction with its updated application for an operating license (OL)

for a second pressurized-water reactor, Watts Bar Nuclear Plant (Watts Bar), Unit 2, located in Rhea County, Tennessee, approximately 50 miles northeast of Chattanooga, Tennessee. The information submitted to the U.S. Nuclear Regulatory Commission (NRC) will assist the staff in determining whether there have been any significant changes since the completion of the antitrust review conducted for Watts Bar in 1979. This **Federal Register** notice acknowledges receipt of the updated antitrust information, notifies the public of the availability of this information, seeks public comment on this information, and describes the procedures the NRC staff will use to evaluate the information.

On January 23, 1973, the NRC granted TVA's application for construction permits for Watts Bar, Units 1 and 2. On June 30, 1976, TVA filed an application for OLs for Watts Bar, Unit 1 and 2. The NRC issued an OL authorizing full-power operation of Watts Bar, Unit 1, in 1996. However, TVA did not complete construction of Unit 2, and construction was deferred. Since that time, the NRC has granted extensions of the time period for completing construction of Unit 2 under its construction permit. On March 4, 2009, TVA updated its application for an OL for Watts Bar, Unit 2. The receipt of the updated application was noticed in the **Federal Register** on May 1, 2009 (74 FR 20350). The OL application is currently pending review before the NRC.

At the time the NRC issued the construction permit for Watts Bar, Unit 2, Section 105c of the Atomic Energy Act (AEA) of 1954, as amended, required the NRC to conduct an antitrust review on all applications for a license to construct or operate a production or utilization facility [42 U.S.C. 2135(c)]. Thus, the NRC conducted an antitrust review in conjunction with the review of the application for a construction permit for Watts Bar, Unit 2 (37 FR 27646). In 2005, Congress determined that the NRC need not conduct antitrust reviews for applications filed after August 8, 2005 [42 U.S.C. 2135(c)(9)]. Congress did so because "other Government agencies more specialized in financial matters have demonstrated oversight and authority sufficient to discern and address potential anticompetitive behavior of nuclear energy producers" (70 FR 61885). However, because TVA filed its original OL application for Watts Bar Unit 2 before 2005, under the AEA, the NRC must complete an antitrust review on this application.

Under Section 105(c)(2) of the AEA, the NRC will undertake an in-depth antitrust review on applications for an OL only when the NRC determines that "significant changes in the licensee's activities or proposed activities have occurred subsequent" to the previous antitrust review on the construction permit [42 U.S.C. 2135(c)(2)]. The Commission has interpreted this requirement to mean that the NRC must find "the situation as changed has negative antitrust implications" before it will conduct an in-depth antitrust review. *See South Carolina Electric and Gas Company and South Carolina Public Service Authority* (Virgil C. Summer Nuclear Station, Unit 1), CLI–80–28, 11 NRC 817, 835 (1980). Thus, the threshold question before the NRC is whether significant changes have occurred in TVA's activities, from an antitrust perspective, since the NRC previously conducted its antitrust review on the application to construct Watts Bar, Unit 2.

The data submitted by TVA on May 13, 2010, contained information for review, based on NRC Regulatory Guide 9.3, "Information Needed by the AEC Regulatory Staff in Connection with its Antitrust Review of Operating License Applications for Nuclear Power Plants." This information updated previous submissions to the NRC that supported the significant changes review the agency conducted on TVA for Watts Bar, Unit 1. The NRC completed this evaluation on August 15, 1991. Although the evaluation addressed TVA's OL application for Watts Bar, Unit 1, the analysis itself focused on TVA's economic activities. Thus, a separate significant changes analyses for Watts Bar, Unit 2, for that time period would be largely identical to the analysis already conducted for Unit 1. Therefore, the NRC staff sees no reason to conduct such a repetitive significant changes analysis. Instead, in conducting its significant changes analysis for Watts Bar, Unit 2, the NRC will rely on the analysis of TVA's economic activities conducted for Watts Bar, Unit 1, for the time period between the issuance of the construction permit and August 15, 1991. In addition, for the time period from August 15, 1991, to the present, the NRC will conduct a new significant changes analysis for Watts Bar, Unit 2.

For further details pertinent to the matters under consideration, see the application for the facility OL dated June 30, 1975, as supplemented on September 27, 1976, and as updated on March 4, 2009, and the updated antitrust information dated May 13, 2010, which are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The ADAMS accession numbers for the OL application cover letter and supplement cover letter are ML073400595 and ML073381112, respectively. The ADAMS accession number for the update to the application is ML090700378. The ADAMS accession number for the antirust information is ML101400185. To search for other related documents in ADAMS using the Watts Bar Nuclear Plant Unit 2 OL application docket number, 50–391, enter the term "05000391" in the "Docket Number" field when using either the Web-based search (advanced search) engine or the ADAMS find tool in Citrix.

Within 30 days from the date of this **Federal Register** notice, members of the public may send written comments with respect to significant changes related to antitrust matters that occurred since completion of the previous antitrust review to: Chief, Rules, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mailstop: TWB–05B01, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, or by fax to RADB at (301) 492–3446, and should cite the publication date and page number of this **Federal Register** notice. Electronic comments may also be submitted to *http://www.regulations.gov,* and should be sent no later than 30 days from the date of this **Federal Register** notice to be considered in the review process. Comments will be available electronically and accessible through ADAMS at *http://adamswebsearch.nrc.gov/dologin.htm.*

Because these comments will not be edited to remove any identifying or contact information, the NRC cautions the commenter against including any information that he/she does not want to be publicly disclosed. The NRC requests that any person soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will

not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

The NRC will consider such comments submitted and forward those comments, as well as the information submitted by TVA, to the United States Attorney General. Upon reviewing this information, the United States Attorney General will provide the NRC with an opinion on whether there have been significant changes related to antitrust matters in TVA's activities.

Upon completion of the staff's review of significant changes, and after considering any opinion from the United States Attorney General and comments submitted by the public, the Director of the Office of Nuclear Reactor Regulation (NRR), as authorized by the Commission, may issue an initial finding as to whether there have been "significant changes" under Section 105c(2) of the AEA. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC public document room and to those persons providing comments or information in response to this notice. The NRC will also make that initial finding available in ADAMS.

If the initial finding concludes that there have not been any significant changes, a request for reevaluation of the finding may be submitted within 30 days of the date of that **Federal Register** notice. The results of that reevaluation, if requested, will also be published in the **Federal Register**, and copies will be sent to the Washington, DC public document room. The reevaluation will also be available on the NRC's public website through ADAMS. If that determination also finds no significant changes, it will become the final NRC decision after 30 days unless the Commission exercises sua sponte review.

If the Director of NRR concludes that significant changes have occurred since the completion of the antitrust review that the NRC previously conducted, the NRC will begin the procedures necessary to conduct an in-depth antitrust review, as required by Section 105c of the AEA.

Information about the proposed action and the antitrust review process may be obtained from Mr. Aaron Szabo at 301–415–1985 or by e-mail to *Aaron.Szabo@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of July 2010.

For the Nuclear Regulatory Commission.

Michael A. Dusaniwskyj,

Acting Chief, Financial, Policy, and Rulemaking Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–16628 Filed 7–7–10; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 6a–4, Form 1–N; OMB Control No. 3235–0554; SEC File No. 270–496.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below. The Code of Federal Regulation citation to this collection of information is 17 CFR 240.6a–4 and 17 CFR 249.10 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Act").

Section 6 of the Act [1] sets out a framework for the registration and regulation of national securities exchanges. Under the Commodity Futures Modernization Act of 2000, a futures market may trade security futures products by registering as a national securities exchange. Rule 6a–4 [2] sets forth these registration procedures and directs futures markets to submit a notice registration on Form 1–N.[3] Form 1–N calls for information regarding how the futures market operates, its rules and procedures, its criteria for membership, its subsidiaries and affiliates, and the security futures products it intends to trade. Rule 6a–4 also requires entities that have submitted an initial Form 1–N to file: (1) Amendments to Form 1–N in the event of material changes to the information provided in the initial Form 1–N; (2) periodic updates of certain information provided in the initial Form 1–N; (3) certain information that is provided to the futures market's members; and (4) a monthly report summarizing the futures market's trading of security futures products. The information required to be filed with the Commission pursuant to Rule 6a–4 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The respondents to the collection of information are futures markets.

The Commission estimates that the total annual burden for all respondents to provide the amendments and periodic updates under Rule 6a–4 would be 45 hours (15 hours/respondent per year × 3 respondents) and $300 of miscellaneous clerical expenses. The Commission estimates that the total annual burden for the filing of the supplemental information and the monthly reports required under Rule 6a–4 would be 37.5 hours (12.5 hours/respondent per year × 3 respondents) (rounded to 38 hours) and $375 of miscellaneous clerical expenses.

Compliance with Rule 6a–4 is mandatory. Information received in response to Rule 6a–4 shall not be kept confidential; the information collected is public information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC, 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16537 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78f.

[2] 17 CFR 240.6a–4.

[3] 17 CFR 249.10.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor

Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19d–3; SEC File No. 270–245; OMB Control No. 3235–0204.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information provided for in Rule 19d–3 (17 CFR 240.19d–33)—Applications for Review of Final Disciplinary Sanctions, Denials of Membership, Participation or Association, or Prohibitions or Limitations of Access to Services Imposed by Self-Regulatory Organizations.

Rule 19d–3 under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency. The Commission uses the information provided in the application filed pursuant to Rule 19d–3 to review final actions taken by SROs including: (1) Disciplinary sanctions; (2) denials of membership, participation or association; and (3) prohibitions on or limitations of access to SRO services.

It is estimated that approximately 15 respondents will utilize this application procedure annually, with a total burden of 270 hours, for all respondents to complete all submissions. This figure is based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–3 is 18 hours. The average cost per hour, to complete each submission, is approximately $101. Therefore, the total cost of compliance for all respondents is $27,270. (15 submissions × 18 hours × $101 per hour).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16539 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 607; SEC File No. 270–561; OMB Control No. 3235–0634.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Regulation E (17 CFR 230.601–230.610a) provides a conditional exemption from the registration provisions of the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) ("Securities Act") for securities of small business investment companies ("SBICs") and investment companies that elect to be treated as business development companies ("BDCs"). Regulation E was initially adopted in 1958 and made available to SBICs pursuant to Section 3(c) of the Securities Act. Section 3(c) of the Securities Act generally permits the Securities and Exchange Commission ("Commission") to add to the securities exempted from the Securities Act by Section 3 any class of securities issued by an SBIC. In 1984, pursuant to Section 3(b) of the Securities Act, Regulation E was amended to permit the availability of the exemption to BDCs. Section 3(b) of the Securities Act generally permits the Commission to add any class of securities to the securities exempted from the Securities Act by Section 3.

Regulation E allows the exemption of securities issued by an SBIC which is registered under the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a–1 *et seq.*) or a closed-end investment company that has elected to be regulated as a BDC under the Investment Company Act from registration under the Securities Act, so long as the aggregate offering price of all securities of the issuer that may be sold within a 12-month period does not exceed $5,000,000 and certain other conditions are met.

Rule 607 (17 CFR 230.607) entitled, "Sales material to be filed," requires that sales material used in connection with securities offerings under Regulation E to be filed with the Commission at least five days (excluding weekends and holidays) prior to its use. Respondents to this collection of information include SBICs and BDCs making an offering of securities under Regulation E. Each respondent's reporting burden under rule 607 relates to the burden associated with filing its sales material electronically. The burden of filing electronically, however, is negligible and there have been no filings made under this rule, so this collection of information does not impose any burden on the industry. However, we are requesting one annual response and an annual burden of one hour for administrative purposes. The estimate of average burden hours is made solely for purposes of the Paperwork Reduction Act and is not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms.

The requirements of this collection of information are mandatory. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16547 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Form 10–D; OMB Control No. 3235–0604; SEC File No. 270–544

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 10–D (17 CFR 249.312) is used by asset-backed issuers to file periodic distribution reports pursuant to Section 13 and 15(d) under the Securities Exchange Act 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*) within 15 days after each required distribution date. The information provided by Form 10–D is mandatory and all information is made available to the public upon request. Form 10–D takes approximately 30 hours per response to prepare and is filed by approximately 1,000 respondents. Each respondent files an estimated 10 Form 10–Ds per year for a total of 10,000 responses. We estimate that 75% of the 30 hours per response (22.5 hours) is prepared by the company for a total annual reporting burden of 225,000 hours (22.5 hours per response × 10,000 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16540 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Form N–8F; SEC File No. 270–136; OMB Control No. 3235–0157.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form N–8F (17 CFR 274.218) is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that the registration of that investment company cease to be in effect. The form requests, from investment companies seeking a deregistration order, information about (i) the investment company's identity, (ii) the investment company's distributions, (iii) the investment company's assets and liabilities, (iv) the events leading to the request to deregister, and (v) the conclusion of the investment company's business. The information is needed by the Commission to determine whether an order of deregistration is appropriate.

The Form takes approximately 3 hours on average to complete. It is estimated that approximately 330 investment companies file Form N–8F annually, so that the total annual burden for the form is estimated to be 990 hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study.

The collection of information on Form N–8F is not mandatory. The information provided on Form N–8F is not kept confidential. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia, 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16541 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 155; OMB Control No. 3235–0549; SEC File No. 270–492.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 155 (17 CFR 230.155) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) provides safe harbors for a registered offering following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offerings in either case. Rule 155 requires any prospectus filed as a part of a registration statement after a private offering to include disclosure regarding abandonment of the private offering. Similarly, the rule requires an issuer to provide each offeree in a private offering following an abandoned registered offering with: (1) Information concerning withdrawal of the registration statement; (2) the fact that the private offering is unregistered; and (3) the legal implications of the

offering's unregistered status. The likely respondents will be companies. All information submitted to the Commission is available to the public for review. Companies only need to satisfy the Rule 155 information requirements if they wish to take advantage of the rule's safe harbors. The Rule 155 information is required only on occasion. Rule 155 takes approximately 4 hours per response to prepare and is filed by 600 respondents. We estimate that 50% of the 4 hours per response (2 hours per response) is prepared by the filer for a total annual reporting burden of 1,200 hours (2 hours per response × 600 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16542 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form BD/Rule 15b1–1; SEC File No. 270–19; OMB Control No. 3235–0012.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form BD (17 CFR 249.501) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) is the application form used by firms to apply to the Commission for registration as a broker-dealer. Form BD also is used by firms other than banks and registered broker-dealers to apply to the Commission for registration as a municipal securities dealer or a government securities broker-dealer. In addition, Form BD is used to change information contained in a previous Form BD filing that becomes inaccurate.

The total annual burden imposed by Form BD is approximately 6,800 hours, based on approximately 17,795 responses (341 initial filings + 17,764 amendments). Each application filed on Form BD requires approximately 2.75 hours to complete and each amended Form BD requires approximately 20 minutes to complete. There is no annual cost burden.

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers and government securities broker-dealers, and where the Commission, other regulators and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

Completing and filing Form BD is mandatory in order to engage in broker-dealer activity. Compliance with Rule 15b1–1 does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: (i) *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16543 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17f–4; SEC File No. 270–232; OMB Control No. 3235–0225.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 17(f) (15 U.S.C. 80a–17(f)) under the Investment Company Act of 1940 (the "Act") [1] permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities ("securities depositories"), subject to rules adopted by the Commission.

Rule 17f–4 (17 CFR 270.17f–4) under the Act specifies the conditions for the use of securities depositories by funds [2] and custodians. The Commission staff estimates that 138 respondents (including 74 active funds, 48 custodians, and 16 possible securities depositories) [3] are subject to the

[1] 15 U.S.C. 80a.

[2] As amended in 2003, rule 17f–4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. *See* Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) (68 FR 8438 (Feb. 20, 2003)). The term "fund" is used in this Notice to mean a registered investment company.

[3] The Commission staff estimates that, as permitted by the rule, 2% of all active funds deal directly with a securities depository instead of using an intermediary. The number of custodians is from Lipper Inc.'s Lana Database. Securities

requirements in rule 17f–4. The rule is elective, but most, if not all, funds use depository custody arrangements.[4]

Rule 17f–4 contains two general conditions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets.[5] This obligation does not contain a collection of information because it does not impose identical reporting, recordkeeping or disclosure requirements. Funds and custodians may determine the specific measures the custodian will take to comply with this obligation.[6] If the fund deals directly with a depository, the depository's contract or written rules for its participants must provide that the depository will meet similar obligations,[7] which is a collection of information for purposes of the Paperwork Reduction Act of 1995. All funds that deal directly with securities depositories in reliance on rule 17f–4 should have either modified their contracts with the relevant securities depository, or negotiated a modification in the securities depository's written rules when the rule was amended. Therefore, we estimate there is no ongoing burden associated with this collection of information.[8]

Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.[9] If a fund deals directly with a depository, the depository's contract with or written rules for its participants must provide that the depository will provide similar financial reports,[10] which is a collection of information for purposes of the Paperwork Reduction Act of 1995. Custodians and depositories usually transmit financial reports to funds twice each year.[11] The Commission staff estimates that 48 custodians spend approximately 885 hours (by support staff) annually in transmitting such reports to funds.[12] In addition, approximately 74 funds (*i.e.,* two percent of all funds) deal directly with a securities depository and may request periodic reports from their depository. Commission staff estimates that, for each of the 74 funds, depositories spend approximately 17 hours (by support staff) annually transmitting reports to the funds.[13] The total annual burden estimate for compliance with rule 17f–4's reporting requirement is therefore 902 hours.[14]

If a fund deals directly with a securities depository, rule 17f–4 requires that the fund implement internal control systems reasonably designed to prevent an unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officers' instructions).[15] All funds that seek to rely on rule 17f–4 should have already implemented these internal control systems when the rule was amended. Therefore, there is no ongoing burden associated with this collection of information requirement.[16]

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's collection of information requirement is 902 hours.

The estimates of average burden hours are made solely for the purposes of the PRA. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16544 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Securities Act Rule 477; OMB Control No. 3235–0550; SEC File No. 270–493.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this

depositories include the 12 Federal Reserve Banks and 4 registered depositories.

[4] Based on responses to Item 18 of Form N–SAR (17 CFR 274.101), approximately 98 percent of all funds now use depository custody arrangements. As of November 30, 2009, approximately 3770 funds out of the 3844 active funds relied on rule 17f–4.

[5] Rule 17f–4(a)(1). This provision incorporates into the rule the standard of care provided by section 504(c) of Article 8 of the Uniform Commercial Code when the parties have not agreed to a standard. Rule 17f–4 does not impose any substantive obligations beyond those contained in Article 8. Uniform Commercial Code, Revised Article 8—Investment Securities (1994 Official Text with Comments) ("Revised Article 8").

[6] Moreover, the rule does not impose any requirement regarding evidence of the obligation.

[7] Rule 17f–4(b)(1)(i).

[8] The Commission staff assumes that new funds relying on 17f–4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

[9] Rule 17f–4(a)(2).

[10] Rule 17f–4(b)(1)(ii).

[11] The 48 custodians would handle requests for reports from 3770 fund clients (approximately 79 fund clients per custodian) and the depositories from the remaining 74 funds that choose to deal directly with a depository. It is our understanding based on staff conversations with representatives of custodians that custodians and depositories transmit these reports to clients in the normal course of their activities as a good business practice regardless of whether they are requested. Therefore, for purposes of this PRA estimate, the Commission staff assumes that custodians transmit the reports to all fund clients. If all custodians and depositories transmit these reports to funds in the normal course of their activities, there would be no burden associated with this collection of information. *See* 5 CFR 1320.3(b)(2) ("The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities * * * will be excluded if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.").

[12] (48 custodians × 2 reports) = 96 reports × 79 fund clients per custodian = 7584 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of 885 hours (7 minutes × 7584 transmissions). The estimate of time to transmit reports is based on staff conversations with representatives of custodians.

[13] (16 depositories × 2 reports) = 32 reports × 4.6 fund clients per depository = 147 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 17 hours (7 minutes × 147 transmissions).

[14] 885 hours for custodians and 17 hours for securities depositories.

[15] Rule 17f–4(b)(2).

[16] The Commission staff assumes that new funds relying on 17f–4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

request for extension of the previously approved collection of information discussed below.

Rule 477 (17 CFR 230.477) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) sets forth procedures for withdrawing a registration statement, an amendment to a registration statement, or any exhibits thereto. The rule provides that if a registrant intends to rely on the registered-to-private safe harbor contained in Securities Act Rule 155, the registrant must affirmatively state in the withdrawal application that it plans to undertake a subsequent private offering of its securities. Without this statement, the Commission would not be able to monitor a company's reliance on, and compliance with, Securities Act Rule 155(c). The likely respondents will be companies. All information submitted to the Commission under Securities Act Rule 477 is available to the public for review. Information provided under Securities Act Rule 477 is mandatory. The information is required on occasion. We estimate that approximately 300 issuers will file Securities Act Rule 477 submissions annually at an estimated one hour per response for a total annual burden of approximately 300 hours. We estimate that 100 percent of the reporting burden is prepared by the issuer.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16545 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19d–1; SEC File No. 270–242; OMB Control No. 3235–0206.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information provided for in Rule 19d–1 (17 CFR 240.19d–1)—Notices by Self-Regulatory Organizations of Final Disciplinary Actions, Denials Bars, or Limitations Respecting Membership, Association, or Access to Services, and Summary Suspensions.

Rule 19d–1 ("Rule") under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) Disciplinary sanctions (including summary suspensions); (2) denials of membership, participation or association with a member; and (3) prohibitions or limitations on access to SRO services.

The Rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to discipline members or associated persons of members, deny membership or participation or association with a member, and similar adjudicated findings. The Rule requires that such actions be promptly reported to the Commission. The Rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission: (1) To determine whether the matter should be called up for review on the Commission's own motion; and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Exchange Act.

It is estimated that 10 respondents will utilize this application procedure annually, with a total burden of 1,175 hours, based upon past submissions. This figure is based on 10 respondents, spending approximately 117.5 hours each per year. Each respondent submitted approximately 235 responses. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–1 for each submission is 0.5 hours. The average cost per hour, per each submission is approximately $101. Therefore, the total cost of compliance for all the respondents is $118,675. (10 respondents × 235 responses per respondent × .5 hrs per response × $101 per hour).

The filing of notices pursuant to the Rule is mandatory for the SROs, but does not involve the collection of confidential information. Rule 19d–1 does not have a record retention requirement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 30, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16546 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62402; File No. SR–NYSEArca–2010–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of the ETFS Precious Metals Basket Trust

June 29, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that, on June 15, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 list and trade ETFS Physical PM Basket Shares of the ETFS Precious Metals Basket Trust pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade ETFS Physical PM Basket Shares ("Shares" of the ETFS Precious Metals Basket Trust ("Trust") under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges ("UTP") "Commodity-Based Trust Shares."[3] The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 of other issues of Commodity-Based Trust Shares. The Commission has approved listing on the Exchange of ETFS Silver Trust,[4] ETFS Gold Trust,[5] ETFS Platinum Trust[6] and ETFS Palladium Trust (collectively, the "ETFS Trusts").[7] In addition, The Commission has approved listing on the Exchange of streetTRACKS Gold Trust and iShares COMEX Gold Trust.[8] Prior to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange ("NYSE") and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC (now known as "NYSE Amex LLC").[9] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust on the Exchange pursuant to UTP.[10] The Commission also has approved listing of the iShares Silver Trust on the Exchange[11] and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC.[12]

The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of physical gold, silver, platinum and palladium in the proportions held by the Trust, less the expenses of the Trust's operations.[13]

ETFS Services USA LLC is the sponsor of the Trust ("Sponsor"), The Bank of New York Mellon is the trustee of the Trust ("Trustee"),[14] and JPMorgan Chase Bank, N.A. is the custodian of the Trust ("Custodian").[15]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[16] The Shares will be book-entry only and individual certificates will not be issued for the Shares.

The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include estimated accrued but unpaid fees and expenses).

[3] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[4] Securities Exchange Act Release No. 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28).

[5] Securities Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40).

[6] Securities Exchange Act Release No. 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95).

[7] Securities Exchange Act Release No. 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (SR–NYSEArca–2009–94).

[8] *See* Securities Exchange Act Release Nos. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust); 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[9] *See* Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust on NYSE); 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

[10] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[11] *See* Securities Exchange Act Release No. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing on the Exchange of the iShares Silver Trust)).

[12] *See* Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

[13] *See* the registration statement for the Trust on Form S–1, filed with the Commission on April 29, 2010 (No. 333–164769) ("Registration Statement"). The descriptions of the Trust, the Shares, the Bullion, and the regulation and operation of the commodity markets contained herein are based on the Registration Statement.

[14] The Trustee is generally responsible for the day-to-day administration of the Trust, including keeping the Trust's operational records. The Trustee's principal responsibilities include (1)Transferring the Trust's Bullion metal ("Bullion", which is physical gold, silver, platinum and palladium) as needed to pay the Sponsor's Fee in Bullion (Bullion transfers are expected to occur approximately monthly in the ordinary course), (2) valuing the Trust's Bullion and calculating the net asset value ("NAV") of the Trust and the NAV per Share, (3) receiving and processing orders from Authorized Participants to create and redeem Baskets and coordinating the processing of such orders with the Custodian and DTC, (4) selling the Trust's Bullion as needed to pay any extraordinary Trust expenses that are not assumed by the Sponsor, (5) when appropriate, making distributions of cash or other property to Shareholders, and (6) receiving and reviewing reports from or on the Custodian's custody of and transactions in the Trust's Bullion.

[15] The Custodian is responsible for safekeeping for the Trust Bullion deposited with it by Authorized Participants in connection with the creation of Baskets. The Custodian is also responsible for selecting the Zurich Sub-Custodians and its other subcustodians, if any. The Custodian facilitates the transfer of Bullion in and out of the Trust through the unallocated Bullion accounts it will maintain for each Authorized Participant and the unallocated and allocated Bullion accounts it will maintain for the Trust. The Custodian will hold at its London, England vault premises that portion of the Trust's allocated Bullion to be held in London. The Zurich Sub-Custodians will hold at their Zurich, Switzerland vault premises that portion of the Trust's allocated platinum and palladium to be held in Zurich on behalf of the Custodian. The Custodian is responsible for allocating specific bars of physical gold and silver and specific plates or ingots of physical platinum and palladium to the Trust's allocated platinum account. The Custodian will provide the Trustee with regular reports detailing the Bullion transfers in and out of the Trust's unallocated and allocated Bullion accounts and identifying the platinum and palladium plates or ingots held in the Trust's allocated Bullion account.

[16] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Securities Exchange of 1934 ("Act") (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A–3(c)(7).

In determining the NAV of the Trust, the Trustee will value the prices of Bullion metal as determined by the relevant London PM Fixes.[17] Gold held by the Trust will be valued on the basis of the price of an ounce of gold as set by the afternoon session of the twice daily fix of the price of an ounce of gold which starts at 3 p.m. London, England time and is performed in London by the five members of the London gold fix. Silver held by the Trust will be valued on the basis of the price of an ounce of silver as set at approximately 12 noon London time and performed in London by three market making members of the London Bullion Market Association ("LBMA"). Platinum held by the Trust will be valued on the basis of the price of an ounce of platinum as set by the afternoon session of the twice daily fix of the price of an ounce of platinum which starts at 2 p.m. London, England time and is performed in London by the four fixing members of the London Platinum and Palladium Market ("LPPM"). Palladium held by the Trust will be valued on the basis of the price of an ounce of palladium as set by the afternoon session of the twice daily fix of the price of an ounce of palladium which starts at 2 p.m. London, England time and is performed in London by the four fixing members of the LPPM.[18] The Trustee will determine the NAV of the Trust on each day the NYSE Arca is open for regular trading, as promptly as practicable after 4 p.m. Eastern Time ("E.T."). If no London PM Fixes are made for gold, silver, platinum or palladium on a particular evaluation day or has not been announced by 4 p.m. E.T. on a particular evaluation day, the next most recent London price fix for such metal or metals will be used in the determination of the NAV of the Trust, unless the Sponsor determines that such price is inappropriate to use as basis for such determination.[19] The Trustee will also determine the NAV per Share, which equals the NAV of the Trust, divided by the number of outstanding Shares.

Market Regulation

According to the Registration Statement, the global gold, silver, platinum and palladium markets are overseen and regulated by both governmental and self-regulatory organizations. In addition, certain trade associations have established rules and protocols for market practices and participants. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LBMA and the LPPM, falls under the authority of the Financial Services Authority ("FSA") as provided by the Financial Services and Markets Act 2000 ("FSM Act"). Under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls.

The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of Bullion not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England.

The Tokyo Commodity Exchange ("TOCOM") has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices. To act as a Futures Commission Merchant Broker, a broker must obtain a license from Japan's Ministry of Economy, Trade and Industry (METI), the regulatory authority that oversees the operations of the TOCOM.[20]

Operation of the Trust

The Trust is a common law trust formed under New York law pursuant to the Trust Agreement. The Trust holds Bullion and is expected from time to time to issue Baskets in exchange for deposits of Bullion and to distribute Bullion in connection with redemptions of Baskets. The investment objective of the Trust is for the Shares to reflect the performance of the prices of physical gold, silver, platinum and palladium in the proportions held by the Trust, less the Trust's expenses.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act of 1940 and is not required to register under such act. The Trust will not hold or trade in commodity futures contracts regulated by the Commodity Exchange Act[21] ("CEA"), as administered by the Commodity Futures Trading Commission ("CFTC"). The Trust is not a commodity pool for purposes of the CEA, and neither the Sponsor nor the Trustee is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

The Trust expects to create and redeem Shares from time to time but only in Baskets of 50,000 each. The number of outstanding Shares is expected to increase and decrease from time to time as a result of the creation and redemption of Baskets. The creation and redemption of Baskets requires the delivery to the Trust or the distribution by the Trust of the amount of Bullion and any cash represented by the Baskets being created or redeemed. The total amount of Bullion and any cash required for the creation of Baskets will be based on the combined NAV of the number of Baskets being created or redeemed. The initial amount of Bullion required for deposit with the Trust to create Shares will be 1,500 ounces of gold, 55,000 ounces of silver, 200 ounces of platinum and 300 ounces of palladium per Basket.[22] The number of ounces of Bullion required to create a Basket or to be delivered upon a redemption of a Basket will gradually decrease over time. This is because the

[17] Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

[18] The operation of the London Fix for gold, silver, platinum and palladium is described in the registration statements on Form S–1 for the ETFS Gold, Silver, Platinum and Palladium Trusts, respectively, and in the Exchange's proposed rule changes pursuant to Rule 19b–4 under the Act in connection with Exchange listing of such Trusts. *See* notes 4–7, *supra.*

[19] See discussion under "Operation of the Trust", *infra,* regarding procedures used when the Sponsor determines that the Bullion price is inappropriate to use.

[20] Additional information regarding operation of the gold, silver, platinum and palladium markets, and the regulation of these markets, is described in the Registration Statement and in the Commission notices of the Exchange's proposed rule changes regarding listing of the ETFS Trusts. *See* Securities Exchange Act Release Nos. 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28) (notice and order granting accelerated approval regarding listing of ETFS Silver Trust); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40 (notice and order granting accelerated approval regarding listing of ETFS Gold Trust); 60970 (November 9, 2009), 74 FR 59319 (November 17, 2009) (SR–NYSEArca–2009–95) (notice regarding listing of ETFS Platinum Trust); 60971 (November 9, 2009), 74 FR 59283 (November 17, 2009) (SR–NYSEArca–2009–94) (notice regarding listing of ETFS Palladium Trust).

[21] 7 U.S.C. 1 *et seq.*

[22] As of June 11, 2010, the value of a Basket was approximately $3,285,395. The value of Bullion required for the creation of a Basket was approximately $1,837,650 for gold ($1225.10 per ounce times 1,500 ounces); $1,003,750 for silver ($18.25 per ounce times 55,000 ounces); $308,290 for platinum ($1541.45 per ounce times 200 ounces); and $135,750 for palladium ($452.35 per ounce times 300 ounces). These values represent weightings for gold, silver, platinum and palladium in a Basket of approximately 55.93%, 30.55%, 9.38% and 4.13%, respectively.

Shares comprising a Basket will represent a decreasing amount of Bullion due to the delivery or sale of the Trust's Bullion to pay the Sponsor's Fee or the Trust's expenses not assumed by the Sponsor.

The Trustee will determine the NAV of the Trust on each day that the NYSE Arca is open for regular trading, as promptly as practicable after 4 p.m. E.T. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Trustee will value the gold held by the Trust based on the London PM Fix price for an ounce of gold or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's gold, the silver held by the Trust based on the London PM Fix price for an ounce of silver or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's silver, the platinum held by the Trust based on the London PM Fix price for an ounce of platinum or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's platinum and the palladium held by the Trust based on the London PM Fix price for an ounce of palladium or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's palladium. The Trustee will also determine the NAV per Share. If on a day when the Trust's NAV is being calculated, the London Fix is not available or has not been announced by 4 p.m. E.T., for any Bullion metal the price from the next most recent London fix (AM or PM) for such Bullion metal will be used, unless the Sponsor determines that such price is inappropriate to use.

The Trust's assets will consist of allocated physical Bullion, Bullion credited to an unallocated Bullion account and, from time to time, cash, which will be used to pay expenses not assumed by the Sponsor. Cash held by the Trust will not generate any income. Each Share will represent a proportional interest, based on the total number of Shares outstanding, in the Bullion and any cash held by the Trust, less the Trust's liabilities (which include accrued but unpaid fees and expenses). The Sponsor expects that the secondary market trading price of the Shares will fluctuate over time in response to the prices of gold, silver, platinum and palladium. In addition, the Sponsor expects that the trading price of the Shares will reflect the estimated accrued but unpaid expenses of the Trust.

Investors may obtain on a 24-hour basis gold, silver, platinum and palladium pricing information based on the spot price for an ounce of each Bullion metal from various financial information service providers. Current spot prices are also generally available with bid/ask spreads from physical Bullion dealers. In addition, the Trust's Web site (*http://www.etfsecurities.com*) will provide ongoing pricing information for gold, silver, platinum and palladium spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information Web sites and other information service providers. The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's Web site.

According to the Registration Statement, the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM. Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. The COMEX operates through a central clearance system. On June 6, 2003, TOCOM adopted a similar clearance system.

Secondary Market Trading

According to the Registration Statement, while the Trust's investment objective is for the Shares to reflect the performance of prices of physical gold, silver, platinum and palladium in the proportions held by the Trust, less the expenses of the Trust, the Shares may trade in the secondary market on NYSE Arca at prices that are lower or higher relative to their NAV per Share. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the COMEX, and the London and Zurich Bullion markets. While the Shares will trade on NYSE Arca until 8 p.m. E.T., liquidity in the global gold, silver, platinum and palladium markets will be reduced after the close of the COMEX at 1:30 p.m. E.T. or the London and Zurich Bullion markets. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Creation and Redemption of Shares

The Trust will create and redeem Shares from time to time, but only in one or more Baskets of 50,000 Shares. The creation and redemption of Baskets will only be made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of physical gold, silver, platinum and palladium and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received.

Authorized Participants are the only persons that may place orders to create and redeem Baskets, as described in the Registration Statement.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Trustee to create one or more Baskets. Creation and redemption orders will be accepted on "business days" the NYSE Arca is open for regular trading. Settlements of such orders requiring receipt or delivery, or confirmation of receipt or delivery, of Bullion in the United Kingdom, Zurich or another jurisdiction will occur on "business days" when (1) Banks in the United Kingdom, Zurich and such other jurisdiction and (2) the London and Zurich Bullion markets are regularly open for business. Purchase orders must be placed no later than 3:59:59 p.m. E.T. on each business day the NYSE Arca is open for regular trading. By placing a purchase order, an Authorized Participant agrees to deposit Bullion with the Trust. The creation and redemption of Baskets will only be made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of Bullion and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received.

The initial deposit of Bullion into the Trust establishes the "Bullion Ratio" such that, for every 1,500 ounces of gold, there will also be 55,000 ounces of silver, 200 ounces of platinum, and 300 ounces of palladium. Each Creation Basket Deposit, which is the total deposit required to create a Basket, will be an amount of Bullion and cash, if any, that is in the same proportion to the total assets of the Trust (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date an order to purchase one or more Baskets is properly received as the number of Shares comprising the number of Baskets to be created in

respect of the deposit bears to the total number of Shares outstanding on the date such order is properly received. The Bullion component of any Creation Basket Deposit following the initial deposit shall be comprised of gold, silver, platinum and palladium in the Bullion Ratio.[23]

An Authorized Participant who places a purchase order is responsible for crediting its Authorized Participant Unallocated Account with the required Bullion deposit amount by the third business day in London or Zurich, as applicable, following the purchase order date. Upon receipt of the Bullion deposit amount, the Custodian, after receiving appropriate instructions from the Authorized Participant and the Trustee, will transfer on the third business day following the purchase order date the Bullion deposit amount from the Authorized Participant Unallocated Account to the Trust Unallocated Account and the Trustee will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account. The expense and risk of delivery, ownership and safekeeping of Bullion until such Bullion has been received by the Trust is borne solely by the Authorized Participant.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed no later than 3:59:59 p.m. E.T. on each business day the NYSE Arca is open for regular trading. A redemption order so received is effective on the date it is received in satisfactory form by the Trustee. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual Shareholder to redeem any Shares in an amount less than a Basket, or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Trust not later than the third business day following the effective date of the redemption order.

Determination of Redemption Distribution

The redemption distribution from the Trust will consist of a credit to the redeeming Authorized Participant's Authorized Participant Unallocated Account representing the amount of the Bullion held by the Trust evidenced by the Shares being redeemed. Redemption distributions will be subject to the deduction of any applicable tax or other governmental charges which may be due.

Creation and Redemption Transaction Fee

To compensate the Trustee for services in processing the creation and redemption of Baskets, an Authorized Participant will be required to pay a transaction fee to the Trustee of $500 per order to create or redeem Baskets. An order may include multiple Baskets. The transaction fee may be reduced, increased or otherwise changed by the Trustee with the consent of the Sponsor. The Trustee shall notify DTC of any agreement to change the transaction fee and will not implement any increase in the fee for the redemption of Baskets until 30 days after the date of the notice.

Termination Events

The Trustee will terminate and liquidate the Trust if the aggregate market capitalization of the Trust, based on the closing price for the Shares, was less than $350 million (as adjusted for inflation) at any time after the first anniversary after the Trust's formation and the Trustee receives, within six months after the last of those trading days, notice from the Sponsor of its decision to terminate the Trust. The Trustee will terminate the Trust if the CFTC determines that the Trust is a commodities pool under the CEA. The Trustee may also terminate the Trust upon the agreement of the owners of beneficial interests in the Shares ("Shareholders") owning at least 75% of the outstanding Shares.

The Trust has no fixed termination date.

Additional information regarding the Shares and the operation of the Trust, including termination events, risks, and creation and redemption procedures, are described in the Registration Statement.

Valuation of Bullion, Definition of Net Asset Value and Adjusted Net Asset Value ("ANAV")

On each day that the NYSE Arca is open for regular trading, as promptly as practicable after 4 p.m., New York time, on such day (Evaluation Time), the Trustee will evaluate the Bullion held by the Trust and determine both the ANAV and the NAV of the Trust.

At the Evaluation Time, the Trustee will value the Trust's Bullion on the basis of that day's London Fix for such metal or, if no London Fix is made for a metal on such day or has not been announced by the Evaluation Time, the next most recent London price fix for such metal determined prior to the Evaluation Time will be used, unless the Sponsor determines that such price is inappropriate as a basis for evaluation. In the event the Sponsor determines that the London Fix or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's Bullion metal is not an appropriate basis for evaluation of the Trust's Bullion metal, it shall identify an alternative basis for such evaluation to be employed by the Trustee.

Once the value of the Bullion has been determined, the Trustee will subtract all estimated accrued but unpaid fees (other than the fees accruing for such day on which the valuation takes place computed by reference to the value of the Trust or its assets), expenses and other liabilities of the Trust from the total value of the Bullion and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). The resulting figure is the ANAV of the Trust. The ANAV of the Trust is used to compute the Sponsor's Fee.

Liquidity

Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's "buy" and "sell" prices. The period of greatest liquidity in the Bullion markets generally occurs at the time of day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York, Zurich and other centers coincides with futures and options trading on the COMEX. This period lasts for approximately four hours each New York business day morning.

Availability of Information Regarding Bullion Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of commodities such as gold, silver, platinum and palladium over the Consolidated Tape. However, there will be disseminated over the

[23] The proportion of Bullion comprising a deposit will remain the same following inception of the Trust. The amount of gold, silver, platinum and palladium in the required deposit is determined by dividing the number of ounces of each metal held by the Trust by the number of Baskets outstanding, as adjusted for the amount of Bullion constituting estimated accrued but unpaid fees and expenses of the Trust.

Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of Bullion market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis Bullion pricing information based on the spot price for an ounce of Bullion from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of Bullion and last sale prices of Bullion futures, as well as information about news and developments in the Bullion market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on Bullion prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot Bullion, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for Bullion futures and options prices traded on COMEX are available by subscription from Reuters and Bloomberg. COMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on Bullion, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London AM Fix and London PM Fix are publicly available at no charge at or *http://www.thebulliondesk.com.*

The Trust Web site will provide an intraday indicative value ("IIV") per share for the Shares, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider, during the Exchange's Core Trading Session (9:30 a.m. to 4 p.m. E.T.). The IIV is calculated by multiplying the indicative spot price of Bullion by the quantity of Bullion backing each Share as of the last calculation date. The Trust Web site will also provide the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Web site for the Trust will contain the following information, on a per Share basis, for the Trust: (a) The NAV as of the close of the prior business day and the mid-point of the bid-ask price [24] at the close of trading in relation to such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the following information: The Creation Basket Deposit, the Trust's prospectus, and as the two most recent reports to stockholders. Finally, the Trust Web site will also provide the last sale price of the Shares as traded in the US market. The Exchange will provide on its Web site (*http://www.nyx.com*) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares.

A minimum of 100,000 Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the streetTRACKS Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETF Trusts and exchange-traded funds. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the applicable underlying Bullion, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying Bullion, related futures or options on futures or any other related derivative (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying Bullion market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[25] In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule.[26]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Shares. The Exchange represents that these

[24] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[25] The Exchange, pursuant to NYSE Arca Equities Rule 7.12, has discretion to halt trading in the Shares if the London Fixes are not determined for an extended time period based on extraordinary circumstances or market conditions.

[26] *See* NYSE Arca Equities Rule 7.12.

procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying Bullion, Bullion futures contracts, options on Bullion futures, or any other Bullion derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.[27] COMEX is an ISG member.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of Bullion trading during the Core and Late Trading Sessions after the close of the major world Bullion markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical Bullion, that the Commission has no jurisdiction over the trading of Bullion as physical commodities, and that the CFTC has regulatory jurisdiction over the trading of Bullion futures contracts and options on Bullion futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[28] of the Act, in general, and furthers the objectives of Section 6(b)(5),[29] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of commodity-based product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 the 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–NYSEArca–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–NYSEArca–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

[27] A list of ISG members is available at *http://www.isgportal.org.* The Exchange notes that TOCOM is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market. In addition, the Exchange does not have access to information regarding Bullion-related OTC transactions in spot, forwards, options or other derivatives.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–NYSEArca–2010–56* and should be submitted on or before July 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16532 Filed 7–7–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62400; File No. SR–BX–2010–042]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the BOX LLC Agreement

June 29, 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 June 28, 2010, NASDAQ OMX BX, Inc. (the "Exchange") 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the proposed Sixth Amended and Restated Operating Agreement ("BOX LLC Agreement"), of the Boston Options Exchange Group LLC ("BOX LLC"), in connection with the restructuring of subsidiary holding companies by the Montreal Exchange Inc.,[5] a company incorporated in Québec, Canada ("MX"), solely involving MX subsidiaries indirectly holding ownership interests in BOX LLC. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 13, 2004, the Commission approved four Exchange proposals that together established, through an operating agreement among its owners, a Delaware limited liability company, BOX LLC, to operate BOX as an options trading facility of the Exchange.[6]

Prior to the Transfer (as defined below), MX held (i) 100% of the common stock of MX US 1, Inc., a Delaware corporation, (ii) 100% of the common shares of 3226506 Nova Scotia Company, a Nova Scotia unlimited liability company ("NSULC 1") and (iii) 100% of the preferred shares and 99.9% of the common shares of 3226507 Nova Scotia Company, a Nova Scotia unlimited liability company ("NSULC 2"). NSULC 1 held 0.1% of the common shares of NSULC 2. MX US 1, Inc. held 100% of the common stock of MX US 2, Inc., a Delaware corporation, and NSULC 2 owned 100% of the preferred stock of MX US 2, Inc. MX US 2, Inc. held a 53.83% ownership interest in BOX LLC.[7]

Upon effectiveness of this rule filing, MX is expected to effect a series of transactions resulting in a new ownership structure (the "Transfer"). Following the Transfer, the ownership structure by which MX will indirectly control MX US 2, Inc. will be as follows: MX will hold 100% of the common stock of MX US 1, Inc. MX US 1, Inc. will hold (i) 100% of the equity of MX US 1, LLC, a Delaware limited liability company, and (ii) 100% of the common stock of MX US 2, Inc. NSULC 1 will be dissolved and its assets will be distributed to MX US 1, LLC. MX US 1, LLC will hold 100% of the equity of MX US 2, LLC, a Delaware limited liability company (formerly NSULC 2). MX US 2, LLC will hold 100% of the preferred stock of MX US 2, Inc. MX US 2, Inc. will hold a 53.83% ownership interest in BOX LLC.

The Exchange is submitting the proposed rule change to the Commission to amend the BOX LLC Agreement pursuant to the proposed Instruments of Accession in connection with the Transfer. As a result of the Transfer, MX US 1, LLC and MX US 2, LLC will be indirect, wholly-owned subsidiaries of MX.

Pursuant to Section 8.4(g) of the BOX LLC Agreement, as previously approved by the Commission, BOX LLC is required to amend the BOX LLC Agreement to make a Controlling Person[8] a party to the BOX LLC Agreement if such Controlling Person establishes a Controlling Interest[9] in any BOX Member that, alone or together with any Affiliate of such BOX Member, holds a Percentage Interest in BOX

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Montréal Exchange Inc. is also known in French as the Bourse de Montréal Inc.

[6] *See* Securities Exchange Act Release No. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (establishing a fee schedule for the proposed BOX facility); Securities Exchange Act Release No. 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (creating Boston Options Exchange Regulation LLC to which the Exchange would delegate its self-regulatory functions with respect to the BOX facility); Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (approving trading rules for the BOX facility); Securities Exchange Act Release No. 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (approving certain regulatory provisions of the operating agreement of BOX LLC).

[7] *See* Securities Exchange Act Release No. 58822 (Oct. 21, 2008), 73 FR 63742 (Oct. 27, 2008) (SR–BSE–2008–47) (approving BOX purchase and cancellation of units held by a BOX LLC member resulting in increased ownership interest of the other members of the BOX LLC Agreement).

[8] A "Controlling Person" is defined as "a Person who, alone or together with any Affiliate of such Person, holds a controlling interest in a [BOX] Member." *See* Section 8.4(g)(v)(B), BOX LLC Agreement.

[9] A "Controlling Interest" is defined as "the direct or indirect ownership of 25% or more of the total voting power of all equity securities of a Member (other than voting rights solely with respect to matters affecting the rights, preferences, or privileges of a particular class of equity securities), by any Person, alone or together with any Affiliate of such Person." *See* Section 8.4(g)(v)(A), BOX LLC Agreement.

equal to or greater than 20%.[10] Pursuant to the Transfer, MX US 1, LLC has acquired a Controlling Interest in MX US 2, LLC, which owns 100% of the preferred shares of MX US 2, Inc., which owns a 53.83% Controlling Interest in BOX LLC. MX US 1, LLC and MX US 2, LLC, as Controlling Persons, are required to be and will become parties to the BOX LLC Agreement pursuant to the proposed Instruments of Accession. As a result, MX US 1, LLC and MX US 2, LLC will agree to abide by all the provisions of the BOX LLC Agreement, including those provisions requiring submission to the jurisdiction of the Commission.[11]

For the reasons stated above, the Exchange is submitting to the Commission the proposed Instruments of Accession to the BOX LLC Agreement as a rule change.

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(1),[13] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5) of the Act[14] in that it is designed to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Exchange believes that the proposed rule change to amend the BOX LLC Agreement to make MX US 1, LLC and MX US 2, LLC parties to the BOX LLC Agreement, pursuant to the proposed Instruments of Accession, should provide the Commission with sufficient authority over changes in control of BOX LLC to enable the Commission to carry out its regulatory oversight responsibilities with respect to BX and the BOX facility.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[15] of the Act and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[19] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the Exchange has represented that the Transfer is anticipated to be consummated on June 29, 2010.[20] In addition, the proposed rule change to amend the BOX LLC Agreement to make MX US 1, LLC and MX US 2, LLC parties to the BOX LLC Agreement, pursuant to the proposed Instruments of Accession, should provide the Commission with sufficient authority over changes in control of BOX LLC to enable the Commission to carry out its regulatory oversight responsibilities with respect to BX and the BOX facility. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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–BX–2010–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[10] *See* Section 8.4(g), BOX LLC Agreement.

[11] The BOX LLC Agreement states, in part, that "the Members, officers, directors, agents, and employees of Members irrevocably submit to the exclusive jurisdiction of the U.S. Federal courts, U.S. Securities and Exchange Commission, and the Boston Stock Exchange, for the purposes of any suit, action or proceeding pursuant to U.S. Federal securities laws, the rules or regulations thereunder, arising out of, or relating to, BOX activities or Article 19.6(a), (except that such jurisdictions shall also include Delaware for any such matter relating to the organization or internal affairs of BOX, provided that such matter is not related to trading on, or the regulation, of the BOX Market), and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. Securities and Exchange Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency." *See* BOX LLC Agreement, Section 19.6.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5)[sic].

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] *Id.*

[20] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–042. 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–BX–2010–042 and should be submitted on or before July 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16533 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 62403; File No. SR–Phlx–2010–80]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to the Options Floor Broker Subsidy

June 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2010 NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend: (i) The threshold volume requirements related to the Options Floor Broker Subsidy; and (ii) the Per Contract Average Daily Volume Subsidy Payment. The Exchange also proposes correcting a typographical error.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to decrease the threshold volume requirements related to the Options Floor Broker Subsidy and amend the per contract average daily volume subsidy payment fees. The Exchange believes that by eliminating certain threshold requirements additional members may be attracted to the Options Floor Broker Subsidy. Also, the Exchange believes that the proposed rate changes could provide enhanced benefits to current and future member organizations who participate in the Options Floor Broker Subsidy because the Exchange is increasing the per contract rate on the Tier II and Tier III levels. The Exchange still continues to afford the members [sic] organizations who transact volume in Tier I a benefit as well.

Amending the Thresholds

The Exchange currently pays an Options Floor Broker Subsidy to member organizations with Exchange registered floor brokers for eligible contracts that are entered into the Exchange's Floor Broker Management System ("FBMS").[3] To qualify for the per contract subsidy, a member organization with Exchange registered floor brokers must have: (1) More than an average of 100,000 executed contracts per day in the applicable month; and (2) at least 40,000 executed contracts or more per day for at least eight trading days during that same month.[4] Only the floor broker volume from orders entered into FBMS and subsequently executed on the Exchange are counted. The 100,000 contract and 40,000 contract thresholds, as described above, are calculated per member organization floor brokerage unit. In the event that two or more member organizations with Exchange registered floor brokers each entered one side of a transaction into FBMS, then the executed contracts is [sic] divided among each qualifying member organization that participates in that transaction.[5]

The Exchange proposes amending the threshold volume requirements related to the Option Floor Broker Subsidy so that in order to qualify for the per contract subsidy a member organization

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FBMS is designed to enable floor brokers and/or their employees to enter, route, and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by floor brokers on the Exchange. *See* Exchange Rule 1080, commentary .06.

[4] For purposes of calculating the 100,000 and 40,000 thresholds, customer-to-customer transactions, customer-to-non-customer transactions, and non-customer-to-non-customer transactions would be included.

[5] When computing the threshold amounts, the Exchange would first count all customer-to-customer transactions and then all other customer-to-non-customer transactions. *See also* Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR–Phlx–2008–08) (adopting a tiered per contract floor broker options subsidy payable to member organization with Exchange registered floor brokers).

with Exchange registered floor brokers would only require more than an average of 100,000 executed contracts per day in the applicable month. The Exchange is proposing to delete the second threshold requirement, "* * * at least 40,000 executed contracts or more per day for at least eight trading days during that same month."

Customer-to-customer transactions would continue to count towards reaching the 100,000 contract thresholds, but a per contract subsidy would not be paid on any customer-to-customer transactions. Dividend, merger and short stock interest strategies would continue to be excluded from all threshold volume calculations, and no per contract subsidy would be paid on these transactions. The per contract subsidy would be paid based on the average daily contract volume for that month, which are customer-to-non-customer transactions and are in excess of 100,000 contracts. Payments would be made at the stated rate for each tier for those contracts that fall within that tier. These contracts may include customer-to-customer transactions for the purposes of reaching a tier, but as stated above, a per contract subsidy would not be paid on these executions.

In connection with amending the threshold volume requirements, the Exchange also proposes amending the corresponding eligible contract requirements to reflect the elimination of the second threshold.

Amending the Subsidy Payment

Additionally, the Exchange is proposing to amend the per contract average daily volume subsidy payment fees. Currently, in order to be eligible for the Options Floor Broker Subsidy, the member organization must have an average daily volume in a particular calendar month as follows:

PER CONTRACT AVERAGE DAILY VOLUME SUBSIDY PAYMENT

Tier I	Tier II	Tier III
100,001 to 200,000. $0.04 per contract.	200,001 to 300,000. $0.05 per contract.	300,001 and greater. $0.06 per contract.

The Exchange proposes amending the per contract fees as follows:

PER CONTRACT AVERAGE DAILY VOLUME SUBSIDY PAYMENT

Tier I	Tier II	Tier III
100,001 to 200,000.	200,001 to 300,000.	300,001 and greater.

PER CONTRACT AVERAGE DAILY VOLUME SUBSIDY PAYMENT—Continued

Tier I	Tier II	Tier III
$0.02 per contract.	$0.08 per contract.	$0.09 per contract.

The Exchange is also proposing to correct a typographical error in the Fee Schedule. Specifically, the spelling of the word facilitation is being corrected.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(4) of the Act [7] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposed amendments to the Options Floor Broker Subsidy are equitable, fair and reasonable because member organizations with Exchange registered floor brokers are provided an equal opportunity to receive a subsidy and any member organization is free to establish floor brokerage operations on the floor of the Exchange, and, as such, would be eligible to receive the Options Floor Broker Subsidy. Further, the Exchange believes that the changes to the subsidy payments are reasonable because the Exchange is continuing to offer to all members the ability to earn the Options Floor Broker Subsidy. Additionally, the Exchange is eliminating one of the two threshold volume requirements to receive the Options Floor Broker Subsidy and thereby creating additional opportunity for members to avail themselves of the subsidy. In summary, the Exchange is decreasing the payment for Tier I volumes and increasing the payments for Tier II and III volumes to create greater incentives and opportunities for member organizations with Exchange registered floor brokerage operations to earn additional payments for attracting additional order flow to the Exchange.

While the Exchange is decreasing the payments for Tier I volumes from $0.04 to $0.02, the Exchange believes this is reasonable because: (1) The Exchange is still continuing to pay members a subsidy for their volume; and (ii) the Exchange previously had a similar gap in its subsidy payment amounts.[8] The Exchange does not believe that this subsidy is unreasonable or discriminatory because any floor broker is capable of meeting the volume criteria.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [9] and paragraph (f)(2) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–80 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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 57253 (February 1, 2008), 73 FR 7352 (February 7, 2008) (SR–Phlx–2008–08).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

All submissions should refer to File Number SR–Phlx–2010–80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[11] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–80 and should be submitted on or before July 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16534 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

[11] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62404; File No. SR–BATS–2010–017]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rule 11.13, Entitled "Order Execution"

June 30, 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 June 28, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. 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 BATS Rule 11.13, entitled "Order Execution," to modify the existing general description of Exchange routing functionality, to describe available routing options in greater detail, and to add certain new routing options.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.13, which describes its order routing processes, to modify the existing general description of Exchange routing functionality, to describe available routing options in greater detail, and to add certain new routing options.

In addition to the changes described below related to specific routing options, the Exchange proposes various modifications to its general routing standards, which modifications, the Exchange believes, will help to clarify the rule. For instance, the Exchange proposes consolidating the portions of the Rule related to routing of market orders with those portions related to routing of limit orders. Although market orders and limit orders might operate differently under different circumstances, the Exchange does not believe there is a meaningful reason to maintain separate rules related to such routing options any longer. The Exchange made a similar consolidation when adopting its rule for routing of options orders from BATS Options.[5]

Also, subject to User instructions, the Exchange currently allows orders that have been routed and then posted to the Exchange's order book to be re-routed if the order is subsequently locked or crossed by another accessible Trading Center ("RECYCLE Option"). The Exchange proposes to add a reference to the "RECYCLE Option" in its Rule following the text describing this option, consistent with the general goal of the proposed changes to align the routing options offered by the Exchange with the rule text by providing additional specificity. The Exchange also wishes to make clear that, unless otherwise specified, the RECYCLE Option may be combined with any of the System routing options specified in Rule 11.13.

The Exchange is also amending Rule 11.13 to include a definition of "System routing table," defined as the proprietary process for determining the specific trading venues to which the Exchange System routes orders and the order in which it routes them. The definition reflects the fact that the Exchange, like other trading venues, maintains different routing tables for different routing options and modifies them on a regular basis to reflect assessments about the destination markets. Such assessments consider factors such as a destination's latency, fill rates, reliability, and cost. Accordingly, the definition specifies that the Exchange reserves the right to maintain a different routing table for different routing options and to modify routing tables at any time without notice.

Currently, routing options available through BATS are all variations of a routing option referred to by the Exchange as "CYCLE" routing. Although the rule language for Exchange routing options describes the available variations of options in general terms,

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* BATS Rule 21.9, which contains information regarding the routing functionality offered by the Exchange for equity options but does not differentiate between market orders and limit orders.

the Exchange believes that understanding of these options would be enhanced by describing the different versions as separately named routing options.

Below is a description of the various routing options proposed pursuant to new paragraph (a)(3) of Rule 11.13.

- CYCLE. CYCLE is a routing option currently offered by the Exchange under which an order checks the System for available shares and then is sent sequentially to destinations on the System routing table for the full remaining size of such order.
- Parallel D. The Exchange is introducing the new Parallel D routing option, under which an order checks the System for available shares and then is sent to destinations on the System routing table. The System may route to multiple destinations at a single price level simultaneously through Parallel D routing.
- Parallel 2D. The Exchange is introducing the new Parallel 2D routing option, under which an order checks the System for available shares and then is sent to destinations on the System routing table. The System may route to multiple destinations and at multiple price levels simultaneously through Parallel 2D routing.
- Parallel T. The Exchange is introducing the new Parallel T routing option, under which orders route only to Protected Quotations and only for displayed size. The System may route to multiple destinations and at multiple price levels simultaneously through Parallel T routing.
- DART. DART is a routing option currently offered by the Exchange in which the entering firm instructs the System to first route to alternative trading systems included in the System routing table. DART can be combined with and function consistent with either the CYCLE, Parallel D or Parallel 2D routing options.
- "Destination Specific Orders," "Modified Destination Specific Orders" and "Directed ISO" orders are routed orders described in Rule 11.9.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[7] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed change to provide additional clarity and specificity to the Exchange's Rules regarding routing strategies further enhances transparency with respect to Exchange routing offerings. Furthermore, the proposal to introduce the new routing options will provide market participants with greater flexibility in routing orders consistent with Regulation NMS without developing complicated order routing strategies on their own.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange expects to have technological changes for one or more of the new routing strategies in place to support the proposed rule change on or about July 6, 2010, and believes that benefits to Exchange Users expected from the proposed rule change should not be delayed.[12] In addition, the Exchange notes that another national securities exchange currently offers similar routing functionalities.[13] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.[14]

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 No. SR–BATS–2010–017 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–BATS–2010–017. 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

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *Id.*

[12] *See* SR–BATS–2010–017, Item7.

[13] *See* SR–BATS–2010–017, Item7 and 8. *See also* The NASDAQ Stock Market LLC Rule 4758.

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

submission,[15] 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 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2010–017 and should be submitted on or before July 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16535 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

[15] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/rules/sro.shtml.*

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62405; File No. SR–NYSEAmex–2010–59]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Market Maker Authorized Traders

June 30, 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 June 14, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 29, 2010, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 Rule 921.1NY–Market Maker Authorized Traders. The text of the proposed rule change is available on NYSE Amex's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of NYSE Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Presently, Market Maker Authorized Traders ("MMAT") may submit electronic quotes and orders on behalf of an ATP Holder registered as a Remote Market Maker. The purpose of the proposed rule change is to amend Rule 921.1NY in order to allow MMATs to submit electronic quotes and orders on behalf of any type of Market Maker. Rules changes proposed in this filing are consistent with rules governing MMATs on NYSE Arca, Inc.

An MMAT is either a Market Maker, or an officer, partner, employee or associated person of an ATP Holder. MMATs act in a trading capacity by submitting electronic quotes and orders on behalf of the account of a Remote Market Maker. Remote Market Makers make transactions from a location off the trading floor.

A Market Maker on NYSE Amex can either be a Remote Market Maker, a Floor Market Maker, a Specialist or an e-Specialist. Unless otherwise specified, the term Market Maker refers to Remote Market Makers, Floor Market Makers, Specialists and e-Specialists.[4]

Market Makers are permitted to trade all issues listed on the Exchange, and are not limited to the number of issues they may include in their Appointment. Utilizing an electronic execution and quoting system, Market Makers are able to make markets and trade in hundreds, or sometimes thousands of securities simultaneously. Market maker proprietary systems may allow for the trading of a large number issues, however market making still requires a certain level of human interaction in order to effectively monitor trading, manage open positions and enter quotes and orders, and while certain support personnel may monitor trading and or manage positions, only a Market Maker or MMAT is permitted to electronically submit quotes and/or orders to NYSE Amex.

As previously stated, MMATs submit electronic quotes and orders on behalf of Remote Market Makers, but it is not only Remote Market Makers that are required to quote electronically; all Market Makers, regardless of their registration status, must meet certain minimum quoting obligations for all issues within their Appointment.[5] The Exchange believes that by restricting the use of MMATs to just Remote Market Makers, other Market Makers may be limited in the number of securities that they can effectively trade. The Exchange now proposes to allow all types of registered Market Makers on NYSE Amex to utilize registered MMATs to submit electronic quotes and orders on their behalf.

As is the case now, an MMAT will only be permitted to enter electronic quotes and orders on behalf of the Market Maker with which he is associated.[6] MMATs that are associated with Floor Market Makers and Specialists will not be permitted to execute trades in open outcry on the floor of the Exchange. They will however be able to submit electronic quotes and orders in issues included as part of a Floor Market Maker's Appointment.

In addition to the changes proposed to Rule 921.1NY, the Exchange proposes to amend the definition of Market Maker Authorized Trader contained in Rule 900.1NY(37).

These rule changes do not in any way revise or amend any other Exchange

[3] Amendment No. 1 clarified the proposal by making an additional revision to the current text of Rule 921.1NY(a).

[4] See NYSE Amex Rule 920NY(a).

[5] See NYSE Amex Rule 925.1NY.

[6] See NYSE Amex Rule 921.1(a).

rule, including those rules pertaining to qualifications, obligations and rights of Market Makers.

As previously stated, this proposed rule change is consistent with rules governing MMATs on NYSE Arca, Inc. Other rules related to MMATs on NYSE Amex and NYSE Arca are substantially similar. This rule change which authorizes MMATs to submit electronic quotes and orders on behalf of all types of Market Makers will further harmonize the rules of the two exchanges.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[8] 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

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–NYSEAmex–2010–59 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–NYSEAmex–2010–59. 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–NYSEAmex–2010–59 and should be submitted on or before July 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62422; File No. SR–NYSEArca–2010–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Its Fee Schedule

June 30, 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 June 25, 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 its [sic] Schedule of Fees and Charges for Exchange Services (the "Schedule") effective July 1, 2010. The amended section of the Schedule is included as Exhibit 5 hereto.[3] A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Exhibit 5 is attached to the Form 19b–4.

and on the Commission's Web site at *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the Exchange aggregates all of an OTP Holder's volume at the trading permit level for purposes of the Firm Proprietary Manual fee caps. Recently, certain OTP Holders have requested that the Firm Proprietary Manual fee caps be calculated at the initiating firm level. By this filing, the Exchange proposes to allow its OTP Holders to elect to have their Firm Proprietary Manual billing calculated at the initiating firm level for purposes of the fee cap. The Exchange's default billing will continue to aggregate volume at the trading permit level, and OTP Holders must elect this new billing option. If elected, this option will allow Joint Back Office operations to pass-through the pricing associated with the caps at NYSE Arca more effectively. The Exchange believes this proposed elective billing option is reasonable and equitable and applies uniformly to all OTP Holders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[4] in general, and Section 6(b)(4) of the Act,[5] 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. This proposed elective billing option is reasonable and equitable and applies uniformly to all OTP Holders. If elected, this option will allow Joint Back Office operations to pass-through the pricing associated with the caps at NYSE Arca more effectively.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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–2010–63 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2010–63. 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 NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2010–63 and should be submitted on or before July 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62424; File No. SR–EDGX–2010–04]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Fees for Use of EDGX Exchange, Inc.

June 30, 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 June 30, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 establish its initial fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). The Exchange intends to implement this rule proposal immediately upon commencement of its operations as a national securities exchange.

All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 12, 2010, the Securities and Exchange Commission ("SEC" or "Commission") approved EDGX Exchange, Inc.[4] (the "Exchange") Form 1 application under the Act, which sought registration as a national securities exchange pursuant to Section 6 of the Act.[5]

EDGX Exchange proposes to implement a fee schedule applicable to use of the Exchange commencing on the date it begins operating as a national securities exchange. The Exchange currently intends to commence operations as a national securities exchange on July 2, 2010. Please find below a description of the fees and rebates that the Exchange intends to impose under the initial, proposed fee schedule.

(i) Fees for Removing Liquidity

For securities priced $1.00 and over, the Exchange is proposing to charge $0.0029 per share for executions that remove liquidity from the Exchange. For securities priced less than $1.00, there is a charge of 0.10% of the total value of the transaction.

The rebates for removing liquidity will apply to securities traded on the Exchange pursuant to unlisted trading privileges that are listed on: (A) The New York Stock Exchange ("NYSE"); (B) regional exchanges, such as NYSE Arca Equities ("NYSE Arca") and NYSE Alternext US ("NYSE Alternext," formerly the American Stock Exchange); and (C) the NASDAQ Stock Market ("Nasdaq") ("Tape A Securities", "Tape B Securities" and "Tape C Securities", respectively, and collectively, "All Tapes").

Applicable Flags [6]

For orders in Tapes B and C Securities that remove liquidity from the EDGX book, a charge of $0.0029 per share is proposed, as described above, and this situation yields Flag "N." For orders in Tape A Securities that remove liquidity from the EDGX book, a charge of $0.0029 is proposed, as described above, and this situation yields Flag "W."

For orders that remove liquidity from LavaFlow ECN, a charge of $0.0029 per share is proposed and this situation yields Flag "U." However, if a Member posts an average of 100,000 share or more per day using a ROLF strategy (yielding Flag "M"), then said Member's fee when routed to LavaFlow decreases to $0.0023 per share (yielding Flag "U"). The latter rate reflects a pass-through of the LavaFlow ECN fee. A ROLF strategy sweeps the EDGA book and the remainder routes to LavaFlow.

For orders that remove liquidity in the Pre-Opening [7] and Post-Closing [8] Sessions in securities on all Tapes, a charge of $0.0029 per share is also proposed. This situation yields Flag "6."

(ii) Standard Rebates for Adding Liquidity

For securities priced $1.00 and over, the Exchange is proposing to rebate $0.0029 per share for executions that add liquidity to the Exchange. For securities priced less than $1.00, there is a rebate of $0.00003 to add liquidity. The Exchange believes that this rebate is appropriate as it represents 30% of the minimum price increment for securities priced less than $1.00 ($0.0001) and effectively aligns the rebate with access fee caps under Regulation NMS.[9] The charge for adding liquidity will apply to securities traded on the Exchange pursuant to unlisted trading privileges that are Tape A Securities, Tape B Securities, and Tape C Securities.

However, Members can qualify for a rebate of $0.0032 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 shares of average daily volume prior to 9:30 a.m. or after 4:00 p.m. (includes all flags except 6) and add a minimum of 50,000,000 shares of average daily volume on EDGX in total, including during both market hours and Pre-Opening and Post-Closing Sessions. For the month of July 2010 only, these average daily volume thresholds (5,000,000 and 50,000,000) will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each Exchange-traded symbol for all days that such symbol is traded on the Exchange during the month of July and the denominator of which shall be the monthly consolidated volume for all Exchange-traded symbols during the month of July. This calculation adjusts these volume thresholds during the month of July when trading is being phased into the Exchange from Direct Edge's ECN and reflects the portion of the volume that occurs on the Exchange during the month.

Additionally, upon a Member's request, EDGX Exchange will aggregate share volume calculations for wholly owned affiliates on a prospective basis.

Applicable Flags [10]

For orders in Tape B Securities that add liquidity to the EDGX book, a rebate of $0.0029 per share is proposed, as described above, and this situation yields Flag "B." For orders in Tape A

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] EDGA Exchange, Inc. will file a separate fee schedule with the Commission.

[5] *See* Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File No. 10–196). EDGA Exchange, Inc. ("EDGA") was also approved as an exchange, and will file a separate 19b–4 filing with its fee schedule.

[6] The following rebates and fees apply to orders in securities priced $1 and over. For securities priced less than $1.00, there is a charge of 0.10% of the total value of the transaction.

[7] As defined in EDGA Rule 1.5(q).

[8] As defined in EDGA Rule 1.5(p).

[9] The Access Rule of Regulation NMS limits the fees any trading center can charge, or allow to be charged, for accessing its protected quotations, both displayed and reserve size, to no more than $0.003 per share. *See* Rule 610(c) of Regulation NMS, Securities and Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[10] The following rebates and fees apply to orders in securities priced $1.00 and over. For securities priced less than $1.00, there is no rebate.

Securities that add liquidity to the EDGX book, a rebate of $0.0029 per share is proposed, as described above, and this situation yield Flag "V." For orders in Tape C Securities that add liquidity to the EDGX book, a rebate of $0.0002 per share is proposed, as described above, and this situation yields Flag "Y." For all cases described above, Members could receive higher rebates if they meet the thresholds described above.

For those orders that add liquidity on LavaFlow ECN, a rebate of $0.0024 per share is proposed and this situation would yield Flag "M." However, if a Member posts an average of 100,000 shares or more using a ROLF routing strategy, yielding flag M, then such Member's fee, when removing liquidity from LavaFlow, will decrease to $0.0023 per share and yield flag U, as described above. For orders that add liquidity in the Pre-Opening and Post-Closing Sessions in Tapes A & C Securities, a rebate of $0.0029 per share is proposed (yielding Flag "3"). For those orders that add liquidity in the Pre-Opening and Post-Closing Sessions in Tape B securities, a rebate of $0.0029 per share is also proposed (yielding Flag "4"). However, Members could receive higher rebates if they meet the thresholds described above.

The Exchange believes that this fee structure is equitable in that it applies uniformly to all Members and provide higher rebates for higher volume thresholds, resulting from lower administrative costs. Destination-specific fees are also based, in part, on fees charged by other market centers.

(iii) Routing Charges

The Exchange proposes to charge the routing charges described below. All charges by the Exchange for routing are applicable only in the event that an order is executed. In other words, there is no charge for orders that are routed away from the Exchange but are not filled. In connection with routing of orders away from the Exchange, the Exchange proposes to charge $0.0029 per share for securities priced $1.00 and over and 0.30% of the total dollar value of the transaction [11] for securities priced less than $1.00.

For destination specific orders, the following fees/rebates are proposed to apply to all securities priced $1 and over:[12] For orders that are routed to Nasdaq using the INET order type, and remove liquidity in Tape B Securities, a charge of $0.0030 per share is proposed (yielding Flag "2"). For securities routed to Nasdaq using the INET order type and that remove liquidity in Tape A & C Securities, a charge of $0.0030 per share is proposed (yielding Flag "L"). The INET order type sweeps the EDGA book and removes liquidity from Nasdaq, if the order is marketable, or posts on Nasdaq, if the order is non-marketable. Members routing an average daily volume ("ADV"): (i) Less than 5,000,000 shares will be charged $0.0030 per share, as described above; (ii) equal to or greater than 5,000,000 shares but less than 20,000,000 shares will be charged Nasdaq's best removal tier rate per share; (iii) equal to or greater than 20,000,000 shares but less than 30,000,001 shares will be charged Nasdaq's best removal tier rate—$0.0001 per share; and (iv) equal to or greater than 30,000,001 shares will be charged Nasdaq's best removal tier rate—$0.0002 per share. The rates, in all cases, are calculated for shares removed from Nasdaq. The Exchange believes that this fee structure is equitable in that it applies uniformly to all Members and provides lower fees for higher volume thresholds, resulting from lower administrative costs. Destination-specific fees are also based, in part, on fees charged by other market centers.

For those orders routed to Nasdaq that add liquidity, a rebate of $0.0020 per share is proposed (yielding Flag "A"). For orders routed to Nasdaq OMX BX in Tape A and C Securities and that remove liquidity, a rebate of $0.0001 per share is proposed (yielding Flag "C"). For orders routed or re-routed to NYSE and that remove liquidity, a charge of $0.0021 per share is proposed (yielding Flag "D").[13] For orders routed to NYSE that add liquidity, a rebate of $0.0013 per share is proposed (yielding Flag "F"). For orders routed to NYSE Arca in Tape A & C Securities that remove liquidity, a charge of $0.0030 per share is proposed (yielding Flag "G"). For orders routed to EDGA Exchange, Inc., a charge of $0.0029 per share is proposed (yielding Flag "I"). For orders routed to Nasdaq that remove liquidity, a charge of $0.0030 per share is proposed (yielding Flag "J"). For orders routed to the BATS Exchange ("BATS") using a ROBA order type, a charge of $0.0025 per share is proposed (yielding Flag "K"). A ROBA order type sweeps the EDGA book and routes to BATS Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution.

For orders using the ROUQ or ROUC order types, a charge of $0.0020 per share is proposed (yielding Flag "Q"). A ROUQ order type sweeps the EDGA book, then routes to other destination centers. A ROUC order type sweeps the EDGA book, then other destination centers, then Nasdaq OMX BX, then NYSE, and the remainder posts to EDGX. For any orders that are re-routed by EDGA, a charge of $0.0030 per share is proposed (yielding Flag "R"). For Directed Intermarket Sweep Orders [14] (yielding Flag "S"), a charge of $0.0033 per share is proposed. For orders that are routed and no other flag applies, a standard charge of $0.0029 per share applies, as discussed above (yielding Flag "X"). For orders that are routed using the ROUZ order type, a charge of $0.0010 per share is proposed (yielding Flag "Z"). A ROUZ order type sweeps the EDGA book before interacting with solicited orders. For orders routed during the Pre-Opening and Post-Closing Sessions, a charge of $0.0030 per share applies (yielding Flag "7"). For orders that are routed using the ROUD or ROUE order types, a charge of $0.0020 is proposed (yielding Flag "T"). A ROUD order sweeps the EDGA book before being routed to other destination centers. A ROUE order type sweeps the EDGA book, then other destination centers, and any remainder routes to other market centers.

The differences between the fees charged for routing to specific market centers and routing of specific order types described above are due to different cost structures at the various market centers to which orders may be routed and other factors. Similarly, lower transaction fees at other destination centers permit the Exchange to charge lower routing fees for orders routed to such venues. Because the Exchange incurs additional costs and performs additional services in connection with the routing of Directed ISOs, it charges a higher routing fee for such orders. Finally, because the Exchange believes that a uniform routing fee for all other orders routed away from the Exchange (other than those described above) provides

[11] This charge applies in all cases, except when (i) routing to the NYSE, where securities priced under $1.00 are charged $0.0021 per share when removing liquidity; (ii) when routing to Nasdaq BX and removing liquidity in Tapes A & C Securities, where securities priced under $1.00 are charged 0.10% of the dollar value of the transaction; and (iii) when routing to Nasdaq and removing liquidity in securities on all Tapes, securities priced under $1.00 are charged 0.20% of the dollar value of the transaction. These fees are proposed to be indicated by footnote number 3 being appended to the "C," "J," "L," and "2" flags.

[12] For securities priced below $1.00, a standard routing charge of 0.30% of the total dollar value of the transaction applies, except when routing to the NYSE, as described above.

[13] This charge, instead of the standard 0.30% of the dollar value of the transaction described above, also applies to securities priced less than $1.00.

[14] As defined in EDGA Rule 11.5(d).

Members with certainty as to transaction costs, it proposes to charge a standard routing fee of $0.0029 per share, as described above, for such orders, rather than further differentiating routing fees that it charges to Members.

Other Charges and Flags

For customer internalization (i.e, same MPID),[15] there is no charge nor rebate because the fees for removing liquidity would be offset by the rebate received for adding liquidity. This situation yields Flag "E." During the Pre-Opening and Post-Closing sessions, there are also no charges nor rebates, but this situation yields Flag "5."

For orders that execute during the Nasdaq opening cross (NOOP), it is proposed that these orders will be charged $0.0005 per share and yield Flag "O." However, this fee is proposed to be capped at $10,000 per month per Member, which is a pass-through of Nasdaq's opening cross cap.

For Direct Edge opening transactions, where Members match with each other at the midpoint of the national best bid/offer ("NBBO") during EDGX's opening process, IPO, or post-halt, a charge of $0.0010 is proposed, yielding flag "OO."

For Mid-Point Match ("MPM") orders,[16] the following applies:

- Where a Member added liquidity in the MPM product, a charge of $0.0010 per share is proposed (yielding Flag "MM.")
- Where a Member removed liquidity in the MPM product, a charge of $0.0010 per share is proposed (yielding Flag "MT.")
- A MPM Cross, where a Member crossed/matched with itself in the MPM product (Member is both sides of the trade), there is no charge proposed (yielding Flag "AA").

The lower charge for MPM orders is designed to incent Members to use this order type, which provides price improvement by providing liquidity at the midpoint, and is similar to existing pricing for this order type on the International Securities Exchange, LLC.[17]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[18] in general, and furthers the objectives of Section 6(b)(4),[19] 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. The Exchange notes that it 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 the Exchange. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and provide higher rebates for higher volume thresholds, resulting from lower administrative costs. The Exchange 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 the Exchange rather than competing venues. Finally, the Exchange believes that the proposed rates further the objectives of Regulation NMS by promoting competition and granting fair and equal access to all exchange participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[20] and Rule 19b–4(f)(2)[21] 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–EDGX–2010–04 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–EDGX–2010–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[22] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[15] This occurs when two orders presented to the Exchange from the same Member (i.e, MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another. Members are advised to consult Rule 12.2 respecting fictitious trading.

[16] As defined in EDGX Rule 11.5(c)(7).

[17] *See* Securities Exchange Act Release No. 57828 (May 15, 2008), 73 FR 30433 (May 27, 2008) (SR–ISE–2008–38).

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 19b–4(f)(2).

[22] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGX, and at the Commission's Public Reference Room.

available publicly. All submissions should refer to File Number SR–EDGX–2010–04 and should be submitted on or before July 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16563 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62431; File No. SR–ISE–2010–70]

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

July 1, 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 June 30, 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 June 30, 2010, in SR–ISE–2010–69, the ISE filed for immediate effectiveness a proposed rule change to amend DECN's fee schedule for ISE Members[4] to (i) eliminate a trading volume threshold found in footnote 4 to the fee schedule;[5] and (ii) add clarifying material to explain how certain volume thresholds will be adjusted during the month of July 2010.[6] The changes made pursuant to SR–ISE–2010–69 became operative on July 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–2010–69, DECN wishes to make corresponding changes to the amounts it passes through to non-

[23] 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. ("EDGA and EDGX Exchanges") [sic] Direct Edge ECN will cease to operate in its capacity as an electronic communications network following the commencement of operations of EDGA and EDGX Exchanges as national securities exchanges.

[4] References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

[5] On June 30, 2010, in SR–ISE–2010–69, the Exchange eliminated the trading volume threshold found in footnote 4 of the DECN fee schedule relating to Flags E and 5. Currently, the lower rate of $0.000025 per share is contingent upon meeting a 1,000,000 share volume threshold on a daily basis, measured monthly. The Exchange eliminated the 1,000,000 share threshold in footnote 4 to the fee schedule and added "intentionally omitted" to the footnote in order to keep the current footnote numbering intact. The Exchange believes that the elimination of such threshold will enable it to avoid having to adjust the threshold calculation for the month of July 2010. This will result in an administratively easier process for both the Exchange and Members during the migration of symbols from DECN to EDGA and EDGX Exchanges.

[6] EDGA and EDGX Exchanges expect to begin operating as national securities exchanges on July 2, 2010. (*See* SR–EDGA–2010–04 and SR–EDGX–2010–04 for EDGA and EDGX Exchange fee schedules). Following the launch date there will be a two week, phase-in period during which securities currently trading on DECN will be moved from DECN to EDGA and EDGX Exchanges. Once a symbol is migrated from DECN to EDGA and EDGX Exchanges, it will no longer be available for trading on DECN and will only be available for trading on the EDGA and EDGX Exchanges. Once the EDGA and EDGX Exchanges begin trading their first security, they will thus operate in conjunction with DECN until all symbols are fully migrated.

As a result of the phased migration of symbols from DECN to EDGA and EDGX Exchanges, per SR–ISE–2010–69, three volume thresholds were adjusted for the month of July 2010 only to reflect the portion of the volume that occurs on DECN during the month. In that filing, the Exchange placed clarifying language about how these rebates are calculated in footnote numbers 1 and 2 to the DECN fee schedule. First, the removal rate on EDGA (a rebate of $0.0002 per share) is currently contingent on the attributed MPID adding (including hidden) and/or routing a minimum average daily share volume, measured monthly, of 50,000 shares on EDGA. Any attributed MPID not meeting the aforementioned minimum is charged $0.0030 per share for removing liquidity from EDGA (0.20% of dollar value for stocks priced less than $1.00). However, per SR–ISE–2010–69, the Exchange amended its fee schedule to provide that for the month of July 2010 only, the 50,000 average daily volume threshold will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECN-traded symbol for all days that such symbol is traded on the DECN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECN-traded symbols during the month of July.

Secondly, Members can qualify for a rebate of $0.0032 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6) AND add a minimum of 50,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours. In SR–ISE–2010–69, the Exchange amended its fee schedule for the month of July 2010 only to provide that these average daily volume thresholds (5,000,000 and 50,000,000) will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECN-traded symbol for all days that such symbol is traded on the DECN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECN-traded symbols during the month of July.

Third, the rebate for adding hidden orders is currently contingent upon Members adding greater than 1,000,000 shares on a daily basis, measured monthly. Members not meeting this minimum will be charged $0.0030 per share. In SR–ISE–2010–69, for the month of July 2010 only, the Exchange amended its fee schedule to provide that the 1,000,000 monthly share volume threshold will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECN-traded symbol for all days that such symbol is traded on the DECN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECN-traded symbols during the month of July.

ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers are charged will be the same as the amounts that ISE Members are charged.

ISE is seeking accelerated approval of this proposed rule change, as well an effective date of July 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 July 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,[7] in general, and furthers the objectives of Section 6(b)(4),[8] 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

This 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
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–70 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–2010–70. 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–2010–70 and should be submitted on or before July 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.[9] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)[10] 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–2010–69 (the "Member Fee Filing"). The changes to the DECN fee schedule made pursuant to the Member Fee Filing became operative on July 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 July 1, 2010, will allow DECN to pass through the revised fees and rebates 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 establish fees and rebates for 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 fees and rebates established for ISE Member subscribers in the Member Fee Filing, resulting in equivalent fees and rebates for ISE Member and non-member subscribers. In addition, because the proposal will apply the revised fees and rebates beginning on July 1, 2010, the revised fees and rebates 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,[11] that the proposed rule change (SR–ISE–2010–70) is approved on an accelerated basis.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C 78c(f).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–16669 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62430; File No. SR–ISE–2010–69]

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

July 1, 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 June 30, 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 proposes to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members[3] to (i) eliminate a trading volume threshold found in footnote 4 to the fee schedule and (ii) add clarifying material to explain how certain volume thresholds will be adjusted during the month of July 2010. 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.

I. 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]

The EDGA and EDGX Exchanges[5] expect to begin operating as national securities exchanges on July 2, 2010. Following the launch date there will be a two-week phase-in period during which securities currently trading on DECN will be moved from DECN to EDGA and EDGX Exchanges. Once a symbol is migrated from DECN to EDGA and EDGX Exchanges, it will no longer be available for trading on DECN and will only be available for trading on the EDGA and EDGX Exchanges. Once the EDGA and EDGX Exchanges begin trading their first security, they will thus operate in conjunction with DECN until all symbols are fully migrated.

As a result of the phased migration of symbols from DECN to EDGA and EDGX Exchanges, three volume thresholds will need to be adjusted for the month of July 2010 only to reflect the portion of the volume that occurs on DECN during the month. The Exchange is proposing to place clarifying language about how these rebates are calculated in footnote numbers 1 and 2 to the DECN fee schedule. First, the removal rate on EDGA (a rebate of $0.0002 per share) is currently contingent on the attributed MPID adding (including hidden) and/or routing a minimum average daily share volume, measured monthly, of 50,000 shares on EDGA. Any attributed MPID not meeting the aforementioned minimum will be charged $0.0030 per share for removing liquidity from EDGA (0.20% of dollar value for stocks priced less than $1.00). However, the Exchange is proposing that for the month of July 2010 only, the 50,000 average daily volume threshold will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECN-traded symbol for all days that such symbol is traded on the DECN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECN-traded symbols during the month of July.

Secondly, Members can qualify for a rebate of $0.0032 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 shares of average daily volume prior to 9:30 a.m. or after 4 p.m. (includes all flags except 6) AND add a minimum of 50,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre- and post-trading hours. The Exchange is proposing that for the month of July 2010 only, these average daily volume thresholds (5,000,000 and 50,000,000), will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECN-traded symbol for all days that such symbol is traded on the DECN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECN-traded symbols during the month of July.

Third, the rebate for adding hidden orders is currently contingent upon Members adding greater than 1,000,000 shares on a daily basis, measured monthly. Members not meeting this minimum will be charged $0.0030 per share. For the month of July 2010 only, the 1,000,000 monthly share volume threshold will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each DECN-traded symbol for all days that such symbol is traded on the DECN during the month of July and the denominator of which shall be the monthly consolidated volume for all DECN-traded symbols during the month of July.

Finally, the Exchange is proposing to eliminate the trading volume threshold found in footnote 4 of the DECN fee schedule relating to Flags E and 5. Currently, the lower rate of $0.000025 per share is contingent upon meeting a 1,000,000 share volume threshold on a daily basis, measured monthly. The Exchange proposes to eliminate the 1,000,000 share threshold in footnote 4 to the fee schedule and add "intentionally omitted" to the footnote

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[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* SR–EDGA–2010–04 and SR–EDGX–2010–04 for EDGA and EDGX Exchange fee schedules.

in order to keep the current footnote numbering intact. The Exchange believes that the elimination of such threshold will enable it to avoid having to adjust the threshold calculation for the month of July 2010. This will result in an administratively easier process for both the Exchange and Members during the migration of symbols from DECN to EDGA and EDGX Exchanges.

The changes discussed in this filing will become operative on July 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. The ISE also believes that the proposed rates are equitable in that they apply uniformly to all Members.

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.

II. 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.

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
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–69 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–2010–69. 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–2010–69 and should be submitted on or before July 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–16668 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

[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).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62421; File No. SR–OCC–2010–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Additional Underlying Interests for Commodity Futures and Commodity Options Available to ELX Futures, L.P. for Clearing and Settlement Services

June 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,[1] notice is hereby given that on June 16, 2010, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The proposed rule change consists of adding Schedule C–1 to the Agreement for Clearing and Settlement Services ("Agreement") dated December 5, 2008, between the Options Clearing Corporation ("OCC") and ELX Futures L.P. ("ELX").

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(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, OCC 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. OCC 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

OCC and ELX are parties to a clearing and settlement agreement pursuant to which OCC provides clearing services for U.S. treasury futures traded on ELX. The Agreement further provides, among other things, that ELX may select additional underlying interests for commodity futures and commodity options by completing and executing a Schedule C, which is subject to the agreement of OCC. (ELX may trade futures options on futures contracts traded on ELX and cleared by OCC without executing a Schedule C.) When completed and duly executed, a Schedule C is incorporated into the Agreement and becomes a part thereof.

ELX has selected Eurodollar Time Deposits having a principal value of USD $1,000,000 with a 3-month maturity as an underlying interest for futures contracts ("Eurodollar Futures") and OCC has agreed to clear Eurodollar Futures on behalf of ELX. OCC and ELX have now executed Schedule C–1 to codify that Eurodollar Futures will be incorporated and become a part of the Agreement between the parties. Schedule C–1 is attached as Exhibit 5A to OCC's filing with the Commission.[4]

OCC states that the proposed change is consistent with Section 17A of the Act[5] because it makes explicit that OCC will clear pursuant to the Agreement the Eurodollar futures contracts proposed for trading by ELX. OCC also states that the proposed rule change is not inconsistent with the existing rules of OCC including any other rules proposed to be amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

OCC has not solicited or received written comments relating to the proposed rule change. OCC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(4)[7] thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–OCC–2010–08 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–OCC–2010–08. 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 OCC's principal office and on OCC's Web site at *http://www.theocc.com/about/publications/bylaws.jsp.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–OCC–2010–08 and should be submitted on or before July 29, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–16667 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62428; File No. SR–NASDAQ–2010–081]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change To Extend the Last Sale Data Feeds Pilot Program

July 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[4] The filing, including Schedule C–1, can be seen at *http://www.theocc.com/about/publications/bylaws.jsp.*

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).

[8] 17 CFR 200.30–3(a)(12).

("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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 Exchange. 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

NASDAQ is proposing to extend for three months the pilot that created the NASDAQ Last Sale ("NLS") market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the Internet and television. Specifically, NASDAQ offers the "NASDAQ Last Sale for NASDAQ" and "NASDAQ Last Sale for NYSE/Amex" data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the jointly-operated FINRA/NASDAQ Trade Reporting Facility ("FINRA/NASDAQ TRF"). The purpose of this proposal is to extend the existing pilot program for a three-month period beginning on July 1, 2010.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the current pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3]

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a [six] *three* month pilot period commencing on [January] *July* 1, 2010, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1) "NASDAQ Last Sale for NASDAQ" shall contain all transaction reports for NASDAQ-listed stocks; and

(2) "NASDAQ Last Sale for NYSE/Amex" shall contain all such transaction reports for NYSE- and *NYSE* Amex-listed stocks.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data via the Internet and television at no cost to millions of Internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program on the same terms as applicable today.[4]

The NLS pilot created two separate "Level 1" products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the "NASDAQ Last Sale for NASDAQ Data Product," a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the NASDAQ Last Sale for NYSE/Amex data product that provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms will be eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product: Firms that were unable to maintain username/password entitlement systems and/or quote counting mechanisms will also have multiple options for purchasing the NASDAQ Last Sale data. These firms chose between a "Unique Visitor" model for Internet delivery or a "Household" model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

Second, NASDAQ established a cap on the monthly fee, currently set at $50,000 per month for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products would pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee will apply to all distributors and will not vary based on whether the distributor distributes the data internally or externally or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at *http://nasdaqomx.cchwallstreet.com*.

[4] NASDAQ previously stated that it would file a proposed rule change seeking permanent approval of the NLS pilot. NASDAQ has also informed Commission staff that it will consult with FINRA to develop a proposed rule change by FINRA to seek permanent Commission approval for inclusion of FINRA/NASDAQ TRF data in NLS. Because NASDAQ and FINRA have not completed their consultations regarding such a proposed rule change, NASDAQ is not yet in a position to file for permanent approval of NLS. Accordingly, NASDAQ is filing to seek a three-month extension of the existing pilot.

distributes the data via both the Internet and television.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of NASDAQ data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The NASDAQ Last Sale market data products proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[7]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

NASDAQ's ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including ten self-regulatory organization ("SRO") markets, as well as internalizing broker-dealers ("BDs") and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities ("TRFs") compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE Amex, NYSEArca, and BATS.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract "eyeballs" that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN,

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

BATS Trading and Direct Edge. Today, BATS publishes its data at no charge on its Web site in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users.[8] A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users. The existence of numerous alternatives to NLS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NLS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the NASDAQ Last Sale Products respond to and enhance competition that already exists in the market.

On May 28, 2008, the Internet portal Yahoo! began offering its Web site viewers real-time last sale data provided by BATS Trading. NASDAQ's last sale data products compete directly with the BATS product disseminated via Yahoo! In addition, as set forth above, the market for last sale data is already competitive, with both real-time and delayed consolidated data as well as the ability for innumerable entities begin rapidly and inexpensively to offer competitive last sale data products. Moreover, the New York Stock Exchange distributes competing last sale data products at a price comparable to the price of NLS. Under the regime of Regulation NMS, there is no limit to the number of competing products that can be developed quickly and at low cost. The Commission should not stand in the way of enhanced competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at *http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml.*

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
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–081 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2010–081. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–081 and should be submitted on or before July 29, 2010.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to extend the pilot program for three months, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, it is consistent with Section 6(b)(4) of the Act,[10] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the

[8] However, BATS recently received approval to begin offering and charging for three new data products, which include BATS Last Sale Feed, BATS Historical Data Products, and a data product called BATS Market Insight. *See* Securities Exchange Act Release No. 61885 (April 9, 2010), 75 FR 20018 (April 16, 2010) (SR–BATS–2010–002).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

Act,[12] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[13] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[14]

The Commission approved the fee for the NASDAQ Last Sale Data Feeds for a pilot period which ran until July 1, 2009.[15] The Commission notes that the Exchange proposes to extend the pilot program for three months. The Commission did not receive any comments on the previous extensions of the pilot program.[16]

On December 2, 2008, the Commission issued an approval order ("Order") that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for "non-core" market data products, such as the NASDAQ Last Sale Data Feeds.[17] The Commission believes that Nasdaq's proposal to temporarily extend the pilot program to June 30, 2010 is consistent with the Act for the reasons noted in the Order.[18] The Commission believes that approving NASDAQ's proposal to temporarily extend the pilot program that imposes a fee for the NASDAQ Last Sale Data Feeds for an additional three months will be beneficial to investors and in the public interest, in that it is intended to allow continued broad public dissemination of increased real-time pricing information.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal is expected to benefit investors by continuing to facilitate their access to widespread, free, real-time pricing information contained in the NASDAQ Last Sale Data Feeds. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[19] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2010–045) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16567 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78f(b)(8).

[13] 17 CFR 242.603(a).

[14] NASDAQ is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

[15] *See* Securities Exchange Act Release Nos. 61872 (April 8, 2010), 74 FR 19444 (April 14, 2010); 60990 (November 12, 2009), 74 FR 60002 (November 19, 2009); 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060); 58894 (October 31, 2008), 73 FR 66953 (November 12, 2008) (SR–NASDAQ–2008–086); 59186 (December 30, 2008), 74 FR 743 (January 7, 2009) (SR–NASDAQ–2008–103); 59652 (March 31, 2009) 74 FR 15533 (April 6, 2009) (SR–NASDAQ–2009–027); 60201 (June 30, 2009), 74 FR 32670 (July 8, 2009) (SR–NASDAQ–2009–062).

[16] *Id.*

[17] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

[18] *See supra* note 15.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62425; File No. SR–EDGA–2010–04]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Fees for Use of EDGA Exchange, Inc.

June 30, 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 June 30, 2010, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") 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 establish its initial fees and rebates applicable to Members[3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). The Exchange intends to implement this rule proposal immediately upon commencement of its operations as a national securities exchange.

All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 12, 2010, the Securities and Exchange Commission ("SEC" or "Commission") approved EDGA Exchange, Inc.[4] (the "Exchange") Form 1 application under the Act, which sought registration as a national securities exchange pursuant to Section 6 of the Act.[5]

EDGA Exchange proposes to implement a fee schedule applicable to use of the Exchange commencing on the date it begins operating as a national securities exchange. The Exchange currently intends to commence operations as a national securities exchange on July 2, 2010. Please find below a description of the fees and rebates that the Exchange intends to impose under the initial, proposed fee schedule.

[3] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[4] EDGX Exchange, Inc. will file a separate fee schedule with the Commission.

[5] *See* Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File No. 10–194). EDGX Exchange, Inc. ("EDGX") was also approved as an exchange, and will file a separate 19b-4 filing with its fee schedule.

(i) Rebates for Removing Liquidity

For securities priced $1.00 and over, the Exchange is proposing to rebate $0.0002 per share for executions that remove liquidity from the Exchange. For securities priced less than $1.00, there is no rebate/charge to remove liquidity. However, the removal rate on EDGA is proposed to be contingent on the attributed MPID adding (including Non-Displayed Orders [6]) and/or routing a minimum average daily share volume, measured monthly, of 50,000 shares on EDGA. Any attributed MPID not meeting the aforementioned minimum is proposed to be charged: (i) $0.0030 per share for removing liquidity from EDGA; and (ii) 0.20% of dollar value for stocks priced less than $1.00.

For the month of July 2010 only, the 50,000 average daily volume threshold will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each Exchange-traded symbol for all days that such symbol is traded on the Exchange during the month of July and the denominator of which shall be the monthly consolidated volume for all Exchange-traded symbols during the month of July. This calculation adjusts this volume threshold during the month of July when trading is being phased into the Exchange from Direct Edge's ECN and reflects the portion of the volume that occurs on the Exchange during the month.

Upon a Member's request, the Exchange will aggregate share volume calculations for wholly owned affiliates on a prospective basis.

The rebates for removing liquidity will apply to securities traded on the Exchange pursuant to unlisted trading privileges that are listed on: (A) the New York Stock Exchange ("NYSE"); (B) regional exchanges, such as NYSE Arca Equities ("NYSE Arca") and NYSE Alternext US ("NYSE Alternext," formerly the American Stock Exchange); and (C) the NASDAQ Stock Market ("Nasdaq") ("Tape A Securities", "Tape B Securities" and "Tape C Securities", respectively, and collectively, "All Tapes").

Applicable Flags [7]

For orders in Tapes B and C Securities that remove liquidity from the EDGA book, a rebate of $0.0002 per share is proposed, as described above, and this situation yields Flag "N." For orders in Tape A Securities that remove liquidity from the EDGA book, a rebate of $0.0002 is proposed, as described above, and this situation yields Flag "W." Again, this rebate is contingent on the attributed MPID meeting the criteria described above.

For orders that remove liquidity from LavaFlow ECN, a charge of $0.0029 per share is proposed and this situation yields Flag "U." However, if a Member posts an average of 100,000 shares or more per day using a ROLF strategy (yielding Flag "M"), then said Member's fee when routed to LavaFlow decreases to $0.0023 per share (yielding Flag "U"). The latter rate reflects a pass-through of the LavaFlow ECN fee. A ROLF strategy sweeps the EDGA book and the remainder routes to LavaFlow.

For orders that remove liquidity in the Pre-Opening [8] and Post-Closing [9] Sessions in securities on all Tapes, a rebate of $0.0002 per share is also proposed. Again, this rate is contingent on the attributed MPID meeting the criteria described above. This situation yields Flag "6."

(ii) Standard Fees for Adding Liquidity

For securities priced $1.00 and over, the Exchange is proposing to charge $0.0002 per share for executions that add liquidity to the Exchange. For securities priced less than $1.00, there is no charge/rebate to add liquidity. The charge for adding liquidity will apply to securities traded on the Exchange pursuant to unlisted trading privileges that are Tape A Securities, Tape B Securities, and Tape C Securities.

Applicable Flags [10]

For orders in Tape B Securities that add liquidity to the EDGA book, a charge of $0.0002 per share is proposed, as described above, and this situation yields Flag "B." For orders in Tape A Securities that add liquidity to the EDGA book, a charge of $0.0002 per share is proposed, as described above, and this situation yields Flag "V." For orders in Tape C Securities that add liquidity to the EDGA book, a charge of $0.0002 per share is proposed, as described above, and this situation yields Flag "Y."

For those orders that add liquidity on EDGX via an EDGA-originated ROUC order type, it is proposed that there be a rebate of $0.0025 per share. An ROUC order type sweeps the EDGA book, then other destinations, then Nasdaq OMX BX, then NYSE, and the remainder posts to EDGX. This situation would yield Flag "P." For those orders that add liquidity on LavaFlow ECN, a rebate of $0.0024 per share is proposed and this situation would yield Flag "M." However, if a Member posts an average of 100,000 shares or more using a ROLF routing strategy, yielding flag M, then such Member's fee, when removing liquidity from LavaFlow, will decrease to $0.0023 per share and yield flag U, as described above. For orders that add liquidity in the Pre-Opening and Post-Closing Sessions in Tapes A & C Securities, a charge of $0.0002 per share is proposed (yielding Flag "3"). For those orders that add liquidity in the Pre-Opening and Post-Closing Sessions in Tape B securities, a charge of $0.0002 per share is also proposed (yielding Flag "4").

The Exchange believes that this fee structure is equitable in that it applies uniformly to all Members and provides lower fees for higher volume thresholds, resulting from lower administrative costs. Destination-specific fees are also based, in part, on fees charged by other market centers.

(iii) Routing Charges

The Exchange proposes to charge the routing charges described below. All charges by the Exchange for routing are applicable only in the event that an order is executed. In other words, there is no charge for orders that are routed away from the Exchange but are not filled. In connection with routing of orders away from the Exchange, the Exchange proposes to charge $0.0029 per share for securities priced $1.00 and over and 0.30% of the total dollar value of the transaction [11] for securities priced less than $1.00.

For destination specific orders, the following fees/rebates are proposed to apply to all securities priced $1 and over.[12] For orders that are routed to Nasdaq using the INET order type, and remove liquidity in Tape B Securities, a charge of $0.0030 per share is proposed (yielding Flag "2"). For securities routed

[6] As defined in EDGA Rule 11.5(c)(8).

[7] The following rebates and fees apply to orders in securities priced $1.00 and over. For securities priced less than $1.00, there is no rebate/charge to remove liquidity, subject to the contingency described above.

[8] As defined in EDGA Rule 1.5(q).

[9] As defined in EDGA Rule 1.5(p).

[10] The following rebates and fees apply to orders in securities priced $1.00 and over.

For securities priced less than $1.00, there is no rebate/charge to add liquidity.

[11] This charge applies in all cases, except when (i) routing to the NYSE, where securities priced under $1.00 are charged $0.0021 per share when removing liquidity; (ii) when routing to Nasdaq BX and removing liquidity in Tapes A & C Securities, where securities priced under $1.00 are charged 0.10% of the dollar value of the transaction; and (iii) when routing to Nasdaq and removing liquidity in securities on all Tapes, securities priced under $1.00 are charged 0.20% of the dollar value of the transaction. These fees are proposed to be indicated by footnote number 3 being appended to the "C," "J," "L," and "2" flags.

[12] For securities priced below $1.00, a standard routing charge of 0.30% of the total dollar value of the transaction applies, except when routing to the NYSE, as described above.

to Nasdaq using the INET order type and that remove liquidity in Tape A & C Securities, a charge of $0.0030 per share is proposed (yielding Flag "L"). The INET order type sweeps the EDGA book and removes liquidity from Nasdaq, if the order is marketable, or posts on Nasdaq, if the order is non-marketable. Members routing an average daily volume ("ADV"): (i) Less than 5,000,000 shares will be charged $0.0030 per share, as described above; (ii) equal to or greater than 5,000,000 shares but less than 20,000,000 shares will be charged Nasdaq's best removal tier rate per share; (iii) equal to or greater than 20,000,000 shares but less than 30,000,001 shares will be charged Nasdaq's best removal tier rate—$0.0001 per share; and (iv) equal to or greater than 30,000,001 shares will be charged Nasdaq's best removal tier rate—$0.0002 per share. The rates, in all cases, are calculated for shares removed from Nasdaq. The Exchange believes that this fee structure is equitable in that it applies uniformly to all Members and provides higher rebates for higher volume thresholds, resulting from lower administrative costs. Destination-specific fees are also based, in part, on fees charged by other market centers.

For those orders routed to Nasdaq that add liquidity, a rebate of $0.0020 per share is proposed (yielding Flag "A"). For orders routed to Nasdaq OMX BX in Tape A and C Securities and that remove liquidity, a rebate of $0.0001 per share is proposed (yielding Flag "C"). For orders routed or re-routed to NYSE and that remove liquidity, a charge of $0.0021 per share is proposed (yielding Flag "D").[13] This charge also applies to securities priced less than $1.00. For orders routed to NYSE that add liquidity, a rebate of $0.0013 per share is proposed (yielding Flag "F"). For orders routed to NYSE Arca in Tape A & C Securities that remove liquidity, a charge of $0.0030 per share is proposed (yielding Flag "G"). For orders routed to EDGX Exchange, Inc., a charge of $0.0029 per share is proposed (yielding Flag "I"). For orders routed to Nasdaq that remove liquidity, a charge of $0.0030 per share is proposed (yielding Flag "J"). For orders routed to the BATS Exchange ("BATS") using a ROBA order type, a charge of $0.0025 per share is proposed (yielding Flag "K"). A ROBA order type sweeps the EDGA book and routes to BATS Exchange as an immediate or cancel (IOC) order, with the remainder being cancelled if there is no execution.

For orders using the ROUQ or ROUC order types, a charge of $0.0020 per share is proposed (yielding Flag "Q"). A ROUQ order type sweeps the EDGA book, then routes to other destination centers. A ROUC order type sweeps the EDGA book, then other destination centers, then Nasdaq OMX BX, then NYSE, and the remainder posts to EDGX. For any orders that are re-routed by EDGA, a charge of $0.0030 per share is proposed (yielding Flag "R"). For Directed Intermarket Sweep Orders[14] (yielding Flag "S"), a charge of $0.0033 per share is proposed. For orders that are routed and no other flag applies, a standard charge of $0.0029 per share applies, as discussed above (yielding Flag "X"). For orders that are routed using the ROUZ order type, a charge of $0.0010 per share is proposed (yielding Flag "Z"). A ROUZ order type sweeps the EDGA book before interacting with solicited orders on a price/time priority basis. For orders routed during the Pre-Opening and Post-Closing Sessions, a charge of $0.0030 per share applies (yielding Flag "7"). For orders that are routed using the ROUD or ROUE order types, a charge of $0.0020 is proposed (yielding Flag "T"). A ROUD order sweeps the EDGA book before being routed to other destination centers. A ROUE order type sweeps the EDGA book, then other destination centers, and any remainder routes to other market centers.

The differences between the fees charged for routing to specific market centers and routing of specific order types described above are due to different cost structures at the various market centers to which orders may be routed and other factors. Similarly, lower transaction fees at other destination centers permit the Exchange to charge lower routing fees for orders routed to such venues. Because the Exchange incurs additional costs and performs additional services in connection with the routing of Directed ISOs, it charges a higher routing fee for such orders. Finally, because the Exchange believes that a uniform routing fee for all other orders routed away from the Exchange (other than those described above) provides Members with certainty as to transaction costs, it proposes to charge a standard routing fee of $0.0029 per share, as described above, for such orders, rather than further differentiating routing fees that it charges to Members.

Other Charges and Flags

For Non-Displayed Orders, a charge of $0.0010 per share is proposed and this situation yields Flag "H." However, this rate is contingent upon the Member adding greater than 1,000,000 shares on a daily basis, measured monthly. It is proposed that Members not meeting this minimum will be charged $0.0030 per share. For the month of July 2010 only, the 1,000,000 monthly share volume threshold will be multiplied by a fraction, the numerator of which shall be the sum of the daily consolidated volumes for each Exchange-traded symbol for all days that such symbol is traded on the Exchange during the month of July and the denominator of which shall be the monthly consolidated volume for all Exchange-traded symbols during the month of July. This calculation adjusts this volume threshold during the month of July when trading is being phased into the Exchange from Direct Edge's ECN and reflects the portion of the volume that occurs on the Exchange during the month.

For customer internalization (*i.e,* same MPID),[15] there is no charge nor rebate because the fees for removing liquidity would be offset by the rebate received for adding liquidity. This situation yields Flag "E." During the Pre-Opening and Post-Closing sessions, there are also no charges nor rebates, but this situation yields Flag "5."

For orders that execute during the Nasdaq opening cross (NOOP), it is proposed that these orders will be charged $0.0005 per share and yield Flag "O." However, this fee is proposed to be capped at $10,000 per month per Member, which is a pass-through of Nasdaq's opening cross cap.

For Direct Edge opening transactions, where Members match with each other at the midpoint of the national best bid/offer ("NBBO") during EDGA's opening process, IPO, or post-halt, a flag of "OO" is proposed and there is no rebate nor charge.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[16] in general, and furthers the objectives of Section 6(b)(4),[17] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and

[13] This charge, instead of the standard 0.30% of the dollar value of the transaction described above, also applies to securities priced less than $1.00.

[14] As defined in EDGA Rule 11.5(d).

[15] This occurs when two orders presented to the Exchange from the same Member (i.e, MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another. Members are advised to consult Rule 12.2 respecting fictitious trading.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4).

other charges among its members and other persons using its facilities. The Exchange notes that it 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 the Exchange. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and provide higher rebates for higher volume thresholds, resulting from lower administrative costs. The Exchange 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 the Exchange rather than competing venues. Finally, the Exchange believes that the proposed rates further the objectives of Regulation NMS by promoting competition and granting fair and equal access to all exchange participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [18] and Rule 19b–4(f)(2) [19] 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.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 19b–4(f)(2).

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–EDGA–2010–04 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–EDGA–2010–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[20] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2010–04 and should be submitted on or before July 29, 2010.

[20] The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGA, and at the Commission's Public Reference Room.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16566 Filed 7–7–10; 8:45 am]

BILLING CODE 8010–01–P

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7075]

30-Day Notice of Proposed Information Collection: Retail Price Schedule, DS–2020 Parts 1–4, DS–2020I, DS–2021, DS–1996, 1405–XXXX

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Retail Price Schedule.
- *OMB Control Number:* No OMB Control Number has yet been assigned.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Administration Office of Allowances (A/OPR/ALS).
- *Form Number:* DS–2020, DS–2020I, DS–2021, DS–1996.
- *Respondents:* Respondents are managers of retail price outlets in the Washington, DC area and at 96 foreign locations.
- *Estimated Number of Respondents:* 3,888 annually. The estimate represents the number of outlets visited annually worldwide.
- *Estimated Number of Responses:* 4,032.
- *Average Hours per Response:* It is estimated that the average in Washington, DC is one hour. The estimate for foreign locations is twenty minutes.
- *Total Estimated Burden:* 1,376 hours.
- *Frequency:* Biennially at foreign posts. Quarterly in Washington, DC.
- *Obligation To Respond:* Responses from outlets is Voluntary. However, the collection and submission of the data by USG posts is required for Federal employees to obtain/retain a benefit.

DATES: The Department will accept comments from the public up for up to 30 days from July 8, 2010.

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

- *E-mail: AllowancesO@state.gov.*
- *Mail (paper, disk, or CD–ROM submissions):* Office of Allowances (A/OPR/ALS), Room L314 SA–1, Department of State, Washington, DC 20522–0103.
- *Fax:* (202) 261–8707 or (202) 261–8708.
- *Hand Delivery or Courier:* Office of Allowances (A/OPR/ALS), Room L314, Department of State, 2401 E Street, NW., Washington, DC 20037.
- If you have access to the Internet you may view and comment on this notice by going to "*http://www.regulations.gov/search/Regs/home.html#home*".

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to George W. Indyke, Director, Office of Allowances, Room L314 SA–1, Washington, DC 20522–0103, who may be reached on (202) 261–8700 or at *AllowancesO@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The collected data is used by the Department of State to carry out its responsibilities under 5 U.S.C. 5924(1), and Executive Orders 10903 and by the Department of Defense to carry out responsibilities under 37 U.S.C. 405. It is the primary source of information used to establish/justify post (cost of living) allowances for all Federal civilian employees assigned abroad and cost of living allowances for uniformed service members. The respondents are the store/department managers of approximately 40 retail outlets at each foreign post and approximately 48 retail outlets in the Washington, DC area.

Methodology: U.S.G. employees or contractors visit the retail outlets and gather prices personally. The estimated burden for respondents is based on the time the Price Collectors may spend with them to explain the purpose of the data collection and seek their cooperation with having the price collector gather prices. Once the price collector has completed the cost data collection, the information is entered in the eAllowances program for electronic submission to the Department of State's Office of Allowances.

Dated: June 21, 2010.

George W. Indyke, Jr.,

Director, Office of Allowances, Bureau of Administration, Department of State.

[FR Doc. 2010–16672 Filed 7–7–10; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 7047]

Amendment to the Biometric Visa Program

AGENCY: Department of State.

ACTION: Notice of Amendment to the Biometric Visa Program.

This public notice announces an amendment to the Biometric Visa Program. Section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 has required, since October 26, 2004, that all visas issued by the Department must be machine-readable and tamper-resistant and use biometric identifiers. In consultation with the Department of Homeland Security (DHS) and the Department of Justice (DOJ), the Department determined that fingerprints and a photo image should be required as biometric identifiers. When the biometric visa program began, available technology allowed for the efficient capture and comparisons of only two fingerscans. As a result of technological improvements, the Department instituted a ten fingerscan standard to raise the accuracy rate in matching fingerscans and enhanced our ability to detect and thwart persons who are eligible for visas.

In establishing the Biometric Visa Program, the Department coordinated closely with the Department of Homeland Security (DHS). The Biometric Visa Program is a partner program to the DHS US–VISIT Program that is in effect at U.S. ports of entry and that uses the same biometric identifiers. By coordinating these two programs, the two departments have ensured the integrity of the U.S. visa. This is accomplished by sending the fingerscans and photos of visa applicants to DHS databases. When a person to whom a visa has been issued arrives at a port of entry, his or her photo is retrieved from a database and projected on the computer screen of the Customs and Border Protection officer. The person's fingerscans are compared to the fingerscans in the database to ensure that the person presenting the visa is the same as the person to whom the visa was issued.

Certain exemptions to the fingerscans under the Biometric Visa Program were also coordinated with the Department of Homeland Security to coincide with the exemptions to fingerscans under the US–VISIT Program. Under the Biometric Visa Program, applicants for diplomatic or official visas, for visas to represent their governments at recognized international organizations such as the United Nations or for visas to serve as employees of such organizations, for NATO visas, or for government officials on official transit through the U.S. are exempt from the fingerscans. The aforementioned are represented by visa categories: A–1, A–2, G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, NATO–6 and C–3 (except for attendants, servants, or personal employees of accredited officials). In addition, persons under age 14 and persons age 80 or above are generally exempt from the fingerscans, unless the person is applying for a visa at a consular post in Mexico and in Yemen. In Mexico, fingerscans are required for applicants beginning at age 7 and above under the program for issuance of biometric Border Crossing Cards (commonly known as "laser visas"), which began in 1998. We have recently expanded that policy to include visa applicants in Yemen, and may further expand it to include additional countries in the future. The Secretary of State retains the authority to require fingerscans of children under age 14 or adults age 80 or above in all other countries. All visa applicants are required to submit a photograph with the visa application, except at consular posts in Mexico where most nonimmigrant visa applicants have a live-capture photo taken at post. All persons, regardless of whether they submit fingerscans or not, are reviewed against the Department's facial recognition database, one of the largest facial recognition databases in the world.

By checking fingerscans against a biometric watchlist, the Biometric Visa

Program enables consular officers to deny visas to persons on the watchlist who are ineligible for visas. For the great majority of travelers, the Biometric Visa Program performs a travel facilitation function by allowing for biometric identity verification at ports of entry, which serves to facilitate admission to the United States.

DATES: Effective upon date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lauren Prosnik, Visa Analyst, U.S. Department of State, 2401 E Street, NW., Room L603, Washington, DC 20520. Phone 202–633–2951.

Dated: June 25, 2010.

Janice L. Jacobs,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–16671 Filed 7–7–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary: 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 June 26, 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–2010–0163.

Date Filed: June 24, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 15, 2010.

Description: Application of Continental Airlines, Inc., and United Air Lines, Inc. requesting: (1) Approval of a defacto transfer of the certificates and other economic authority held by Continental, Continental Micronesia and Air Micronesia to the same carriers under common ownership with United and vice versa, (2) reissue the certificates and other authority issued to Continental, Continental Micronesia and Air Micronesia to Continental and/or United, and (3) reissue the certificates and other authority issued to United to United and/or Continental, Continental Micronesia and Air Micronesia.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–16614 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

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 June 5, 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–2006–25940.

Date Filed: June 3, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 24, 2010.

Description: Application of Kuzu Havayollari Kargo Tasimacilik A.S requesting the Department issue an amended foreign air carrier permit of its current charter authority in the name of ULS Havayollari Kargo Tasimacilik S.A.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–16609 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

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 June 12, 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–2010–0148.

Date Filed: June 8, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 2010.

Description: Application of Privilege Style, S.A. requesting an exemption and foreign air carrier permit to conduct charter foreign air transportation of persons, property and mail between a point or points in the European Community and the Member States of the European Union, and a point or points in the United States, to the full extent allowed under the Air Transport Agreement between the United States and the European community and the Member States of the European Union.

Docket Number: DOT–OST–2010–0150.

Date Filed: June 9, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 30, 2010.

Description: Application of Acropolis Aviation Limited requesting an exemption and a foreign air carrier permit authorizing Acropolis Aviation to engage in charter foreign air transportation of persons, property and mail to and from points in the United States to the full extent permitted by its homeland operating authority and the EU–U.S. open-skies agreement, as well as other charters pursuant to the prior approval requirements.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–16621 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

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 June 19, 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–2010–0153.

Date Filed: June 14, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 6, 2010.

Description: Application of Aviation Services, Ltd. (d/b/a Freedom Air (Guam)) ("Freedom Air") requesting a certificate of public convenience and necessity authorizing Freedom Air to engage in foreign charter air transportation of persons property and mail.

Docket Number: DOT–OST–2010–0156.

Date Filed: June 16, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 7, 2010.

Description: Application of Island Airlines, LLC requesting authority to conduct operations as a commuter air carrier.

Docket Number: DOT–OST–2010–0157.

Date Filed: June 17, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 8, 2010.

Description: Application of Southern Air Inc. requesting a certificate of public convenience and necessity and an exemption to engage in scheduled foreign air transportation of property and mail between a point or points in the United States, on one hand, and a point or points in the People's Republic of China, on the other hand, via intermediate points, and beyond China.

Docket Number: DOT–OST–2001–10385.

Date Filed: June 18, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 9, 2010.

Description: Application of Air Europa Lineas Aereas, S.A.U. requesting renewal of its exemption authority and a foreign air carrier permit to engage in: (i) Foreign scheduled and charter air transportation of persons, property and mail from any point or points behind any Member State of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign scheduled and charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign scheduled and charter cargo air transportation between any point or points in the United States and any other point or points; (iv) other charters pursuant to prior approval requirements; and (v) transportation authorized by any additional route rights made available to European Community carrier in the future.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–16620 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 19, 2010

The following Agreements were filed with the Department of Transportation under Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number DOT–OST–2010–0155.

Date Filed June 16, 2010.

Parties Members of the International Air Transport Association.

Subject Mail Vote 640—Resolution 010y. PTC3 Japan, Korea-South East Asia. Special Passenger Amending Resolution 010y between Korea (Rep. of) and Thailand (Memo 1395). Intended effective date: 23 June 2010.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2010–16611 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Draft Finding of No Significant Impact for the Washington State Portion of the Pacific Northwest Rail Corridor Upgrades Tier-1 Environmental Assessment

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of availability; Request for comments on draft Finding of No Significant Impact.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the FRA's Procedures for Considering Environmental Impacts (FRA Environmental Procedures) (64 F.R. 28545 (May 26, 1999)), the FRA and the Washington State Department of Transportation (WSDOT) prepared a Tier-1 Environmental Assessment (Tier-1 EA) that evaluates the impacts of a corridor improvements program to the Washington State portion of the Pacific Northwest Rail Corridor (PNWRC Program). Based on the Tier-1 EA, the FRA has prepared a draft finding of no significant impact (draft FONSI) and is inviting the public to comment on the draft.

DATES: Written comments will be accepted on or before August 9, 2010. Any substantive comments received before the close of the comment period will be considered and addressed in the final FONSI. Copies of both the Tier-1 EA and draft FONSI are available on FRA's Web site at: *http://www.fra.dot.gov/Pages/3006.shtml* and WSDOT's Web site at *http://www.wsdot.wa.gov/Freight/publications/PassengerRailReports.htm.*

ADDRESSES: Please submit written comments on the draft FONSI to Elizabeth Phinney, Rail Environmental Manager, Washington State Department of Transportation, State Rail and Marine Office, 310 Maple Park Ave., SE., P.O. Box 47407, Olympia, WA 98504–7407. Comments may also be submitted in writing to Melissa DuMond, Environmental Protection Specialist, ATTN: PNWRC FONSI, Federal Railroad Administration, 1200 New

Jersey Ave., SE., Stop 20, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For further information regarding the draft FONSI please contact Melissa DuMond, Environmental Protection Specialist, Federal Railroad Administration, 1200 New Jersey Ave., SE., Stop 20, Washington, DC 20590, telephone: (202) 493–6366.

SUPPLEMENTARY INFORMATION: The purpose of the PNWRC Program in Washington State is to improve intercity passenger rail service by reducing travel times, achieving greater schedule reliability, and creating capacity for additional trip frequencies in order to accommodate growing intercity travel demand. To achieve these goals WSDOT applied for federal funding through the High Speed Intercity Passenger Rail Program (HSIPR Program) administered by the FRA and funded by the American Recovery and Reinvestment Act (Recovery Act). WSDOT's application under the Recovery Act was split into three Service Blocks, and identified incremental service benefits including increased service levels, improved on-time performance and schedule reliability, and reduced travel times. The FRA intends to provide funding under the HSIPR Program for projects contained in two of the three service blocks.

In June 2009, the FRA released the HSIPR Program Guidance (Interim Guidance) that described the eligibility requirements and procedures for obtaining funding under the HSIPR Program. (74 FR 29901 (June 23, 2009)). The Interim Guidance split the funding opportunities into four separate tracks. The PNWRC improvements were submitted by Washington State for consideration for Track 2 funding. The Interim Guidance required Track 2 applicants to submit, with their application, a "corridor-wide 'service' NEPA study, such as a programmatic or Tier I EIS." (Interim Guidance Section 1.6.2). The Interim Guidance went on to define Service NEPA as an environmental document, either an Environmental Impact Statement or an EA, that "[a]ddresses actions at a broad level, such as a program concept for an entire corridor." (Interim Guidance Section 2.2).

In order to comply with the requirements of the Interim Guidance, WSDOT prepared a Tier-1 or "service" NEPA document that included the analysis of two alternatives; the "No Build" and the "Corridor Service Expansion Alternative." The No Build Alternative analyzes what would happen if there are no further improvements on the PNWRC. The Corridor Service Expansion Alternative analyzes the effect on the human and natural environments of the service improvements that involve 23 individual projects that build on one another and collectively meet the goals of the PNWRC Program to expand and improve service along the PNWRC. The Tier-1 EA was completed in September, 2009 and was made available for comment between October 2, 2009 and October 23, 2009 on the WSDOT Web site. Thirteen agencies submitted written comments. No individual written comments were received.

Based on the Tier-1 EA and contingent upon successful completion of mitigation measures detailed in the draft FONSI, FRA has determined that the improvements will not have a significant impact on the quality of the human or natural environment. Therefore, FRA has drafted a FONSI for the proposed program of improvements. This FONSI based on the Tier-1 EA has been prepared to comply with NEPA and the FRA's Environmental Procedures. FRA has concluded that the award of Federal funds to implement the program of improvements to the Washington State segment of the PNWRC that are described as Service Blocks 1, 2, and 3 in the EA, constitute a major Federal action within the meaning of Section 102(c) of NEPA (43 U.S.C. 4321). Prior to release of construction funding for individual projects, WSDOT will successfully complete applicable mitigation measures detailed in the draft FONSI and complete appropriate project-level NEPA evaluations, documentation, and required determinations for the individual project.

FRA Environmental Procedures require that a FONSI be made available to the public for not less than 30 days when the "nature of the proposed action is one without precedent." Because this is the first Tier-1 EA and draft FONSI that FRA will issue, this notice invites the public to comment on the draft FONSI.

Issued in Washington, DC, on July 2, 2010.

Mark E. Yachmetz,

Associate Administrator for Railroad Policy and Development.

[FR Doc. 2010–16664 Filed 7–7–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Proposed Implementation of Rail Passenger Service on the Cotton Belt Corridor

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), as the Federal lead agency, and the Dallas Area Rapid Transit (DART) intend to prepare an Environmental Impact Statement (EIS) to study the implementation of rail passenger service on the 26-mile long Cotton Belt Corridor from Dallas-Fort Worth International Airport (DFWIA) in Tarrant County, Texas, through a large portion of northwest Dallas County, to the existing DART Red Line Light Rail Transit (LRT) corridor in the Cities of Plano and Richardson in Collin County, Texas. The primary purpose of the Cotton Belt Corridor Regional Rail Project is to provide passenger rail connections that will improve mobility, accessibility and system linkages to major employment, population and activity centers. The Federal Aviation Administration (FAA), having jurisdiction over airports, is being requested to be a cooperating agency in this study. The purpose of this Notice is to alert interested parties regarding the plan to prepare the EIS, to provide information on the nature of the proposed transit project, to invite participation in the EIS process, including comments on the scope of the EIS proposed in this notice, and to announce that public scoping meetings will be conducted.

DATES: *Comment Due Date:* Written comments on the scope of the EIS, including the preliminary statement of purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to DART by August 30, 2010. See **ADDRESSES** below for the address to which written public comments may be sent. *Scoping Meetings:* The public scoping meeting will be held on

- Thursday, July 29, 2010, at 6:30 p.m. at the Addison Conference Center, 15650 Addison Road, Addison, TX.

Please notify the DART Community Affairs representative at (214) 749–2590 at least one week in advance of the meeting date if language translation or hearing-impaired signing is needed. The

building used for the scoping meeting is accessible to persons with disabilities.

Scoping materials describing the project purpose and need and the alternatives proposed for analysis will be available at the meetings and on the DART Web site at *http://www.dart.org/cottonbelt.*

An interagency scoping meeting will be held on Wednesday, July 28, 2010 at 10 a.m. at DART Headquarters, in the Board Room, located at 1401 Pacific Avenue in Dallas, TX. Representatives of Native American tribal governments and of all Federal, State, regional and local agencies that may have an interest in any aspect of the project will be invited to be participating or cooperating agencies, as appropriate.

ADDRESSES: *Written comments* on the project scope should be sent to John Hoppie, Project Manager, Dallas Area Rapid Transit, P.O. Box 660163, Dallas, TX 75266–7213. Telephone: (214) 749–2525, Fax: (214) 749–3844, or via e-mail: *jhoppie@dart.org.* Comments may also be offered at the public scoping meetings identified under **DATES** above.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Hayes, Community Planner, Federal Transit Administration, Region 6, 819 Taylor Street, Room 8A36, Fort Worth, Texas 76102, Telephone: (817) 978–0550; Fax (817) 978–0575, or e-mail: *Lynn.Hayes@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Scoping and Background

FTA and DART invite all interested individuals, organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, specifically on the proposed project's purpose and need, the alternatives to be evaluated that may address the purpose and need, the impacts of the alternatives considered, and the evaluation methods to be used. Comments should address (1) feasible alternatives that may better achieve the project's need and purpose with fewer adverse impacts, and (2) any significant environmental impacts relating to the alternatives. To ensure that these issues are identified, the scoping meetings will begin with a formal presentation followed by the opportunity for the public to comment on the scope of the EIS. Oral and written comments may be given at the scoping meetings; a court reporter will record all comments. Written comments may be submitted at the meeting or may be mailed to the project manager at the address in **ADDRESSES** above. Following the scoping process, public outreach activities will continue throughout the duration of the work on the EIS as described in FTA Procedures below.

National Environmental Policy Act (NEPA) "scoping" (Title 40 of the Code of Federal Regulations (CFR) 1501.7) has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need to prepare an environmental impact statement—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence consistent with the ultimate objectives of the NEPA implementing regulations—"to make the environmental impact statement process more useful to decision makers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives * * * [by requiring] impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses." Executive Order 11991, of May 24, 1977. Transit projects may also generate environmental benefits; these should be highlighted as well—the impact statement process should draw attention to positive impacts, not just negative impacts.

Once the scope of the environmental study, including significant environmental issues to be addressed, is settled, an annotated outline of the document will be prepared and shared with interested agencies and the public. The outline serves at least three worthy purposes, including (1) documenting the results of the scoping process; (2) contributing to the transparency of the process; and (3) providing a clear roadmap for concise development of the environmental document.

Since 1983, the Cotton Belt Corridor has been included in several transportation service plans and the North Central Texas Council of Governments (NCTCOG) Metropolitan Transportation Plan (MTP). In 1999 and 2000 DART identified the North Crosstown Corridor which included the Cotton Belt Corridor as a key transportation corridor. In 2006, DART conducted a higher level of alternatives analysis and completed an existing conditions report of the North Crosstown Corridor, as part of its 2030 Transit System Plan. The Cotton Belt Corridor was identified as the preferred alignment for transit service between DFWIA and the DART Red Line. NCTCOG also included the Cotton Belt Corridor in the region's long range transportation plan, *Mobility 2030: The Metropolitan Transportation Plan for the Dallas-Fort Worth Area—2009 Amendment.* In April 2010, the NCTCOG completed a *Conceptual Engineering and Funding Study.* This study provided background information on the existing environment, and compared various combinations of interlining, Red Line termini, minor alignment deviations, and station locations on the Cotton Belt Corridor. The feasibility study will be used to inform and guide the scoping process and EIS development for the proposed project.

II. Preliminary Statement of Purpose and Need for the Project

The Cotton Belt Regional Rail Corridor's primary purpose is to provide passenger rail connections that will improve mobility, accessibility and system linkages to major employment, population and activity centers in the northern part of the DART Service Area. The implementation of passenger rail within the Cotton Belt Corridor would also provide an alternative to traffic congestion within the planning area. The connection of three LRT lines and two planned regional rail lines (Denton County Transportation Authority [DCTA] A–Train and Fort Worth Transportation Authority's [The T's] Southwest-to-Northeast [SW2NE] Project) makes regional connectivity a key component of the Cotton Belt Corridor. The Cotton Belt Corridor also offers opportunities to connect with the proposed BNSF regional rail corridor between Frisco and Irving, with a connection in downtown Carrollton.

Regional demand for travel in the planning area is projected to increase along with congestion. Implementation would improve transit performance in the planning area by offering a new, more reliable service. By providing a new transportation option, peak period congestion would be reduced, providing improvements to regional air quality.

III. Project Location and Environmental Setting

The proposed project would occur in the State of Texas, in portions of Tarrant, Dallas and Collin Counties, within the Cotton Belt Corridor. The project proposes a new regional rail line to provide express rail passenger service between DFWIA, through the cities of Grapevine, Coppell, Carrollton,

Addison, and Dallas to the existing DART Red Line LRT corridor in the cities of Plano and Richardson, Texas. Land use varies along the corridor and includes residential, commercial, government/institutional, transportation, and industrial, as well as underdeveloped areas.

The proposed project would lie within right-of-way purchased by DART in 1990 and designated as a preserved corridor for future passenger rail service. The corridor has been included in various DART and NCTCOG planning documents since 1983 as an alignment alternative for passenger rail. The right-of-way width varies throughout the corridor, but is generally 100 feet.

Three freight companies operate within the corridor through agreements on tracks owned by DART: The Fort Worth and Western Railroad (FWWR), the Kansas City Southern (KCS) Railroad, and the Dallas Garland Northeastern (DGNO) short-line freight rail service. The Union Pacific (UP) Railroad has overhead rights but does not currently operate within the corridor. On January 22, 2010, the Surface Transportation Board (STB) approved freight abandonment in the north Dallas area from Knoll Trail in Dallas, Texas to Renner Junction in Richardson, Texas.

IV. Possible Alternatives

Alternatives to be reviewed in the EIS include a No-Build Alternative and the Build Alternative, which may include design options and various station locations.

The No Build Alternative assumes a 2030 condition of land use and demographics. It includes transit capital and service improvements that are programmed to be implemented by DART and other transit providers in the study area, as well as all other planned, programmed, and funded transportation projects for the planning year 2030.

The Build Alternative would consist of "express" rail passenger service within the Cotton Belt Corridor using a passenger rail vehicle that complies with the requirements of the Federal Railroad Administration (FRA) safety standards (FRA-compliant vehicle). Express service is defined as a 20-minute peak and 60-minute off peak headway. A base alignment and station locations will be examined along with various options for the eastern terminus, stations, passing siding/double-track locations, and possible horizontal and vertical alignment deviations at strategic locations.

The base project would extend eastward from DFWIA within existing railroad right-of-way approximately 26 miles to DART's Red Line LRT corridor in the cities of Plano and Richardson. At its western terminus, the project would interface with DART's future Orange Line LRT service, which extends from DFWIA through Irving to downtown Dallas, and to the planned Fort Worth Transportation Authority's (The T's) SW2NE Regional Rail Corridor service from downtown Fort Worth to DFWIA. The T completed a Draft EIS (DEIS) for the SW2NE project and the Final EIS is expected to be complete in 2010. The SW2NE project is anticipated to receive environmental clearance for the section of the Cotton Belt from north of DFWIA to Fort Worth, and for a new rail corridor extending from the Cotton Belt south into DFWIA Terminal B.

At the eastern terminus, the base corridor would interface with the Red Line where a new LRT station would be located at the intersection of the two corridors. Options for the Cotton Belt corridor eastern terminus include: Turning south to connect to the existing DART Red Line Bush Turnpike Station, Turning north to connect to the existing Red Line Downtown Plano Station (which would allow an option for service to continue further north into Plano or McKinney), or extending further east on the Cotton Belt to terminate near Shiloh Road in Plano. Additional deviations from the base alignment elsewhere along the corridor may also be considered.

The base corridor includes a total of 54 roadway crossings (44 at-grade; 10 grade-separated) including major roadway facilities such as State Highway (SH) 121, Interstate Highway (IH) 635, the President George Bush Turnpike, IH 35E, the Dallas North Tollway (DNT) and US 75 (North Central Expressway). It is anticipated the Cotton Belt would interface with six other major passenger rail lines, including DART's Orange, Green and Red LRT lines, a proposed BNSF Corridor service that would interface with the Cotton Belt in downtown Carrollton, a proposed extension of the DCTA A-Train service to downtown Carrollton, and the planned SW2NE rail corridor connection at DFWIA.

Several new rail stations would be provided, depending upon the build alternative selected. Station platforms would be approximately 300 to 500 feet in length. Potential station locations include: DFWIA, North Lake, Downtown Carrollton (Green Line interface), Addison (existing Transit Center), Knoll Trail, Preston Road (State Highway 289), Renner Village, UTD—Synergy Park, the Red Line Interface, and Shiloh Road.

Additional alternatives that emerge during scoping that reasonably address the project's purpose and need and that have not been previously evaluated will be considered.

V. Possible Effects

The purpose of this EIS process is to study, in a public setting, the potentially significant effects of the proposed project and its alternatives on the quality of the human environment. Areas of investigation for transit projects generally include, but are not limited to: Land use, development potential, land acquisition and displacements, environmental justice, historic resources, visual and aesthetic qualities, air quality, noise and vibration, energy use, safety and security, and ecosystems, including threatened and endangered species; investigation may reveal that the proposed project will not affect or affect substantially many of those areas. Measures to avoid, minimize, or mitigate any significant adverse impacts will be identified.

VI. FTA Procedures

The regulations implementing NEPA, as well as provisions of SAFETEA–LU, call for public involvement in the NEPA process. Section 6002 of SAFETEA–LU provides the following guidance: (1) Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in becoming a participating agency for the proposed project; (2) Provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the environmental documentation; and (3) Establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify the project manager, as identified in the **ADDRESSES** section above.

A comprehensive public and agency involvement program (PAIP) has been developed and will be implemented as part of the DEIS. The PAIP will include: Agency and public scoping meetings; community-wide public information meetings; public hearings; informational briefings to stakeholder groups, elected

officials, and other local and regional officials; and information dissemination via a project Web site and newsletters. The PAIP will also involve advisory committees and other stakeholder groups to obtain input on issues, concerns, and advise on neighborhood and transit oriented development issues.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR Parts 1500–1508) and with the FTA/Federal Highway Administration regulations "Environmental Impact and Related Procedures" (23 CFR Part 771).

After its approval, the DEIS will be available for public and agency review and comment. A public hearing will be held on the DEIS. The Final EIS (FEIS) will consider comments received during the DEIS public review and will identify the preferred alternative. Opportunity for additional public comment will be provided throughout all phases of project development.

VII. Paperwork Reduction

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is FTA policy to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific request for a complete printed set of environmental documents is received (preferably in advance of printing), FTA and its grantees will distribute only the executive summary of the environmental document together with a Compact Disc of the complete environmental document. A complete printed set of the environmental document will be available for review at DART's offices and elsewhere; an electronic copy of the complete environmental document will also be available on DART's Web page.

VIII. Other

DART and the NCTCOG, which is the metropolitan planning organization for the Dallas-Fort Worth region, have entered into a Memorandum of Understanding (MOU) concerning the identification of potential funding sources to implement passenger rail service on the Cotton Belt Corridor. The purpose of the MOU is to outline the roles and responsibilities of each party. DART would be responsible for the preliminary engineering, environmental review process, planning, design and implementation activities. NCTCOG would be responsible for identification of funding sources and for developing a financial plan sufficient to design, build and implement passenger rail service on the Cotton Belt Corridor.

Various funding alternatives are under consideration. The proposed project may be funded through a combination of local funds and funds apportioned to the NCTCOG from the FTA Urbanized Area Formula Program (UAFP) funding under 49 U.S.C 5307 (Section 15). This program (49 U.S.C. 5307) makes Federal resources available to urbanized areas and to Governors for transit capital and operating assistance in urbanized areas and for transportation related planning. NCTCOG may consider requesting additional funding to help construct the project through various state and Federal programs. NCTCOG is also seeking innovative financing alternatives that may include private sector partners.

The EIS will be prepared in accordance with NEPA (42 U.S.C. 4321 *et seq.*) of 1969 and the regulations implementing NEPA set forth in 40 CFR Parts 1500–1508 and 23 CFR Part 771, as well as provisions of the enacted Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

Issued on: June 29, 2010.

Robert C. Patrick,

Federal Transit Administration, Region VI, Ft. Worth, TX.

[FR Doc. 2010–16599 Filed 7–7–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Interagency Guidance on Asset Securitization Activities

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before August 9, 2010. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain.*

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725–17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW. by appointment. To make an appointment, call (202) 906–5922, send an e-mail *to public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, *ira.mills@ots.treas.gov* (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Interagency Guidance on Asset Securitization Activities.

OMB Number: 1550–0104.

Form Number: N/A.

Regulation requirement: 12 CFR part 570.

Description: Institution management will use these information collections as the basis for the safe and sound operation of their asset securitization activities and to ensure that they minimize operational risk in these activities. OTS will use this information to evaluate the quality of an institution's risk management practices. OTS will also use the information to assist institutions without proper supervision of their asset securitization activities to implement corrective action to conduct these activities in a safe and sound manner.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 15.

Estimated Burden Hours per Response: 20 hours.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 300 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: July 1, 2010.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–16675 Filed 7–7–10; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 17, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, August 17, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16562 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 10, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, August 10, 2010, at 11 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16565 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 18, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, August 18, 2010, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16570 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee will be conducted. The

Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 12, 2010.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee will be held Thursday, August 12, 2010, at 1 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information, please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16572 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 26, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee will be held Thursday, August 26, 2010, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16574 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 17, 2010.

FOR FURTHER INFORMATION CONTACT: Meredith D. Odom at 1–888–912–1227 or 718–488–3514.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, August 17, 2010, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Meredith D. Odom. For more information please contact Ms. Odom at 1–888–912–1227 or 718–488–3514, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16568 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, August 9, 2010, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16577 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 24, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Tuesday, August 24, 2010, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16579 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 24, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, August 24, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16578 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (including the states of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 18, 2010.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, August 18, 2010, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Mrs. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16576 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 10, 2010.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be held Tuesday, August 10, 2010, at 2:00 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information, please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office,

1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16561 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 11, 2010.

FOR FURTHER INFORMATION CONTACT: Meredith D. Odom at 1–888–912–1227 or 718–488–3514.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be held Wednesday, August 11, 2010, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Meredith D. Odom. For more information, please contact Ms. Odom at 1–888–912–1227 or 718–488–3514, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16573 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Wednesday, August 25, 2010.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be held Wednesday, August 25, 2010, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information, please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16571 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 11, 2010.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Wednesday, August 11, 2010, at 1 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information, please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–16564 Filed 7–7–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Rural Health Advisory Committee will conduct a telephone conference call meeting from 2 p.m. to 3:30 p.m. EDT on Monday, July 19, 2010, in Room 530 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC. The toll-free number for the meeting is 1–800–767–1750, and the access code is 57165#. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on health care issues affecting enrolled Veterans residing in rural areas. The Committee examines programs and policies that impact the provision of VA health care to enrolled Veterans residing in rural areas and discusses ways to

improve and enhance VA services for these Veterans.

The Committee will discuss this year's rural health agenda and the Committee's 2009 Annual Report to the VA Secretary, which included formal recommendations on Veteran rural health care policy.

A 15-minute period will be reserved at 3:15 p.m. for public comments. Individuals who wish to address the Committee are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record. Any member of the public seeking additional information should contact Christina White, Designated Federal Officer, at *rural.health.inquiry@va.gov* or (202) 461–7100.

Dated: July 2, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–16648 Filed 7–7–10; 8:45 am]

BILLING CODE P

Federal Register

Thursday,
July 8, 2010

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Incidental Takes of Marine Mammals During Specified Activities; Marine Seismic Survey in the Arctic Ocean, August to September, 2010; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW05

Incidental Takes of Marine Mammals During Specified Activities; Marine Seismic Survey in the Arctic Ocean, August to September, 2010

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

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Geological Survey (USGS) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a marine seismic survey in the Arctic Ocean during August to September, 2010. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to authorize USGS to incidentally take, by Level B harassment only, small numbers of marine mammals during the aforementioned activity.

DATES: Comments and information must be received no later than August 9, 2010.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing e-mail comments is *PR1.0648–XW05@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.

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 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.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289.

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 (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and 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.

An authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, 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 United States can apply for an authorization not to exceed one year to incidentally take small numbers of marine mammals by 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"].

16 U.S.C. 1362(18)

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 for any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS, MMPA must either issue or deny the authorization.

Summary of Request

On March 9, 2010, NMFS received an IHA application and an Environmental Assessment (EA) from USGS for the taking, by Level B harassment only, of small numbers of several species of marine mammals incidental to conducting a marine seismic survey in the Arctic Ocean during August to September, 2010. NMFS received a revised IHA application and a revised EA on June 1, 2010.

Description of the Specified Activity

USGS plans to conduct a marine geophysical (seismic reflection/refraction) and bathymetric survey in the Arctic Ocean in August and September, 2010 (*see* Tables 1 and 2, and Figure 3 of the IHA application). The survey will be conducted from the Canadian Coast Guard (CCG) vessel CCGS *Louis S. St. Laurent* (*St. Laurent*) which will be accompanied by the U.S. Coast Guard Cutter (USCGC) *Healy,* both of which are polar-class icebreakers. Descriptions of the vessels and their specifications are presented in Appendix A of the IHA application. The two vessels will operate in tandem in the presence of ice but may diverge and operate independently in open water. Some minor deviation of the dates is possible, depending on logistics and weather (*i.e.,* the cruise may depart earlier or be extended due to poor weather; there could be extra days of seismic operations if collected data are of sub-standard quality).

One CCG helicopter will be available for deployment from the *St. Laurent* for ice reconnaissance and crew transfers between the vessels during survey operations. Helicopters transfer of crew from the *Healy* is also planned for approximately one day during a ship-to-shore crew change at Barrow, Alaska at the end of the survey. The helicopter operations in Barrow will be conducted under Department of Interior (DOI) contract. Daily helicopter operations are anticipated pending weather conditions. Spot bathymetry will also be conducted from the helicopter outside U.S. waters.

Acoustic sources onboard the *St. Laurent* will include an airgun array comprised of three Sercel G-airguns and a Knudsen 320BR "Chirp" pulse echosounder operating at 12 kHz. The *St. Laurent* will also tow a 3 to 5 kHz sub-bottom profiler while in open water

and when not working with the *Healy.* The airgun array consists of two 500 in^3 and one 150 in^3 airguns for an overall discharge of 1,150 in^3. Table 2 of the IHA application presents different sound pressure level (SPL) radii of the airgun array. Acoustic sources that will be operated on the *St. Laurent* are described in detail in Section VII and Appendix B in the IHA application. The seismic array and a hydrophone streamer towed from the *St. Laurent* will operate under the provisions of a Canadian authorization based on Canada's environmental assessment of the proposed survey while in Canadian or international waters, and under the provisions of an IHA issued to the USGS by NMFS in U.S. waters. NMFS cannot issue an IHA directly to a non-U.S. citizen, however, the Geological Survey of Canada (GSC) has written a Categorical Declaration stating that "while in U.S. waters (*i.e.,* the U.S. 200 mile Exclusive Economic Zone), the GSC will comply with any and all environmental mitigation measures required by the U.S. NMFS and/or the U.S. Fish and Wildlife Service." The *St. Laurent* will follow the lead of the *Healy.* The *Healy* will break and clear ice approximately 1.6 to 3.2 km (1 to 2 miles [mi]) in advance of the *St. Laurent.* In situations where the array (and hydrophone streamer) cannot be towed safely due to ice cover, the *St. Laurent* may escort the *Healy.* The *Healy* will use a multi-beam echosounder (Kongsberg EM122), a sub-bottom profiler (Knudsen 3.5 kHz Chirp), and a "piloting" echosounder (ODEC 1500) continuously when underway and during the seismic profiling. Acoustic Doppler current profilers (75 kHz and 150 kHz) may also be used on the *Healy.* The *Healy's* acoustic systems are described in further detail in Section VII and Appendix B of the IHA application.

In addition to the hydrophone streamer, marine sonobuoys will be deployed to acquire wide angle reflection and refraction data for velocity determination to convert seismic reflection travel time to depth. Sonobuoys will be deployed off the stern of the *St. Laurent* approximately every eight hours during seismic operations with as many as three deployments per day. The sonobuoy's hydrophone will activate at a water depth of approximately 60 m (196.9 ft) and seismic signals will be communicated via radio to the *St. Laurent.* The sonobuoys are pre-set to scuttle (*i.e.,* deliberately sink) eight hours after activation.

The program within U.S. waters will consist of approximately 806 km (500.8 mi) of survey transect line, not including transits when the airguns are not operating (*see* Figure 1 and Table 1 of the IHA application). U.S. priorities include another 997 km (619.5 mi) of survey lines north of the U.S. Exclusive Economic Zone (EEZ), for a total of 1,803 km (1,120.3 mi) of tracklines of interest to the U.S. Table 1 of the IHA application lists all U.S. priority tracklines; Figure 1 of the IHA application includes all U.S. priority tracks and the area of interest to Canada near the proposed U.S. tracklines. Water depths within the U.S. study area will range from approximately 1,900 to 4,000 m (6,233.5 to 13,123.4 ft) (*see* Figure 1 of the IHA application). There may be additional seismic operations associated with airgun testing, start-up, and repeat coverage of any areas where initial data quality is sub-standard. The tracklines that will be surveyed in U.S. waters include the southern 263.8 km (164 mi) of the line that runs North-South in the western EEZ, the southern 264.5 km (164.4 mi) of the line that runs North-South in the central EEZ, and 277.7 km (172.6 mi) trackline of the line that connects the two (*see* Figure 1 and Table 1 of the IHA application). The IHA application requests the authorization of incidental takes of marine mammals for activities within U.S. waters.

TABLE 1—PROPOSED U.S. PRIORITY TRACKLINES FOR USGS AND GEOLOGICAL SURVEY OF CANADA (GSC) 2010 EXTENDED CONTINENTAL SHELF SURVEY IN THE NORTHERN BEAUFORT SEA AND ARCTIC OCEAN

Location	End point 1	End point 2	Kilometer (km)	Nautical Mile (nmi)	Time (hour [hr]) @ 4 nmi/hr
NS in central EEZ (south)	71.22° North; 145.17° West	72.27° North; 145.41° West	118	64	16
NS in central EEZ (north)	72.27° North; 145.41° West	73.92° North; 145.30° West	183	100	25
Central-western EEZ connector.	73.92° North; 145.30° West	71.84° North; 151.82° West	317	171	43
NS in western EEZ	71.84° North; 151.82° West	74.32° North; 150.30° West	281	152	39
South Northwind Ridge	74.32° North; 150.30° West	74.96° North; 158.01° West	239	129	32
Northwind Ridge connector	74.96° North; 158.01° West	76.30° North; 155.88° West	161	87	22
Mid-Northwind Ridge	76.30° North; 155.88° West	75.41° North; 146.50° West	274	148	37
Northwind Ridge connector	75.41° North; 146.50° West	76.57° North; 146.82° West	129	70	17
Mid-Northwind Ridge	76.57° North; 146.82° West	76.49° North; 150.73° West	102	55	14
Totals			1,804	976	245

Two vessels will operate cooperatively during the proposed seismic survey. The *St. Laurent* will conduct seismic operations using an airgun array and also operate a 12 kHz Chirp echosounder. The St. Laurent will also operate a 3 to 5 kHz sub-bottom profiler in open water when not working with the *Healy.* The *Healy* will normally escort the *St. Laurent* in ice cover, and will continuously operate a bathymetric multi-beam echosounder, a 3.5 kHz Chirp sub-bottom profiler, a piloting echosounder, and two acoustic Doppler current profilers.

The *St. Laurent* will access the survey area from Canada and rendezvous with the *Healy* on approximately August 7, 2010; the *Healy* will approach the survey area from the Bering Straits. The *St. Laurent* will deploy a relatively small airgun array comprised of three G-airguns and a single hydrophone streamer approximately 300 m (984 ft) in length. The airgun array consists of two 500 in^3 and one 150 in^3 airguns for an overall discharge of 1,150 in^3. The *St. Laurent* will follow the lead of the *Healy* which will operate approximately 1.9 to 3.8 km (1 to 2 nmi) ahead of the *St. Laurent.* In ice conditions where seismic gear cannot be safely towed, the *St. Laurent* will escort the *Healy* to optimize multi-beam bathymetry data collection. If extended open-water conditions are encountered, *Healy* and *St. Laurent* may operate independently.

The U.S. priority survey lines will consist of eight transect lines ranging in

length from approximately 102 to 317 km (63.4 to 197 mi) of trackline (*see* Table 1 and Figure 1 of the IHA application). These tracklines are planned in water depths of 1,900 to 4,000 m (6,234 to 13,123 ft). Approximately 806 km (500.8 mi) of trackline will be surveyed within U.S. waters. The survey line nearest to shore in U.S. waters is approximately 116 km (63 nmi) offshore at its closest point. After completion of the survey the *St. Laurent* will return to port in Canada, and the *Healy* will change crew at Barrow via helicopter or surface conveyance before continuing on another project.

Vessel Specifications

The CCGS *St. Laurent* was built in 1969 by Canadian Vickers Ltd. in Montreal, Quebec, and underwent an extensive modernization in Halifax, Nova Scotia between 1988 to 1993. The *St. Laurent* is based at CCG Base Dartmouth in Dartmouth, Nova Scotia. Current vessel activities involve summer voyages to the Canadian Arctic for sealifts to various coastal communities and scientific expeditions. A description of the *St. Laurent* with vessel specifications is presented in Appendix A of the IHA application and is available online at: *http://www.ccg-gcc.gc.ca/eng/Fleet/Vessels?id=1111&info=5&subinfo.*

The *Healy* is designed to conduct a wide range of research activities, providing more than 390.2 m^2 (4,200 ft^2) of scientific laboratory space, numerous electronic sensor systems, oceanographic winches, and accommodations for up to 50 scientists. The *Healy* is designed to break 1.4 m (4.5 ft) of ice continuously at 5.6 km/hour (three knots) and can operate in temperatures as low as −45.6 C (−50 degrees F). The science community provided invaluable input on lab lay-outs and science capabilities during design and construction of the ship. The *Healy* is also a capable platform for supporting other potential missions in the polar regions, including logistics, search and rescue, ship escort, environmental protection, and enforcement of laws and treaties.

The *Healy* is a USCG icebreaker, capable of traveling at 5.6 km/hour (three knots) through 1.4 m (4.5 ft) of ice. A "Central Power Plant," four Sultzer 12Z AU40S diesel generators, provides electric power for propulsion and ship's services through a 60 Hz, three-phase common bus distribution system. Propulsion power is provided by two electric AC Synchronous, 11.2 MW drive motors, fed from the common bus through a Cycloconverter system, that turn two fixed-pitch, four-bladed propellers. The *Healy* will also serve as the platform from which vessel-based Protected Species Observers (PSOs) will watch for marine mammals before and during airgun operations. Other details of the *Healy* can be found in Appendix A of the IHA application.

NMFS believes that the realistic possibility of a ship-strike of a marine mammal by the vessel during research operations and in-transit during the proposed survey is discountable. The probability of a ship strike resulting in an injury or mortality of an animal has been associated with ship speed; however, it is highly unlikely that the proposed seismic survey would increase the rate of serious injury or mortality given the *St. Laurent* and *Healy*'s slow survey speed.

Acoustic Source Specifications—Seismic Airguns and Radii

The seismic source for the proposed seismic survey will be comprised of three Sercel G-airguns with a total volume of 1,150 in^3. The three-airgun array will be comprised of two 500 in^3 and one 150 in^3 G-airguns in a triangular configuration (*see* Figure B–1 in the IHA application). The single 150 in^3 G-airgun will be used if a power-down is necessary for mitigation. The G-airgun array will be towed behind the *St. Laurent* at a depth of approximately 11 m (36.1 ft) (*see* Figure B–2 in the IHA application) along predetermined lines in water depths ranging from 1,900 to 4,000 m (6,233.6 to 13,123.4 ft). One streamer approximately 232 m (761.2 ft) in length with a single hydrophone will be towed behind the airgun array at a depth of approximately 9 to 30 m (29.5 to 98.4 ft).

A square wave trigger signal will be supplied to the firing system hardware by a FEI–Zyfer GPStarplus Clock model 565, based on GPS time (typically at approximately 14 to 20 sec intervals). Vessel speed will be approximately 10.2 km/hour (5.5 knots) resulting in a shot interval ranging from approximately 39 to 56 m (128 to 183.7 ft). G-airgun firing and synchronization will be controlled by a RealTime Systems LongShot fire controller, which will send a voltage to the airgun solenoid to trigger firing with approximately 54.8 ms delay between trigger and fire point.

Pressurized air for the pneumatic G-airguns will be supplied by two Hurricane compressors, model 6T–276–44SB/2500. These are air cooled, containerized compressor systems. Each compressor will be powered by a C13 Caterpillar engine which turns a rotary screw first stage compressor and a three stage piston compressor capable of developing a total air volume of 600 SCFM @ 2,500 pounds per square inch (PSI). The seismic system will be operated at 1,950 PSI and one compressor could easily supply sufficient volume of air under appropriate pressure.

Seismic acquisition will require a watchkeeper in the seismic lab and another in the compressor container. The seismic lab watchkeeper is responsible for data acquisition/recording, watching over-the-side equipment, airgun firing and log keeping. A remote screen will permit monitoring of compressor pressures and alerts, as well as communication with the compressor watchkeeper. The compressor watchkeeper will be required to monitor the compressor for any emergency shut-down and provide general maintenance that might be required during operations.

Sound level radii for the proposed three airgun array were measured in 2009 during a seismic calibration (Mosher *et al.,* 2009; Roth and Schmidt, 2010). A transmission loss model was then constructed assuming spherical (20LogR) spreading and using the source level estimate 235 dB re 1 μPa (rms) 0-peak; 225 dB re 1 μPa (rms) from the measurements. The use of 20LogR spreading fit the data well out to approximately 1 km (0.6 mi) where variability in measured values increased (*see* Appendix B in the IHA application for more details and a figure of the transmission loss model compared to the measurement data). Additionally, the Gundalf modeling package was used to model the airgun array and estimated a source level output of 236.7 dB 0-peak (226.7 dB [rms]). Using this slightly stronger source level estimate and a 20LogR spreading the 180 and 190 dB (rms) radii are estimated to be 216 m (708.7 ft) and 68 m (223.1 ft), respectively. As a conservation measure for the proposed safety radii, the sound level radii indicated by the empirical data and source models have been increased to 500 m (1,640.4 ft) for the 180 dB isopleths and to 100 m (328 ft) of the 190 dB isopleths.

The rms received levels that are used as impact criteria for marine mammals are not directly comparable to the peak or peak-to-peak values normally used to characterize source levels of airguns. The measurement units used above to describe the airgun source, peak or peak-to-peak dB, are always higher than the rms dB referred to in much of the biological literature. A measured received level of 160 dB (rms) in the far field would typically correspond to a peak measurement of about 170 to 172 dB, at the same location (Greene, 1997;

McCauley *et al.,* 1998, 2000). The precise difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or peak-to-peak level for an airgun-type source.

TABLE 2—DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 190, 180, AND 160 DB RE 1 μPA (RMS) COULD BE RECEIVED IN DEEP (GREATER THAN 1,000 m) WATER DURING THE PROPOSED SURVEY IN THE ARCTIC OCEAN, AUGUST 7 TO SEPTEMBER 3, 2010

Source and volume	Tow depth (m) Ice/open water	Water depth	*Predicted received RMS distances (m)*		
			190 dB	180 dB	160 dB
Single Mitigation Airgun (150 in^3)	11/6–7	Deep (>1,000 m)	30	75	750
3 G-airguns (1,190 in^3)	11/6–7	Deep (>1,000 m)	100	500	2,500

Acoustic Source Specifications—Multibeam Echosounders (MBES), Sub-Bottom Profiler (SBP) and Acoustic Doppler Current Profilers (ADCP)

Along with the airgun operations, additional acoustic systems that will be operated during the cruise include a 12 kHz Chirp echosounder and a 3–5 kHz SBP from the *St. Laurent.* The Healy will operate a 12 kHz Kongsberg MBES, a Knudsen 320BR profiler, a piloting echosounder, and two ADCPs. These sources will be operated throughout most of the cruise to map bathymetry, as necessary, to meet the geophysical science objectives. During seismic operations, these sources will be deployed from the *St. Laurent* and the *Healy* and will generally operate simultaneously with the airgun array deployed from the *St. Laurent.*

The Knudsen 320BR echosounder will provide information on depth and bottom profile. The Knudsen 320BR is a dual-frequency system with operating frequencies of 3.5 and 12 kHz, however, the unit will be functioning at the higher frequency, 12 kHz, because the 3.5 kHz transducer is not installed.

While the Knudsen 320BR operates at 12 kHz, its calculated maximum source level (downward) is 215 dB re μPa at 1 m. The pulse duration is typically 1.5 to 5 ms with a bandwidth of 3 kHz (FM sweep from 3 kHz to 6 kHz). The repetition rate is range dependent, but the maximum is a one percent duty cycle. Typical repetition rate is between ½ s (in shallow water) to 8 s in deep water. A single 12 kHz transducer (sub-bottom) array, consisting of 16 elements in a 4x4 array will be used for the Knudsen 320BR. The 12 kHz transducer (TC–12/34) emits a conical beam with a width of 30°.

The 3–5 kHz chirp SBP will be towed by and operated from the *St. Laurent* in open water when the *St. Laurent* is not working in tandem with the *Healy*. The SBP provides information about sedimentary features and bottom topography. The chirp system has a maximum 7.2 kW transmit capacity into the towed array. The energy from the towed unit is directed downward by an array of eight transducers in a conical beamwidth of 80 degrees. The interval between pulses will be no less than one pulse per second. SBPs of that frequency can produce sound levels 200 to 230 dB re 1 μPa at 1 m (Richardson *et al.,* 1995).

The Kongsberg EM 122 MBES operates at 10.5 to 13 (usually 12) kHz and is hull-mounted on the *Healy.* The transmitting beamwidth is 1° or 2° fore-aft and 150° athwartship. The maximum source level is 242 dB re 1 μPam (rms). Each "ping" consists of eight (in water greater than 1,000 m deep) or four (less than 1,000 m) successive fan-shaped transmissions, each ensonifying a sector that extends 1° fore-aft. Continuous-wave (CW) pulses increase from two to 15 ms long in water depths up to 2,600 m (8,530 ft), and FM chirp pulses up to 100 ms long are used in water greater than 2,600 m (8,530 ft). The successive transmissions span an overall cross-track angular extent of about 150°, with 2 ms gaps between pulses for successive sectors.

The Knudsen 320BR hydrographic SBP will provide information on sedimentary layering, down to between 20 and 70 m (65.6 to 229.7 ft), depending on bottom type and slope. The Knudsen 320 BR is a dual-frequency system with operating frequencies of 3.5 and 12 kHz; only the low frequency will be used during this survey. At 3.5 kHz, the maximum output power into the transducer array, as wired on the *Healy* (where the array impedance is approximately 125 ohms), is approximately 6,000 watts (electrical), which results in a maximum source level of 221 dB re 1 μPa at 1 m downward. Pulse lengths range from 1.5 to 24 ms with a bandwidth of 3 kHz (FM sweep from 3 kHz to 6 kHz). The repetition rate is range dependent, but the maximum is a one percent duty cycle. Typical repetition rate is between ½ s (in shallow water) to 8 s in deep water. The 3.5 kHz transducer array on the *Healy,* consisting of 16 (TR109) elements in a 4x4 array, will be used for the Knudsen 320BR. At 3.5 kHz the SBP emits a downward conical beam with a width of approximately 26°.

The piloting echosounder on the *Healy* is an Ocean Data Equipment Corporation (ODEC) Bathy-1500 that will provide information on water depth below the vessel. The ODEC system has a maximum 2 kW transmit capacity into the transducer and has two operating modes, single or interleaved dual frequency, with available frequencies of 12, 24, 33, 40, 100, and 200 kHz.

The 150 kHz ADCP has a minimum ping rate of 0.65 ms. There are four beam sectors and each beamwidth is 3°. The pointing angle for each beam is 30° off from vertical with one each to port, starboard, forward, and aft. The four beams do not overlap. The 150 kHz ADCP's maximum depth range is 300 m (984.3 ft).

The Ocean Surveyor 75 is an ADCP operating at a frequency of 75 kHz, producing a ping every 1.4 s. The system is a four-beam phased array with a beam angle of 30°. Each beam has a width of 4° and there is no overlap. Maximum output power is 1 kW with a maximum depth range of 700 m (2,296.6 ft).

Acoustic Source Specifications—Icebreaking

Icebreaking is considered by NMFS to be a continuous sound and NMFS estimates that harassment occurs when marine mammals are exposed to continuous sounds at a received sound level of 120 dB SPL or above. Potential takes of marine mammals may ensue from icebreaking activity in which the *Healy* is expected to engage outside of U.S. waters, *i.e.,* north of approximately 74.1° North. While breaking ice, the noise from the ship, including impact with ice, engine noise, and propeller cavitation, will exceed 120 dB

continuously. If icebreaking does occur in U.S. waters, USGS expects it will occur during seismic operations. The exclusion zone (EZ) for the marine mammal Level B harassment threshold during the proposed seismic activities is greater than the calculated radius during icebreaking. Therefore, if the *Healy* breaks ice during seismic operations within the U.S. waters, the greater radius, *i.e,* that for seismic operations, supersedes that for icebreaking, so no additional takes have been estimated within U.S. waters.

Proposed Dates, Duration, and Specific Geographic Area

The proposed seismic survey will be conducted for approximately 30 days from approximately August 7 to September 3, 2010. The approximately 806 km (501 mi) of tracklines within U.S. waters will be surveyed first. These survey lines are expected to be completed by approximately August 12, 2010. The seismic vessel *St. Laurent* will depart from Kugluktuk, Nunavut, Canada on August 2, 2010 and return to the same port on approximately September 16, 2010. The *Healy* will depart from Dutch Harbor, Alaska on August 3, 2010 to meet the *St. Laurent* by August 7, 2010. After completion of this survey, the *Healy* will change crew through Barrow via helicopter or surface vessel on September 4, 2010 (*see* Table 3 of the IHA application). The entire survey area will be bounded approximately by 145° to 158° West longitude and 71° to 84° North latitude in water depths ranging from approximately 1,900 to 4,000 m (6,234 to 13,123 ft) (*see* Figure 1 and Table 1 of the IHA application). Ice conditions are expected to range from open water to 10/10 ice cover. See Table 3 of the IHA application for a synopsis of the 2010 *St. Laurent* and *Healy* Extended Continental Shelf expeditions in the Arctic Ocean, August 3 to September 16, 2010.

Icebreaking outside U.S. waters will occur between the latitudes of approximately 74° to 84° North. Vessel operations and ice conditions from similar survey activities and timing in 2008 and 2009 were used to estimate the amount of icebreaking (in trackline km) that is likely to occur in 2010. USGS expects that the *St. Laurent* and the *Healy* will be working in tandem through the ice for a maximum of 23 to 25 days while outside of U.S. waters. The average distance travelled in 2008 and 2009 when the *Healy* broke ice for the *St. Laurent* was 135 km/day (83.9 mi/day). Based on the 23 to 25 day period of icebreaking, USGS calculated that, at most approximately 3,102 to 3,372 km (1,927.5 to 2,095.3 mi) of vessel trackline may involve icebreaking. This calculation is likely an overestimation because icebreakers often follow leads when they are available and thus do not break ice at all times.

TABLE 3—PROJECTED 2010 ICEBREAKING EFFORT FOR USGS/GSC 2010 EXTENDED CONTINENTAL SHELF SURVEY IN THE NORTHERN BEAUFORT SEA AND ARCTIC OCEAN

2008	19	2,469	130
2009	27	37,744	140
Average 2008 to 2009	23	3,122	135
Projected 2010	23 to 25	3,102 to 3,372	—

Description of Marine Mammals in the Proposed Activity Area

Regarding marine mammals, a total of nine cetacean species, including four odontocete (dolphins, porpoises, and small- and large-toothed whales) species, five mysticete species (baleen whales), and five pinniped species (seals, sea lions, and walrus) and the polar bear are known to occur in the area affected by the specified activities associated with the proposed Arctic Ocean marine seismic survey (*see* Table 3 of USGS's application). Cetaceans and pinnipeds, which are the subject of this IHA application, are protected by the MMPA and managed by NMFS in accordance with its requirements. In the U.S., the walrus and polar bear are managed under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and are not considered further in this analysis. Information on the occurrence, distribution, population size, and conservation status for each of the 14 marine mammal species that may occur in the proposed project area is presented in Table 4 of USGS's application as well as here in the table below (Table 4). Several marine mammal species that may be affected by the proposed IHA are listed as Endangered or Threatened under Section 4 of the ESA, including the bowhead, fin and humpback whale, and polar bear. The bowhead whale is common in the Arctic, but unlikely in the survey area. Based on a small number of sightings in the Chukchi Sea, the fin whale is unlikely to be encountered along the planned trackline in the Arctic Ocean. Humpback whales are uncommon in the Chukchi Sea and normally do not occur in the Beaufort Sea. Several humpback sightings were recorded during vessel-based surveys in the Chukchi Sea in 2007 (three sightings) and 2008 (one sighting; Haley *et al.,* 2009). The only known occurrence of humpback whale in the Beaufort Sea was a single sighting of a cow and calf reported and photographed in 2007 (Green *et al.,* 2007). Based on the low number of sightings in the Chukchi and Beaufort seas, humpback whales would be unlikely to occur in the vicinity of the proposed geophysical activities.

The marine mammal species under NMFS jurisdiction most likely to occur in the seismic survey area include two cetacean species (beluga and bowhead whales), and two pinniped species (ringed and bearded seals). These species however, will likely occur in low numbers and most sightings will likely occur in locations within 100 km (62 mi) of shore where no seismic work is planned. The marine mammal most likely to be encountered throughout the cruise is the ringed seal.

Seven additional cetacean species—narwhal, killer whale, harbor porpoise, gray whale, minke whale, fin whale, and humpback whale—could occur in the project area. Gray whales occur regularly in continental shelf waters along the Chukchi Sea coast in summer and to a lesser extent along the Beaufort Sea coast. Recent evidence from monitoring activities in the Chukchi and Beaufort seas during industry seismic surveys suggests that harbor porpoise and minke whales, which have been considered uncommon or rare in the Chukchi and Beaufort seas, may be increasing in numbers in these areas (Funk *et al.,* 2009). Small numbers of killer whales have also been recorded during these industry surveys, along with a few sightings of fin and humpback whales. The narwhal occurs in Canadian waters and occasionally in the Beaufort Sea, but is rare there and not expected to be encountered. Each of these species is uncommon or rare in the Chukchi and Beaufort seas, and relatively few if any encounters with

these species are expected during the seismic program.

Additional pinniped species that could be encountered during the proposed seismic survey include spotted and ribbon seals, and Pacific walrus. Spotted seals are more abundant in the Chukchi Sea and occur in small numbers in the Beaufort Sea. The ribbon seal is uncommon in the Chukchi Sea and there are few sightings in the Beaufort Sea. The Pacific walrus is common in the Chukchi Sea, but uncommon in the Beaufort Sea and not likely to occur in the deep waters of the proposed survey area. None of these species would likely be encountered during the proposed cruise other than perhaps transit periods to and from the survey area.

Table 4 below outlines the marine mammal species, their habitat and abundance in the proposed project area, their conservation status, and density. Additional information regarding the distribution of these species expected to be found in the proposed project area and how the estimated densities were calculated may be found in USGS's application.

TABLE 4—THE HABITAT, REGIONAL ABUNDANCE, CONSERVATION STATUS, AND BEST AND MAXIMUM DENSITY ESTIMATES OF MARINE MAMMALS THAT COULD OCCUR IN OR NEAR THE PROPOSED SEISMIC SURVEY AREA IN THE ARCTIC OCEAN. SEE TABLE 4 IN USGS'S APPLICATION FOR FURTHER DETAIL

Species	Habitat	Abundance/regional population size[a]	ESA[a]	Best[b] Density (#/km^2) open water, ice margin, polar pack	Max[c] Density (#/km^2) open water, ice margin, polar pack
Odontocetes:					
Beluga whale (*Delphinapterus leucas*).	Offshore, coastal, ice edges	3,710[d], 39,257[e]	NL	0.0354 0.0354 0.0035	0.0709 0.0709 0.0071
Narwhal (*Monodon monocerus*).	Offshore, ice edge	Rare[f]	NL	0.0000 0.0000 0.0000	0.0001 0.0002 0.0001
Killer whale (*Orcinus orca*)	Widely distributed	Rare	NL	0.0000 0.0000 0.0000	0.0001 0.0001 0.0001
Harbor porpoise (*Phocoena phocoena*).	Coastal, inland waters, shallow offshore waters.	Common (Chukchi), Uncommon (Beaufort).	NL	0.0000 0.0000 0.0001	0.0001 0.0001 0.0001
Mysticetes:					
Bowhead whale (*Balaena mysticetus*).	Pack ice and coastal	10,545[g]	EN	0.0061 0.0061 0.0006	0.0122 0.0122 0.0012
Eastern Pacific gray whale (*Eschrichtius robustus*).	Coastal, lagoons	488[h], 17,500[i]	NL	0.0000 0.0000 0.0000	0.0001 0.0001 0.0001
Minke whale (*Balaenoptera acutorostrata*).	Shelf, coastal	Small numbers	NL	0.0000 0.0000 0.0000	0.0001 0.0001 0.0001
Fin whale (*Balaenoptera physalus*).	Slope, mostly pelagic	Rare (Chukchi)	E	0.0000 0.0000 0.0000	0.0001 0.0001 0.0001
Humpback whale (*Megaptera novaeangliae*).	Shelf, coastal	Rare	EN	0.0000 0.0000 0.0000	0.0001 0.0001 0.0001
Pinnipeds:					
Bearded seal (*Erignathus barbatus*).	Pack ice, open water	300,000–450,000[j]	C	0.0096 0.0128 0.0013	0.0384 0.0512 0.0051
Spotted seal (*Phoca largha*).	Pack ice, open water, coastal haul-outs.	59,214[k]	P–T	0.0001 0.0001 0.0000	0.0004 0.0004 0.0000
Ringed seal (*Pusa hispida*)	Landfast and pack ice, open water.	18,000[l], 208,000–252,000[m]	C	0.1883 0.2510 0.0251	0.7530 1.0040 0.1004
Ribbon seal (*Histriophoca fasciata*).	Pack ice, open water	90,000–100,000[n]	NL	N.A.	N.A.
Pacific walrus (*Odobenus rosmarus divergens*).	Ice, coastal	N.A.	NL	N.A.	N.A.
Carnivores:					
Polar bear (*Ursus maritimus marinus*).	Ice, coastal	N.A.	T	N.A.	N.A.

N.A.—Data not available or species status was not assessed,
[a] U.S. Endangered Species Act: EN = Endangered, T = Threatened, C = Candidate, P = Proposed, NL = Not listed.
[b] Best estimate as listed in Table 5 and Add-3 of the application.
[c] Maximum estimate as listed in Table 5 and Add-3 of the application.
[d] Eastern Chukchi Sea stock based on 1989 to 1991 surveys with a correction factor (Angliss and Allen, 2009).
[e] Beaufort Sea stock based on surveys in 1992 (Angliss and Allen, 2009).
[f] DFO (2004) states the population in Baffin Bay and the Canadian Arctic archipelago is approximately 60,000; very few of these enter the Beaufort Sea.

[g] Abundance of bowhead whales surveyed near Barrow, as of 2001 (George *et al.,* 2004). Revised to 10,545 by Zeh and Punt (2005).
[h] Southern Chukchi Sea and northern Bering Sea (Clarks and Moore, 2002).
[i] Eastern North Pacific gray whale population (Rugh *et al.,* 2008).
[j] Based on earlier estimates, no current population estimate available (Angliss and Allen, 2009).
[k] Alaska stock based on aerial surveys in 1992 (Angliss and Allen, 2009).
[l] Beaufort Sea minimum estimate with no correction factor based on aerial surveys in 1996 to 1999 (Frost *et al.,* 2002 in Angliss and Allen, 2009).
[m] Eastern Chukchi Sea population (Bengston *et al.,* 2005).
[n] Bering Sea population (Burns, 1981a in Angliss and Allen, 2009).

Within the latitudes of the proposed survey when the *Healy* will be breaking ice outside of U.S. waters, no cetaceans were observed by PSOs along approximately 21,322 km (13,248.9 mi) of effort during projects in 2005, 2006, 2008, and 2009 (Haley and Ireland, 2006; Haley, 2006; Jackson and DesRoches, 2008; Mosher *et al.,* 2009). The estimated maximum amount of icebreaking outside of U.S. waters for this project, *i.e.,* 3,372 line km (2,095.3 mi), is considerably less than the combined trackline for the aforementioned projects. At least one PSO will stand watch at all times while the *Healy* is breaking ice for the *St. Laurent.* USGS does not expect that PSOs will observe any cetaceans during the proposed survey. Seals were reported by PSOs during the 2005, 2006, 2008, and 2009 effort within the latitudes of the proposed survey.

TABLE 5—NUMBER OF PINNIPEDS REPORTED DURING 2005, 2006, 2008, AND 2009 PROJECTS WITHIN THE LATITUDES WHERE THE HEALY WILL BE BREAKING ICE OUTSIDE OF U.S. WATERS FOR THE PROPOSED ARCTIC OCEAN SURVEY (HALEY AND IRELAND, 2006; HALEY, 2006, GSC UNPUBLISHED DATA, 2008; MOSHER *et al.,* 2009)

Pinniped species	Number of sightings	Number of individuals
Ringed seal	116	125
Bearded seal	24	26
Unidentified seal	128	140
Totals	268	291

Potential Effects on Marine Mammals

Potential Effects of Airgun Sounds

The effects of sounds from airguns might result in one or more of the following: Tolerance, masking of natural sounds, behavioral disturbances, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or especially permanent hearing impairment, or any significant non-auditory physical or physiological effects. Some behavioral disturbance is expected, but this would be localized and short-term. NMFS concurs with this determination.

The root mean square (rms) received levels that are used as impact criteria for marine mammals are not directly comparable to the peak or peak-to-peak values normally used to characterize source levels of airgun arrays. The measurement units used to describe airgun sources, peak or peak-to-peak decibels, are always higher than the rms decibels referred to in biological literature. A measured received level of 160 dB (rms) in the far field would typically correspond to a peak measurement of approximately 170 to 172 dB, and to a peak-to-peak measurement of approximately 176 to 178 dB, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.,* 1998, 2000a). The precise difference between rms and peak or peak-to-peak values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or peak-to-peak level for an airgun-type source.

Tolerance

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. For a summary of the characteristics of airgun pulses, see Appendix D (3) of the IHA application. Numerous studies have shown that marine mammals at distances more than a few kilometers from operating seismic vessels often show no apparent response—see Appendix D (5) of the IHA application. 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 the 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 usually seem to be more tolerant of exposure to airgun pulses than are cetaceans, with relative responsiveness of baleen and toothed whales being variable.

Masking

Obscuring of sounds of interest by interfering sounds, generally at similar frequencies, is known as masking. Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data of relevance. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However in exceptional situations, reverberation occurs for much or all of the interval between pulses (Simard *et al.,* 2005; Clark and Gagnon, 2006) which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses. The airgun sounds are pulsed, with quiet periods between the pulses, and whale calls often can be heard between the seismic pulses (Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b, 2006; Dunn *et al.,* 2009). In the northeast Pacific Ocean, blue whale calls have been recorded during a seismic survey off Oregon (McDonald *et al.,* 1995). Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies found that they continued calling the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; Jochens *et al.,* 2008). Bowhead whale calls are frequently detected in the presence of seismic pulses, although the

number of calls detected may sometimes be reduced in the presence of airgun pulses (Richardson *et al.,* 1986; Greene *et al.,* 1999; Blackwell *et al.,* 2008). Dolphins and porpoises commonly are heard calling while airguns are operating (Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b; Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor (in the case of smaller odontocetes), given the normally intermittent nature of seismic pulses. Masking effects on marine mammals are discussed further in Appendix D (4) of the IHA application.

Disturbance Reactions

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous changes in activities, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the response may or may not rise to the level of "harassment" to the individual, or affect the stock or the species population as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals are likely to be present within a particular distance of industrial activities, and/or exposed to a particular level of industrial sound. In most cases, this practice potentially overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The sound exposure criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based primarily on behavioral observations during studies of several species. However, information is lacking for many species. Detailed studies have been done on humpback, gray, bowhead, and on ringed seals. Less detailed data are available for some other species of baleen whales, sperm whales, small toothed whales, and sea otters, but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable. Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kilometers, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix D (5) of the USGS IHA application, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding activities and moving away from the sound source. In the case of the migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals. They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have demonstrated that seismic pulses with received levels of 160 to 170 dB re 1 μPa (rms) seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from 4 to 15 km (2.8 to 9 mi) from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in Appendix D (5) of the USGS IHA application have shown that some species of baleen whales, notably bowhead and humpback whales, at times show strong avoidance at received levels lower than 160 to 170 dB re 1 μPa (rms).

Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20 to 30 km (12.4 to 18.6 mi) from a medium-sized airgun source at received sound levels of around 120 to 130 dB re 1 μPa (rms) (Miller *et al.,* 1999; Richardson *et al.,* 1999; see Appendix D (5) of the IHA application). However, more recent research on bowhead whales (Miller *et al.,* 2005a; Harris *et al.,* 2007; Lyons *et al.,* 2009; Christi *et al.,* 2009) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. Nonetheless, subtle but statistically significant changes in surfacing-respiration-dive cycles were evident upon statistical analysis (Richardson *et al.,* 1986). In summer, bowheads typically begin to show avoidance reactions at a received level of about 152 to 178 dB re 1 μPa (rms) (Richardson *et al.,* 1986, 1995; Ljungblad *et al.,* 1988; Miller *et al.,* 2005a). The USGS project will be conducted during fall migration at locations greater than 200 nmi offshore, well north of the known bowhead migration corridor. Recent evidence suggests that some bowheads feed during migration and feeding bowheads might be encountered in the central Alaska Beaufort Sea during transit periods to and from Barrow (Lyons *et al.,* 2009; Christi *et al.,* 2009). The primary bowhead summer feeding grounds however, are far to the east in the Canadian Beaufort Sea.

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding Eastern Pacific gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. Malme *et al.* (1986, 1988) estimated, based on small sample sizes, that 50 percent of feeding gray whales ceased feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re 1 μPa (rms). Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and with observations of Western Pacific gray whales feeding off Sakhalin Island, Russia, when a seismic survey was underway just offshore of their feeding area (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.* 2007a,b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, Bryde's, and minke whales) have occasionally been reported in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (*e.g.* McDonald *et al.,* 1995; Dunn *et al.,* 2009). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for

mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting and not shooting (silent) (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). In a study off of Nova Scotia, Moulton and Miller (2005) found little difference in sighting rates (after accounting for water depth) and initial sighting distances of balaenopterid whales when airguns were operating vs. silent. However, there were indications that these whales were more likely to be moving away when seen during airgun operations. Similarly, ship-based monitoring studies of blue, fin, sei, and minke whales offshore of Newfoundland (Orphan Basin and Laurentian Sub-basin) found no more than small differences in sighting rates and swim direction during seismic vs. non-seismic periods (Moulton *et al.,* 2005, 2006a,b).

Data on short-term reactions (or lack of reactions) of cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (*see* Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Angliss and Outlaw, 2008). The Western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a prior year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Angliss and Outlaw, 2008). Populations of both gray whales and bowhead whales grew substantially during this time. In any event, the brief exposures to sound pulses from the proposed airgun source are highly unlikely to result in prolonged effects.

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above and (in more detail) in Appendix D of the IHA application have been reported for toothed whales. However, recent systematic studies on sperm whales have been done (Gordon *et al.*, 2006; Madsen *et al.*, 2006; Winsor and Mate, 2006; Jochens *et al.*, 2008; Miller *et al.*, 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.*, Stone, 2003; Smultea *et al.*, 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.*, 2006; Stone and Tasker, 2006; Potter *et al.*, 2007; Hauser *et al.*, 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.*, 2009; Richardson *et al.*, 2009).

Seismic operators and observers on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there seems to be a tendency for most delphinids to show some limited avoidance of operating seismic vessels with large airgun arrays (Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.*, 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.*, 2009; Barkaszi *et al.*, 2009). However, some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large airgun arrays are firing (Moulton and Miller, 2005). Nonetheless, there have been indications that small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Stone and Tasker, 2006; Weir, 2008). In most cases, the avoidance radii for delphinids appear to be small, on the order of 1 km (0.62 mi) or less, and some individuals show no apparent avoidance. The beluga is a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys during seismic operations in the southeastern Beaufort Sea during summer found that sighting rates of beluga whales were significantly lower at distances 10 to 20 km (6.2 to 12.4 mi) compared with 20 to 30 km (12.4 to 18.6 mi) from an operating airgun array, and observers on seismic boats in that area rarely see belugas (Miller *et al.*, 2005; Harris *et al.*, 2007).

Captive bottlenose dolphins and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.*, 2000, 2002, 2005; Finneran and Schlundt, 2004). However, the animals tolerated high received levels of sound (pk-pk level greater than 200 dB re 1 μPa) before exhibiting aversive behaviors. With the presently-planned source, such levels would be limited to distances less than 200 m (656.2 ft) of the three airgun array. The reactions of belugas to the USGS survey are likely to be more similar to those of free-ranging belugas exposed to airgun sound (Miller *et al.*, 2005) than to those of captive belugas exposed to a different type of strong transient sound (Finneran *et al.*, 2000, 2002).

Results for porpoises depend on species. The limited available data suggest that harbor porpoises show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operations airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources in general (Richardson *et al.*, 1995; Southall *et al.*, 2007).

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (Appendix C of the IHA application).

Pinnipeds—Pinnipeds are not likely to show a strong avoidance reaction to the airgun sources that will be used. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior—see Appendix D (5) of the IHA application. Ringed seals frequently do not avoid the area within a few hundred meters of operating airgun arrays (Harris *et al.*, 2001; Moulton and Lawson, 2002; Miller *et al.*, 2005). However, initial telemetry work suggests that avoidance and other behavioral reactions by two other species of seals to small airgun sources may at times be stronger than evident to date from visual studies of pinnipeds reactions to airguns (Thompson *et al.*, 1998). Even if reactions of the species occurring in the present study area are as strong as those evident in the telemetry study, reactions are expected to be confined to relatively small distances and durations, with no long-term effects on pinniped individuals or populations.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to sequences of airgun pulses.

NMFS is presently developing new noise exposure criteria for marine mammals that take account of the now-available scientific data on temporary threshold shift (TTS), the expected offset between the TTS and permanent threshold shift (PTS) thresholds, differences in the acoustic frequencies to which different marine mammal groups are sensitive, and other relevant factors. Detailed recommendations for new science-based noise exposure criteria were published in late 2007 (Southall *et al.*, 2007).

Several aspects of the planned monitoring and mitigation measures for this project (*see* below) are designed to detect marine mammals occurring near the airguns to avoid exposing them to sound pulses that might, at least in theory, cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area where received levels of airgun sound are high enough such that hearing impairment could potentially occur. In those cases, the avoidance responses of the animals themselves will reduce or (most likely) avoid any possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that might (in theory) occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, and other types of organ or tissue damage. It is possible that some marine mammal species (*i.e.*, beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, as discussed below, 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 study area. It is especially unlikely that any effects of these types would occur during the present project given the brief duration of exposure of any given mammal, the deep water in the study area, and the proposed monitoring and mitigation measures (*see* below). The following subsections discuss in somewhat more detail the possibilities of TTS, PTS, and non-auditory physical effects.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007).

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran *et al.*, 2002, 2005). Given the available data, the received level of a single seismic pulse might need to be approximately 210 dB re 1 μPa (rms) (approximately 221 to 226 dB pk-pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200 to 205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy. Seismic pulses with received levels of 200 to 205 dB or more are usually restricted to a radius of no more than 200 m (656.2 ft) around a seismic vessel operating a large array of airguns.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound required to induce TTS. The frequencies to which baleen whales are most sensitive are lower than those to which odontocetes are more sensitive, and natural background noise levels at those low frequencies tend to be higher. 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 (Southall *et al.*, 2007). However, no cases of TTS are expected given the moderate size of the source 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; Au *et al.*, 2000). For harbor seal, which is closely related to the ringed seal, TTS onset apparently occurs at somewhat lower received energy levels than for odontocetes (*see* Appendix D of the IHA application).

A marine mammal within a radius of less than or equal to 100 m (328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with levels of greater than 205 dB (rms), and possibly more pulses if the mammal moved with the seismic vessel. The received sound levels will be reduced for the proposed three airgun array to be used during the current survey compared to the larger arrays thus reducing the potential for TTS for the proposed survey. (As noted above, most cetacean species trend to avoid operating airguns, although not all individuals do so.) However, several of the considerations that are relevant in assessing the impact of typical seismic surveys with arrays of airguns are not directly applicable here:

- "Ramping-up" (soft-start) is standard operational protocol during start-up of large airgun arrays. Ramping-up involves starting the airguns in sequence, usually commencing with a single airgun and gradually adding additional airguns.
- It is unlikely that cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. For the proposed project, the seismic survey will be in deep water where the radius of influence and duration of exposure to strong pulses is smaller compared to shallow locations.
- With a large array of airguns, TTS would be most likely in any odontocetes that bow-ride or in any odontocetes or pinnipeds that linger near the airguns. For the proposed survey, the anticipated 180 dB and 190 dB (re 1 μPa 1m rms) exclusion zone in deep water are expected to extend 483 m (1,584.7 ft) and 153m (502 ft), respectively, from the airgun array which could result in effects to bow-riding species. However, no species that occur within the project area are expected to bow-ride.

• There is a possibility that a small number of seals (which often show little or no avoidance of approaching seismic vessels) could occur close to the airguns and that they might incur slight TTS if no mitigation action (shut-down) were taken.

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans and pinnipeds should not be exposed to pulsed underwater noise at received levels exceeding 180 and 190 dB re 1 μPa (rms), respectively. All airgun activity will occur in water depths ranging from approximately 2,000 to 4,000 m (6,561.7 to 13,123.4 ft). Sound level radii of the proposed three airgun array were measured in 2009 during a seismic calibration experiment (Mosher *et al.,* 2009; Roth and Schmidt, 2010). A transmission loss model was then constructed assuming spherical (20LogR) spreading and using the source level estimate (235 dB re 1 μPa 0-peak; 225 dB re 1 μPa rms) from the measurements. The use of 20LogR spreading fit the data well out to approximately one km (0.6 mi) where variability in measures values increased (*see* Appendix B of the IHA application for more details and a figure of the transmission loss model compared to the measurement data). Additionally, the Gundalf modeling package was used to model the airgun array and estimated a source level output of 236.7 dB 0-peak (226.7 dB rms). Using this slightly stronger source level estimate and 20LogR spreading the 180 and 190 dB rms radii are estimated to be 216 m (708.7 ft) and 68 m (223.1 ft), respectively. As a conservative measure for the proposed EZ, the sound-level radii indicated by the empirical data and source models have been increased to 500 m (1,640.4 ft) for the 180 dB (rms) isopleths and to 100 m (328 ft) for the 190 dB isopleth (*see* Table 2 of the IHA application). These distances will be used as power-down/shut-down criteria described in the Proposed Mitigation and Proposed Monitoring and Reporting sections below. Furthermore, established 180 and 190 dB (rms) criteria are not considered to be the level 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 cetaceans. As summarized above and in Southall *et al.* (2007), data that are now available imply that TTS is unlikely to occur in most odontocetes (and probably mysticetes as well) unless they are exposed to a sequence of several airgun pulses stronger than 180 or 190 dB re 1 μPa (rms). Since no bow-riding species occur in the study area, it is unlikely such exposures will occur.

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (Richardson *et al.,* 1995; Gedamke *et al.,* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

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. PTS might occur at a received sound level at least several decibels above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time (*see* Appendix D (6) of the IHA application). Based on data from terrestrial mammals, a precautionary assumption is that the PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably greater than 6 dB (Southall *et al.,* 2007). On an SEL basis, Southall *et al.* (2007) estimated that received levels would need to exceed the TTS threshold by at least 15 dB for there to be risk of PTS. Thus, for cetaceans they estimate that the PTS threshold might be an M-weighted SEL (for the sequence of received pulses) of approximately 198 dB re 1 $\mu Pa^2 \cdot s$ (15 dB higher than the M_{mf}-weighted TTS threshold, in a beluga, for a watergun impulse), where the SEL value is cumulated over the sequence of pulses.

Southall *et al.* (2007) also note that, regardless of the SEL, there is concern about the possibility of PTS if a cetacean or pinniped receives one or more pulses with peak pressure exceeding 230 or 218 dB re 1 μPa (peak), respectively. Thus PTS might be expected upon exposure of cetaceans to either SEL greater than or equal to 198 dB re 1 $\mu Pa^2 \cdot s$ or peak pressure greater than or equal to 230 dB re 1 μPa. Corresponding proposed dual criteria for pinnipeds (at least harbor seals) are greater than or equal to 186 dB SEL and greater than or equal to 218 dB peak pressure (Southall *et al.,* 2007). These estimates are all first approximations, given the limited underlying data, assumptions, species differences, and evidence that the "equal energy" model may not be entirely correct. A peak pressure of 230 dB re 1 μPa (3.2 bar ·m, 0-pk), which would only be found within a few meters of the largest (360 in^3) airguns in the planned airgun array (Caldwell and Dragoset, 2000). A peak pressure of 218 dB re 1 μPa could be received somewhat farther away; to estimate that specific distance, one would need to apply a model that accurately calculates peak pressures in the near-field around an array of airguns.

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. The planned monitoring and mitigation measures, including visual monitoring, power-downs, and shut-downs of the airguns when mammals are seen within or approaching the EZs will further reduce the probability of exposure of marine mammals to sounds strong enough to induce PTS.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. If any such effects do occur, they probably would be limited to unusual situations when animals might be exposed at close range for unusually long periods. It is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. That is especially so in the case of the proposed project where the airgun configuration focuses most energy downward, the ship will typically be moving at four to five knots, and for the most part, the tracklines will not "double back" through the same area. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formation (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt

diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of "the bends," as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses. Beaked whales do not occur in the proposed survey area.

In general, little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales and some odontocetes (including belugas), and some pinnipeds, are especially unlikely to incur non-auditory physical effects. Also, the planned monitoring and mitigation measures, including shut-down of the airguns, will reduce any such effects that might otherwise occur.

Strandings and Mortality—Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and their auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). However, explosives are no longer used for marine waters for commercial seismic surveys or (with rare exceptions) for seismic research; they have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times, and there is no proof that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of mass strandings of beaked whales with naval exercises and, in one case, an L–DEO seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong pulsed sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding (Hildebrand, 2005; Southall *et al.,* 2007). Appendix D(6) of the USGS IHA application provides additional details.

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change such as a vetibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically mediated bubble formation and growth or acoustic resonance of tissues.

Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are increasing indications that gas-bubble disease (analogous to "the bends"), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. The evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different. Sounds produced by airgun arrays are broadband impulses with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead (at least indirectly) to physical damage and mortality (Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005a; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) was not well founded based on available data (IAGC, 2004; IWC, 2007b). In September 2002, there was a stranding of two Cuvier's beaked whales in the Gulf of California, Mexico, when the L–DEO vessel R/V *Maurice Ewing* (*Ewing*) was operating a 20 airgun, 8,490 in^3 array in the general area. The link between the stranding and the seismic survey was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution when conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). However, no beaked whales are found within this project area and the planned monitoring and mitigation measures are expected to minimize any possibility for mortality of other species.

Potential Effects of Chirp Echosounder Signals

A Knudsen 320BR Plus echosounder will be operated from the source vessel at nearly all times during the planned study. Details about the equipment are provided in Appendix B of the IHA application. The Knudsen 320BR produces sound pulses with lengths up to 24 ms every 0.5 to approximately 8 s, depending on water depth. The energy in the sound pulses emitted by the Chirp echosounder is of moderately high frequency. The Knudsen can be operated with either a 3.5 kHz transducer, for sub-bottom profiling, or a 12 kHz transducer for sounding. The lower frequency (3.5 kHz) transducer is not installed and will not be used. The conical beamwidth for the 12 kHz transducer is 30°, and is directed downward.

Source levels for the Knudsen 320 operating at 12 kHz has been measured as a maximum of 215 dB re 1 μPam. Received levels would diminish rapidly with increasing depth. Assuming spherical spreading, received level directly below the transducer(s) would diminish to 180 dB re 1 μPa at distances of about 56 m (183.7 ft) when operating at 12 kHz. The 180 dB distance in the horizontal direction (outside the downward-directed beam) would be substantially less. Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small, and if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans (1) generally are more powerful than the Knudsen 320BR operating with the 12 kHz transducer,

(2) have longer pulse duration, and (3) are directed close to horizontally vs. downward for the Knudsen 320. The area of possible influence of the Chirp echosounder is much smaller—a narrow conical beam spreading downward from the vessel. Marine mammals that encounter the sounder at close range are unlikely to be subjected to repeated pulses because of the narrow width of the beam, and will receive only small amounts of pulse energy because of the short pulses.

Marine mammal communications will not be masked appreciably by the Chirp echosounder signals given its relatively low duty cycle, directionality, and the brief period when an individual mammal is likely to be within its beam. Belugas can, however, hear sounds ranging from 1.2 to 120 kHz; their peak sensitivity is approximately 10 to 15 kHz, overlapping with the 12 kHz signals (Fay, 1988). Some level of masking could result for beluga whales in close proximity to the survey vessel during brief periods of exposure to the sound. However, masking is unlikely to be an issue for beluga whales because belugas are likely to avoid survey vessels. The 12 kHz frequency signals will not overlap with the predominant low frequencies in baleen whale calls, thus reducing potential for masking in this group.

Marine mammal behavioral reactions to pulsed sound sources from an active airgun array are discussed above, and responses to the echosounder are likely to be similar to those for other pulsed sources if received at the same levels. When the 12 kHz transducer is in operation, the behavioral responses to the Knudsen 320BR are expected to be similar to those reactions to the active airgun array (as discussed above). Because of the lower source level and high directionality, NMFS expects animals to be only infrequently exposed to higher levels of sound and in short durations, and therefore NMFS does not anticipate that exposure to the echosounder will result in a "take" by harassment.

When the 12 kHz transducer is operating, the pulses are brief and concentrated in a downward beam. A marine mammal would be in the beam of the echosounder only briefly, reducing its received sound energy. Thus, it is unlikely that the chirp echosounder produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source.

The Knudsen 320 BR will be operated simultaneously with the airgun array. Many marine mammals will move away in response to the approaching higher-power sources of the vessel itself before the mammals would be close enough for there to be any possibility of effects from the Chirp echosounder (*see* Appendix D of the IHA application).

Potential Effects of Other Acoustic Devices—Chirp SBP Signals

A Knudsen 3260 SBP will be operated from the *St. Laurent* in open water when the *St. Laurent* is not working in tandem with the *Healy* during the planned study. The Knudsen's transducer will be towed behind the *St. Laurent.* Details about the equipment are provided in Appendix B of the IHA application. The chirp system has a maximum 7.2 kW transmit capacity into the towed array and generally operated at 3 to 5 kHz. The energy from the towed unit is directed downward by an array of eight transducers in a conical beamwidth of 80°. The interval between pulses will be no less than one pulse per second. SBPs of that frequency can produce sound levels of 200 to 230 dB re 1 μPa at 1 m (Richardson *et al.,* 1995).

Marine mammal communications will not be masked appreciably by the SBP signals given their relatively low duty cycle, directionality of the signal and the brief period when an individual mammal is likely to be within its beam. In the case of the most odontocetes, the 3 to 5 kHz chirp signals do not overlap with the predominant frequencies in their calls, which would avoid significant masking. Beluga whale is the only odontocete anticipated in the area of the proposed survey. Though belugas can hear sounds ranging from 1.2 to 120 kHz, their peak sensitivity is approximately 10 to 15 kHz, not overlapping with the 3 to 5 kHz signals (Fay, 1988). Furthermore, in the case of most baleen whales, the low-energy SBP signals do not overlap with the predominant low frequencies in the calls, which would reduce potential for masking.

Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the SBP are likely to be similar to those for other pulsed sources if received at the same levels. The pulsed signals from the SBP are somewhat weaker than those from the airgun array. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

The pulses from the chirp profiler are brief and directed downward. A marine mammal would be in the beam of the SBP only briefly, reducing its received sound energy. Thus, it is unlikely that the SBP produces pulse levels strong enough to cause hearing impairment or other physical injuries even if an animal is (briefly) in a position near the surface. It is unlikely that the SBP produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The SBP is operated simultaneously with other higher-power acoustic sources, including the airguns. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the SBP. In the case of mammals that do not avoid the approaching vessel and its various sound sources, monitoring and mitigation measures that would be applied to minimize effects of other sources would further reduce or eliminate any minor effects of the SBP.

Potential Effects of Other Acoustic Devices—MBES Signals

The Kongsberg EM 122 MBES will be operated from the *Healy* continuously during the planned study. Sounds from the MBES are very short pulses, depending on water depth. Most of the energy in the sound pulses emitted by the MBES is at frequencies centered at 12 kHz. The beam is narrow (approximately 2°) in fore-aft extent and wide (approximately 130°) in the cross-track extent. Any given mammal at depth near the trackline would be in the main beam for only a fraction of a second. Therefore, marine mammals that encounter sound from the MBES at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an MBES emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to be subjected to sound levels that could cause TTS. In 2008 and 2009 the *St. Laurent* and the *Healy* surveyed together with a cooperative strategy similar to that proposed for 2010. The director of NOAA's Office of Ocean Exploration and Research deemed that the use of the *Healy's* MBES would not have significant impacts on marine mammals of a direct or cumulative nature. The U.S. portions of the projects were granted a Categorical Exclusion from the need to prepare an EA.

Navy echosounders that have been linked to avoidance reactions and

stranding of cetaceans (1) generally are more powerful than the Kongsberg EM122 echosounder, (2) generally have a longer pulse duration than the Kongsberg EM 122, and (3) are often directed close to horizontally vs. more downward for the MBES. The area of possible influence of the MBES is much smaller—a narrow band oriented in the cross-track direction below the source vessel. Marine mammals that encounter the MBES at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only small amounts of pulse energy because of the short pulse. In assessing the possible impacts of a similar MBES system (the 15.5 kHz Atlas Hydrosweep MBES), Boebel *et al.* (2004) noted that the critical sound pressure level at which TTS may occur is 203.2 dB re 1 μPa (rms). The critical region included an area of 43 m (141.1 ft) in depth, 46 m (151 ft) wide athwartship, and 1 m fore-and-aft (Boebel *et al.*, 2004). In the more distant parts of that (small) critical region, only slight TTS would be incurred.

Marine mammal communications will not be masked appreciably by the MBES signals given its low duty cycle of the MBES and the brief period when an individual mammal is likely to be within its beam. Furthermore, the MBES signals (12 kHz) do not overlap with the predominant frequencies in the baleen whale calls, further reducing any potential for masking in that group.

Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. Also, Navy personnel have described observations of dolphins bow-riding adjacent to bow-mounted mid-frequency sonars during sonar transmissions. During exposure to a 21 to 25 kHz "whale-finding" sonar with a source level of 215 dB re 1 μPam, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (656 ft) (Frankel, 2005). However, all of those observations are of limited relevance to the present situation. Pulse durations from the Navy sonars were much longer than those of the MBESs to be used during the proposed study, and a given mammal would have received many pulses from the naval sonars. During the USGS operations, the individual pulses will be very short, and a given marine mammal would not receive many of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1 s pulsed signals at frequencies similar to those that will be emitted by the MBES used by USGS, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in either duration or bandwidth as compared with those from a MBES.

USGS is not aware of any data on the reactions of pinnipeds to echosounder sounds at frequencies similar to those of the MBES (12 kHz). Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the MBES, pinniped reactions to the echosounder sounds are expected to be limited to startle or otherwise brief responses of no lasting consequence to the animals.

Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (*see* above). However, the MBES proposed for use by USGS is quite different from sonars used for Navy operations. Pulse duration of the bathymetric echosounder is very short relative to the naval sonars. Also, at any given location, an individual cetacean or pinniped would be in the beam of the MBES for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth. (Navy sonars often use near-horizontally-directed sound.) Those factors would all reduce the sound energy received from the bathymetric echosounder relative to that from the sonars used by the Navy.

NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the MBES are not likely to result in the harassment of marine mammals.

Possible Effects of Helicopter Activities

It is anticipated that a helicopter will be deployed daily, weather permitting to conduct ice reconnaissance as well as to periodically transfer personnel between the two vessels. The helicopter will also be used to collect spot bathymetry data during operations in Canadian and international waters, outside of U.S. waters. The spot soundings will be recorded to maximize the area surveyed and the data will be collected off the ship's survey lines. A 12 kHz transducer will be slung by the helicopter and placed in the water down to a mark affixed to the tether. Data will then be logged to a laptop computer in the helicopter.

Levels and duration of sounds received underwater from a passing helicopter are a function of the type of helicopter used, orientation of the helicopter, the depth of the marine mammal, and water depth. A CCG helicopter, a Messerschmitt MBB BO105, will be providing air support for this project. Helicopter sounds are detectable underwater at greater distances when the receiver is at shallow depths. Generally, sound levels received underwater decrease as the altitude of the helicopter increases (Richardson *et al.*, 1995). Helicopter sounds are audible for much greater distances in air than in water.

Cetaceans—The nature of sounds produced by helicopter activities above the surface of the water do not pose a direct threat to the hearing of marine mammals that are in the water; however minor and short-term behavioral responses of cetaceans to helicopters have been documented in several locations, including the Beaufort Sea (Richardson *et al.*, 1985a,b; Patenaude *et al.*, 2002). Cetacean reactions to helicopters depend on several variables including the animal's behavioral state, activity, group size, habitat, and the flight patterns used, among other variables (Richardson *et al.*, 1995). During spring migration in the Beaufort Sea, beluga whales reacted to helicopter noise more frequently and at greater distances than did bowhead whales (38 percent vs. 14 percent of observations, respectively). Most reaction occurred when the helicopter passed within 250 m (820.2 ft) lateral distance at altitudes less than or equal to 150 m (492.1 ft). Neither species exhibited noticeable reactions to single passes at altitudes greater than 150 m (492.1 ft). Belugas within 250 m (820.2 ft) of stationary helicopters on the ice with the engine showed the most overt reactions (Patenaude *et al.*, 2002). Whales were observed to make only minor changes in direction in response to sounds produced by helicopters, so all reactions to helicopters were considered brief and minor. Cetacean reactions to helicopter disturbance are difficult to predict and may range from no reaction at all to minor changes in course or (infrequently) leaving the immediate area of the activity.

Pinnipeds—Few systematic studies of pinniped reactions to aircraft overflights

have been completed. Documented reactions range from simply becoming alert and raising the head to escape behavior such as hauled-out animals rushing to the water. Ringed seals hauled out on the surface of the ice have shown behavioral responses to aircraft overflights with escape responses most probable at lateral distances greater than 200 m (656.2 ft) and overhead distances less than or equal to 150 m (492.1 ft) (Born *et al.*, 1999). Although specific details of altitude and horizontal distances are lacking from many largely anecdotal reports, escape reactions to a low flying helicopter (less than 150 m [492.1 ft] altitude) can be expected from all four species of pinnipeds potentially encountered during the proposed operations. These responses would likely be relatively minor and brief in nature. Whether any response would occur when a helicopter is at the higher suggested operational altitudes (below) is difficult to predict and probably a function of several other variables including wind chill, relative wind chill, and time of day (Born *et al.*, 1999).

As mentioned in the previous section, momentary behavioral reactions "do not rise to the level of taking" (NMFS, 2001). In order to limit behavioral reactions of marine mammals during ice reconnaissance and spot bathymetry work outside of U.S. waters, the helicopter will maintain a minimum altitude of 200 m (656 ft) above the sea ice except when taking off, landing, or conducting spot bathymetry. Sea-ice landings are not planned at this time.

Possible Effects of Icebreaking Activities

Icebreakers produce more noise while breaking ice than ships of comparable size due, primarily, to the sounds of the propeller cavitating (Richardson *et al.*, 1995). Multi-year ice, which is expected to be encountered in the northern and eastern areas of the proposed survey, is thicker than younger ice. Icebreakers commonly back and ram into heavy ice until losing momentum to make way. The highest noise levels usually occur while backing full astern in preparation to ram forward through the ice. Overall, the noise generated by an icebreaker pushing ice was 10 to 15 dB greater than the noise produced by the ship underway in open water (Richardson *et al.*, 1995). In general, the Arctic Ocean is a noisy environment. Greening and Zakarauskas (1993) reported ambient sound levels of up to 180 dB/μPa^2/Hz under multi-year pack ice in the central Arctic pack ice. Little information is available about the effect to marine mammals of the increased sound levels due to icebreaking.

Cetaceans—Few studies have been conducted to evaluate the potential interference of icebreaking noise with marine mammal vocalizations. Erbe and Farmer (1998) measured masked hearing thresholds of a captive beluga whale. They reported that the recording of a CCG ship, *Henry Larsen*, ramming ice in the Beaufort Sea, masked recordings of beluga vocalizations at a noise to signal pressure ratio of 18 dB, when the noise pressure level was eight times as high as the call pressure. Erbe and Farmer (2000) also predicted when icebreaker noise would affect beluga whales through software that combined a sound propagation model and beluga whale impact threshold models. They again used the data from the recording of the *Henry Larsen* in the Beaufort Sea and predicted that masking of beluga vocalizations could extend between 40 and 71 km (24.9 and 44.1 mi) near the surface. Lesage *et al.* (1999) report that beluga whales changed their call type and call frequency when exposed to boat noise. It is possible that the whales adapt to the ambient noise levels and are able to communicate despite the sound. Given the documented reaction of belugas to ships and icebreakers it is highly unlikely that beluga whales would remain in the proximity of vessels where vocalizations would be masked.

Beluga whales have been documented swimming rapidly away from ships and icebreakers in the Canadian high Arctic when a ship approaches to within 35 to 50 km (21.4 to 31.1 mi), and they may travel up to 80 km (49.7 mi) from the vessel's track (Richardson *et al.*, 1995). It is expected that belugas avoid icebreakers as soon as they detect the ships (Cosens and Dueck, 1993). However, the reactions of beluga whales to ships vary greatly and some animals may become habituated to higher levels of ambient noise (Erbe and Darmber, 2000).

There is little information about the effects of icebreaking ships on baleen whales. Migrating bowhead whales appeared to avoid an area around a drill site by greater than 25 km (15.5 mi) where an icebreaker was working in the Beaufort Sea. There was intensive icebreaking daily in support of the drilling activities (Brewer *et al.*, 1993). Migrating bowheads also avoided a nearby drill site at the same time of year where little icebreaking was being conducted (LGL and Greeneridge, 1987). It is unclear as to whether the drilling activities, icebreaking operations, or the ice itself might have been the cause for the whales' diversion. Bowhead whales are not expected to occur in the proximity of the proposed action area.

Pinnipeds—Brueggeman *et al.* (1992) reported on the reactions of seals to an icebreaker during activities at two prospects in the Chukchi Sea. Reactions of seals to the icebreakers varied between the two prospects. Most (67 percent) seals did not react to the icebreaker at either prospect. Reaction at one prospect was greatest during icebreaking activity followed by general vessel activity (running/maneuvering/jogging) and was 0.23 km (0.14 mi) of the vessel and lowest for animals beyond 0.93 km (0.58 mi). At the second prospect however, seal reaction was lowest during icebreaking activity with higher and similar levels of response during general (non-icebreaking) vessel operations and when the vessel was at anchor or drifting. The frequency of seal reaction generally declined with increasing distance from the vessel except during general vessel activity where it remained consistently high to about 0.46 km (0.29 mi) from the vessel before declining.

Similarly, Kanik *et al.* (1980) found that ringed and harp seals often dove into the water when an icebreaker was breaking ice within 1 km (0.6 mi) of the animals. Most seals remained on the ice when the ship was breaking ice 1 to 2 km (0.6 to 1.2 mi) away.

Estimated Take of Marine Mammals by Incidental Harassment

All anticipated takes would be "takes by Level B harassment," involving temporary changes in behavior. The proposed monitoring and mitigation measures are expected to minimize the possibility of injurious takes or mortality. However, as noted earlier, there is no specific information demonstrating that injurious "takes" or mortality would occur even in the absence of the planned monitoring and mitigation measures. NMFS believes, therefore, that injurious take or mortality to the affected species marine mammals is extremely unlikely to occur as a result of the specified activities within the specified geographic area for which USGS seeks the IHA. The sections below describe methods to estimate "take by harassment," and present estimates of the numbers of marine mammals that could be affected during the proposed seismic study in the Arctic Ocean. The estimates of "take by harassment," are based on data obtained during marine mammal surveys in and near the Arctic Ocean by Stirling *et al.* (1982), Kingsley (1986), Moore *et al.* (2000b), Haley and Ireland (2006), Haley (2006), GSC unpublished data (2008), and Mosher *et al.* (2009), Bowhead Whale Aerial Survey Program (BWASP), and on estimates of the sizes

of the areas where effects could potentially occur. In some cases these estimates were made from data collected from regions and habitats that differed from the proposed project area.

Detectability bias, quantified in part by $f(0)$, is associated with diminishing sightability with increasing lateral distance from the trackline. Availability bias (g[0]) refers to the fact that there is less than 100 percent probability of sighting an animal that is present along the survey trackline. Some sources of densities used below included these correction factors in their reported densities. In other cases the best densities used below included these correction factors in their reported densities. In other cases the best available correction factors were applied to reported results when they had not been included in the reported data (Moore *et al.*, 2000b). Adjustments to reported population or density estimates were made on a case by case basis to take into account differences between the source data and the general information on the distribution and abundance of the species in the proposed project area.

Although several systematic surveys of marine mammals have been conducted in the southern Beaufort Sea, few data (systematic or otherwise) are available on the distribution and numbers of marine mammals in the northern Beaufort Sea or offshore water of the Arctic Ocean. The main sources of distributional and numerical data used in deriving the estimates are described in the next subsection. Both "maximum estimates" as well as "best estimates" of marine mammal densities (*see* Table 5 of the IHA application) and the numbers of marine mammals potentially exposed to underwater sound (*see* Table 6 of the IHA application) were calculated as described below. The best (or average) estimate is based on available distribution and abundance data and represents the most likely number of animals that may be encountered during the survey, assuming no avoidance of the airguns or vessel. The maximum estimate is either the highest estimate from applicable distribution and abundance data or the average estimate increased by a multiplier intended to produce a very conservative (over) estimate of the number of animals that may be present in the survey area. There is some uncertainty about how representative the available data are and the assumptions used below to estimate the potential "take by harassment." However, the approach used here is accepted by NMFS as the best available at this time.

USGS has calculated exposures to marine mammals within U.S. waters only. After the *St. Laurent* (a Canadian icebreaker) exits U.S. waters, their activities no longer fall under the jurisdiction of the U.S. or the MMPA.

The following estimates are based on a consideration of the number of marine mammals that might be disturbed appreciably over the approximately 806 line km (501 mi) of seismic surveys within U.S. waters across the Arctic Ocean. An assumed total of 1,007.5 km (626 mi) of trackline includes a 25 percent allowance over and above the planned approximately 806 km to allow for turns, lines that might have to be repeated because of poor data quality, or for minor changes to the survey design.

The anticipated radii of influence of the lower energy sound sources including Chirp echosounder (on the *St. Laurent*) and bathymetric echosounder (on the *Healy*) are less than that for the airgun configuration. It is assumed that during simultaneous operations of the airgun array and echosounder, any marine mammals close enough to be affected by the sounder would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the echosounder, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the sounder given its characteristics (*e.g.,* narrow downward-directed beam) and other considerations described in the IHA application. Similar responses are expected from marine mammals exposed to the *Healy's* bathymetric profiler. Such reactions are not considered to constitute "taking" as defined by NMFS (NMFS, 2001). Therefore, no additional allowance is included for animals that might be exposed to sound sources other than the airguns.

Marine Mammal Density Estimates

Numbers of marine mammals that might be present and potentially disturbed are estimated based on available data about marine mammal distribution and densities in the Arctic Ocean study area during the summer. "Take by harassment" is calculated by multiplying expected densities of marine mammals likely to occur in the survey area by the area of water potentially ensonified to sound levels ≥160 dB re 1 μPa (rms) for the airgun operations and ≥120 dB re 1 μPa (rms) for icebreaking activities. Estimates for icebreaking are based on a consideration of the number of marine mammals that might be disturbed appreciably over the approximately 3,102 to 3,372 line km (1,927.5 to 2,095.3 mi) of icebreaking that may occur during the proposed project. This section provides descriptions of the estimated densities of marine mammals that may occur in the proposed survey area. The area of water that may be ensonified to the indicated sound level is described further below. There is no evidence that avoidance at received sound levels ≥160 dB would have significant effects on individual animals or that the subtle changes in behavior or movements would rise to the level of taking according to guidance by NMFS (NMFS, 2001).

Some surveys of marine mammals have been conducted near the southern end of the proposed project area, but few data are available on the species and abundance of marine mammals in the northern Beaufort Sea and the Arctic Ocean. No published densities of marine mammals are available for the region of the proposed survey (including between 74° and 84° North where the *Healy* will be breaking ice outside U.S. waters), although vessel-based surveys through the general area in 2005, 2006, 2008, and 2009 encountered few marine mammals. A total of two polar bears, 36 seals, and a single beluga whale sighting(s) were recorded along approximately 2,299 km (1,429 mi) of monitored trackline between 71° North and 74° North (Haley and Ireland, 2006; Haley, 2006; GSC unpublished data, 2008; Mosher *et al.,* 2009). PSOs recorded 268 sightings of 291 individual seals along approximately 21,322 km (13,248.9 mi) of monitored trackline between 74° and 84° North (Haley and Ireland, 2006; Haley, 2006; GSC unpublished data, 2008; Mosher *et al.,* 2009). No cetaceans were observed during the surveys between 74° and 84° North. Given the few sightings of marine mammals along the 21,322 km (13,248.9 mi) vessel trackline in previous years, USGS estimate that the densities of marine mammals encountered while breaking ice will be 1/10 of the estimated densities of marine mammals encountered within the ice margin habitat described in the original application.

Given that the survey lines within U.S. waters extend from latitudes 71° to 74° North, it is likely that seismic operations will be conducted in both open-water and sea-ice conditions. Because densities of marine mammals often differ between open-water and pack-ice areas, the likely extent of the pack-ice at the time of the survey was estimated. Images of average monthly sea ice concentration for August from 2005 through 2009, available from the National Snow and Ice Data Center

(NISDC), were used to identify 74° North latitude as a reasonable ice-edge boundary applicable to the proposed study period and location. Based on these satellite data, the majority of the survey in U.S. waters will be conducted in open water and unconsolidated pack ice, in the southern latitudes of the survey area. This region will include the ice margin where the highest densities of cetaceans and pinnipeds are likely to be encountered. The proposed survey lines within U.S. waters reach approximately 74.10° North, extending within the estimated ice-edge boundary for August, 2010 by approximately 19 km (10 mi). This comprises less than 3 percent of the total trackline within U.S. waters. USGS has divided the survey effort between the two habitat zones of open water and ice margin based on the 2005 to 2009 NSIDC satellite data described above and the planed location of the tracklines. NSIDC data from 2005 to 2009 suggests little ice will be present south of 74° North, although data from the 2009 cruise (Moser *et al.,* 2009) shows that inter-annual variability could result in a greater amount of ice being encountered than expected. As a conservative measure, USGS estimated that, within U.S. waters, 80 percent of the survey tracklines will occur in open water and 20 percent of the tracklines will occur within the ice margin.

The NSIDC (2009) reported that more Arctic sea ice cover in 2009 remained after the summer than in the record-setting low years of 2007 and 2008. USGS expects that sea ice density and extent in 2010 will be closer to the density and extent of sea ice in 2009 rather than the record-setting low years of 2007 and 2008. All animals observed during the 2009 survey (Mosher *et al.,* 2009) were north of the proposed seismic survey area, *i.e.,* north of 74° North.

Cetaceans—Average and maximum densities for each cetacean species or species group reported to occur in U.S. waters of the Arctic Ocean, within the study area, are presented in Table 5 of the IHA application. Densities were calculated based on the sightings and effort data from available survey reports. No cetaceans were observed during surveys near the proposed study area in August/September, 2005 (Haley and Ireland, 2006), August, 2006 (Haley, 2006), August/September, 2008 (GSC unpublished data, 2008) or August/September, 2009 (Mosher *et al.,* 2009).

Seasonal (summer and fall) differences in cetacean densities along the north coast of Alaska have been documented by Moore *et al.* (2000b). The proposed survey will be conducted in U.S. waters from approximately August 6 to 12, 2010 and is considered to occur during the summer season.

The summer beluga density (*see* Table 5 of the IHA application) was based on 41 sightings along 9,022 km (5,606 mi) of on-transect effort that occurred over water greater than 2,000 m (6,561.7 ft) during the summer in the Beaufort Sea (Moore *et al.,* 2000b; see Table 2 of the IHA application). A mean group size of 2.8 derived from BWASP data of August beluga sightings in the Beaufort Sea in water depths greater than 2,000 m was used in the density calculation. A $f(0)$ value of 2.326 from Innes *et al.* (1996) and a g(0) value of 0.419 from Innes *et al.* (1996) and Harwood *et al.* (1996) were also used in the density computation. The CV associated with group size was used to select an inflation factor of 2 to estimate the maximum density that may occur in the proposed study area within U.S. waters. Most Moore *et al.* (2000b) sightings were south of the proposed seismic survey. However, Moore *et al.* (2000b) found that beluga whales were associated with both light (1 to 10 percent) and heavy (70 to 100 percent) ice cover. Five of 23 beluga whales that Suydam *et al.* (2005) tagged in Kaseglauk Lagoon (northeast Chukchi Sea) traveled to 79 to 80° North into the pack ice and within the region of the proposed survey. These and other tagged whales moved into areas as far as 1,100 km (594 nmi) offshore between Barrow and the Mackenzie River delta, spending time in water with 90 percent ice coverage. Therefore, we applied the observed density calculated from the Moore *et al.* (2000b) sightings as the average density for both "open water" and "ice margin" habitats. Because no beluga whales were sighted during surveys in the proposed survey area (Harwood *et al.,* 2005; Haley and Ireland, 2006; Haley, 2006; GSC unpublished data, 2008; and Mosher *et al.,* 2009) the densities in Table 5 of the IHA application are probably higher than densities likely to be encountered.

By the time the survey begins in early August, most bowhead whales have typically traveled east of the proposed project area to summer in the eastern Beaufort Sea and Amundsen Gulf. Industry aerial surveys of the continental shelf near Camden Bay in 2008 recorded eastward migrating bowhead whales until July 12 (Lyons and Christie, 2009). No bowhead sightings were recorded again despite continued flights until August 19, 2010. A summer bowhead whale density was derived from 9,022 km (5,606 mi) of summer (July/August) aerial survey effort reported by Moore *et al.* (2000b) in the Alaska Beaufort Sea during which six sightings of bowhead whales were documented in water greater than 2,000 m (6,561.7 ft). A mean group size of bowhead whale sightings in September, in waters greater than 2,000 m deep, was calculated to be 1.14 (CV= 0.4) from BWASP data. A $f(0)$ value of 2.33 and g(0) value of 0.073, both from Thomas *et al.* (2002) were used to estimate a summer density for bowhead whales of 0.0122 whales/km^2. This density falls within the range of densities, *i.e.,* 0.0099 to 0.0717 whales/km^2, reported by Lyons and Christie (2009) based on data from three July, 2008 surveys.

Treacy *et al.* (2006) reported that in years of heavy ice conditions, bowhead whales occur farther offshore than in years of light to moderate ice. NSIDC (2009) reported that September, 2009 had the third lowest sea ice extent since the start of their satellite records in 1979. The extent of sea ice at the end of the 2009 Arctic summer, however, was greater than in 2007 or 2008. USGS does not expect 2010 to be a heavy ice year during which bowhead whales might occur farther offshore in the area of the proposed survey. During the lowest ice-cover year on record (2007), BWASP reported no bowhead whale sightings in the greater than 2,000 m depth waters far offshore. Because few bowhead whales have been documented in the deep offshore waters of the proposed survey area, half of the bowhead whale density estimate from size and standard error reported in Thomas *et al.* (2002) for $f(0)$ and g(0) correction factors suggest that an inflation factor of two is appropriate for estimating the maximum density from the average density. NSIDC did not forecast that 2010 would be a heavy ice year and USGS anticipates that bowheads will remain relatively close to shore, and in areas of light ice coverage. Therefore, USGS has applied the same density for bowheads to the open-water and ice-margin categories. Bowhead whales were not sighted during recent surveys in the Arctic Ocean (Haley and Ireland, 2006; Haley, 2006; GSC unpublished data, 2008; Mosher *et al.,* 2009), suggesting that the bowhead whale densities shown in Table 5 are likely higher than actual densities in the survey area.

For other cetacean species that may be encountered in the Beaufort Sea, densities are likely to be very low in the summer when the survey is scheduled. Fin and humpback whales are unlikely to occur in the Beaufort Sea. No gray whales were observed in the Beaufort Sea by Moore *et al.* (2000b) during summer aerial surveys in water greater than 2,000 m. Gray whales were not recorded in water greater than 2,000 m by the BWASP during August in 29

years of survey operation. Harbor porpoises are not expected to be present in large numbers in the Beaufort Sea during the fall although small numbers may be encountered during the summer. Neither gray whales nor harbor porpoises are likely to occur in the far-offshore waters of the proposed survey area (Table 5 of the IHA application). Narwhals are not expected to be encountered within the survey area although a few individuals could be present if ice is nearby. Because these species occur so infrequently in the Beaufort Sea, little to no data are available for the calculation of densities. Minimal cetacean densities have therefore been assigned to these three species for calculation purposes and to allow for chance encounters (*see* Table 5 of the IHA application). Those densities include "0" for the average and 0.0001 individuals/km^2 for the maximum.

Pinnipeds—Extensive surveys of ringed and bearded seals have been conducted in the Beaufort Sea, but most surveys were conducted over the landfast ice during aerial surveys, and few seal surveys have occurred in open water or in the pack ice. Kingsley (1986) conducted ringed seal surveys of the offshore pack ice in the central and eastern Beaufort Sea during the late spring (late June). These surveys provide the most relevant information on densities of ringed seals in the ice margin zone of the Beaufort Sea. The density estimate in Kingsley (1986) was used as the average density of ringed seals that may be encountered in the ice-margin area of the proposed survey (*see* Table 5 of the IHA application). The average density was multiplied by four to estimate maximum density, as was done for all seal species likely to occur within the survey area. Ringed seals are closely associated with sea ice therefore the ice-margin densities were multiplied by a factor of 0.75 to estimate a summer open-water ringed-seal density for locations with water depth greater than 2,000 m (6,561.7 ft).

Densities of bearded seals were estimated by multiplying the ringed seal densities by 0.051 based on the proportion of bearded seals to ringed seals reported in Stirling *et al.,* (1982; see Table 6–3 of IHA application). Because bearded seals are associated with the pack ice edge and shallow water, their estimated summer ice-margin density was also multiplied by a factor of 0.75 for the open-water density estimate. Minimal values were used to estimate spotted seal densities because they are uncommon offshore in the Beaufort Sea and are not likely to be encountered.

Numbers of marine mammals that might be present and potentially disturbed are estimated below based on available data about marine mammal distribution and densities in the three different habitats during the summer as described in Table 5 of the IHA application.

The number of individuals of each species potentially exposed to received levels greater than or equal to 160 dB re 1 μPa (rms) (for seismic airgun operations) or 120 dB re 1 μPa (rms) (for icebreaking) was estimated by multiplying

- The anticipated area to be ensonified to the specified sound level in both open water, the ice margin, and polar pack by
- The expected species density.

Some of the animals estimated to be exposed to sound levels greater than or equal to 160 dB re 1 μPa (rms) or 120 dB re 1 μPa (rms), particularly migrating bowhead whales, might show avoidance reactions before actual exposure to this sound level (*see* Appendix D of the IHA application). Thus, these calculations actually estimate the number of individuals potentially exposed to greater than or equal to 160 dB (rms) or 120 dB re 1 μPa (rms) that would occur if there were no avoidance of the area ensonified to that level.

Estimated Area Exposed to ≥ 160 dB (rms)

The area of water potentially exposed to received levels greater than or equal to 160 dB by the proposed operations was calculated by multiplying the planned trackline distance within U.S. waters by the cross-track distance of the sound propagation. The airgun array of two 500 in^3 and one 150 in^3 G-airguns that will be used for the proposed 2010 survey within U.S. waters was measured during a 2009 project in the Arctic Ocean. The propagation experiment took place at 74° 50.4′ North; 156° 34.31′ West, in 3,863 m (12,674 ft) of water. The location was near the northern end of the two proposed survey lines in U.S. waters. USGS expects the sound propagation by the airgun array in the planned 2010 survey will be the same as that measured in 2009, because of the similar water depths and relative locations of the test site and proposed survey area. The greater than or equal to 160 dB (rms) sound level radius was estimated to be approximately 2,500 m (8,202.1 ft) based on modeling of the 0 to peak energy of the airgun array (Roth and Schmidt, 2010). The 0 to peak values were corrected to rms by subtracting 10 dB.

Closely spaced survey lines and large cross-track distances of the greater than or equal to 160 dB radii can result in repeated exposure of the same area of water. Excessive amounts of repeated exposure can lead to overestimation of the number of animals potentially exposed through double counting. The trackline for the proposed USGS survey in U.S. waters, however, covers a large geographic area without adjacent tracklines and the potential for multiple or repeated exposure is unlikely to be a concern.

The USGS 2010 geophysical survey is planned to occur approximately 108 km (67.1 mi) offshore, along approximately 806 km (501 mi) of survey lines in U.S. waters, during the first half of August exposing a total of approximately 4,109 km^2 (1,586.5 mi^2) of water to sound levels of greater than or equal to 160 dB (rms).USGS included an additional 25 percent allowance over and above the planned tracklines within U.S. waters to allow for turns, lines that might have to be repeated because of poor data quality, or for minor changes to the survey design. The resulting estimate of 5,136.5 km^2 (1,983.2 mi^2) was used to estimate the numbers of marine mammals exposed to underwater sound levels greater than or equal to 160 dB (rms).

Based on the operational plans and marine mammal densities described in Table 5 of the IHA application, the estimates of marine mammals potentially exposed to sounds greater than or equal to 160 dB (rms) in the proposed survey area within U.S. waters are presented in Table 6 of the IHA application. For the common species, the requested numbers are calculated as described above and based on the average densities from the data reported in the different studies mentioned above. For less common species, estimates were set to minimal values to allow for chance encounters. Discussion of the number of potential exposures is summarized by species in the following subsections.

Cetaceans—Based on density estimates and area ensonified, one endangered cetacean species (bowhead whale) is expected to be exposed to received levels greater than or equal to 160 dB unless bowheads avoid the survey vessel before the received levels reach 160 dB. Migrating bowheads are likely to do so, though many of the bowheads engaged in other activities, particularly feeding and socializing may not. The USGS estimate of the number of bowhead whales potentially exposed to sound levels greater than or equal to 160 dB in the portion of the survey area in U.S. waters in between 31 and 63 (*see* Table 6 of the IHA application). Although take was calculated based on

density estimates in the proposed action area, the proposed seismic survey will be conducted during the fall migration for bowhead whales, but at locations starting at greater than 185.2 km (100 nmi) offshore, well north of the known bowhead migration corridor and well beyond distances (20 to 30 km [12.4 to 18.6], Miller *et al.,* 1999; Richardson *et al.,* 1999) known to potentially effect this species. Other endangered cetacean species that may be encountered in the area are fin and humpback whales; both are unlikely to be exposed given their minimal density in the area.

The only other cetacean species likely to occur in the proposed survey area is the beluga whale. Average (best) and maximum estimates of the number of exposures of belugas to sound levels greater than or equal to 160 dB (rms) are 182 and 364, respectively. Estimates for other cetacean species are minimal (*see* Table 6 of the IHA application).

Pinnipeds—The ringed seal is the most widespread and abundant pinniped in ice-covered arctic waters, and there is a great deal of annual variation in abundance and distribution of these marine mammals. Ringed seals account for the vast majority of marine mammals expected to be encountered, and hence exposed to airgun sounds with received levels greater than or equal to 160 dB (rms) during the proposed marine seismic survey. The average (best) and maximum number of exposures of ringed seals to sound levels greater than or equal to 160 dB (rms) were estimated to be 1,031 and 4,126, respectively.

Two additional pinniped species (other than the Pacific walrus) are likely to occur in the proposed project area. The average and maximum numbers of exposures of bearded seals to sound levels greater than or equal to 160 dB (rms) were estimated to be 53 and 210, respectively. The ribbon seal is unlikely to be encountered in the survey area, but a chance encounter could occur.

Estimated Area Exposed to ≥ 120 dB (rms)

The area potentially exposed to received levels greater than or equal to 120 dB (rms) due to icebreaking operations was estimated by multiplying the anticipated trackline distance breaking ice by the estimated cross-track distance to received levels of 120 dB caused by icebreaking.

In 2008, acousticians from Scripps Institution of Oceanography Marine Physical Laboratory and University of New Hampshire Center for Coastal and Ocean Mapping conducted measurements of SPLs of *Healy* icebreaking under various conditions (Roth and Schmidt, 2010). The results indicated that the highest mean SPL (185 dB [rms]) was measured at survey speeds of 4 to 4.5 knots in conditions of 5/10 ice and greater. Mean SPL under conditions where the ship was breaking heavy ice by backing and ramming was actually lower (180 dB). In addition, when backing and ramming, the vessel is essentially stationary, so the ensonified area is limited for a short period (on the order of minutes to tens of minutes) to the immediate vicinity of the boat until the ship breaks free and once again makes headway.

Although the report by Roth and Schmidt has not yet been reviewed externally nor peer-reviewed for publication, the SPL results reported are consistent with previous studies (Thiele, 1981, 1988; LGL and Greenridge, 1986; Richardson *et al.,* 1995).

The existing threshold for Level B harassment for continuous sounds is a received sound level of 120 dB SPL. Using a spherical spreading model, a source level of 185 dB decays to 120 dB in about 1,750 m (5,741.5 ft). This model is corroborated by Roth and Schmidt (2010). Therefore, as the ship travels through the ice, a swath 3,500 m (11,483 ft) wide would be subjected to sound levels greater than or equal to 120 dB (rms). This results in the potential exposure of 11,802 km^2 (4,557.8 mi^2) to sounds greater than or equal to 120 dB (rms) from icebreaking.

Based on the operational plans and marine mammal densities described above, the estimates of marine mammals exposed to sounds greater than or equal to 120 dB (rms) during the maximum estimation of icebreaking outside of U.S. waters (3,372 km [2,095.3 mi]) are presented in Table Add-4 of the IHA application. For the common marine mammal species, the requested numbers are calculated as described above and based on the average densities from the data reported in the different studies mentioned above. For less common species, estimates were set to minimal values to allow for chance encounters.

Based on models, bowhead whales likely would respond to the sound of the icebreakers at distances of 2 to 25 km (1.2 to 15.5 mi) from the icebreakers (Miles *et al.,* 1987). This study predicts that roughly half of the bowhead whales show avoidance responses to an icebreaker underway in open water at a range of 2 to 12 km (1.3 to 7.5 mi) when the sound-to-noise ratio is 30 dB (rms). The study also predicts that roughly half of the bowhead whales would show avoidance response to an icebreaker pushing ice at a range of 4.6 to 6.2 km (2.9 to 12.4 mi) when the sound-to-noise ratio is 30 dB.

Richardson *et al.* (1995b) found that bowheads migrating in the nearshore lead during the spring migration often tolerated exposure to playbacks of recorded icebreaker sounds at received levels up to 20 dB or more above the natural ambient noise levels at corresponding frequencies. The source level of an actual icebreaker is much higher than that of the projectors (projecting the recorded sound) used in this study (median difference 34 dB over the frequency range 40 Hz to 6.3 kHz). Over the two season period (1991 and 1994) when icebreaker playbacks were attempted, an estimated 93 bowheads (80 groups) were seen near the ice camp when the projectors were transmitting icebreaker sounds into the water, and approximately 158 bowheads (116 groups) were seen near there during quiet periods. Some bowheads diverted from their course when exposed to levels of projected icebreaker sound greater than 20 dB above the natural ambient noise level in the ⅓ octave band of the strongest icebreaker noise. However, not all bowheads diverted at that sound-to-noise ratio, and a minority of whales apparently diverted at a lower sound-to-noise ratio. The study concluded that exposure to a single playback of variable icebreaker sounds can cause statistically, but probably not biologically significant effects on movements and behavior of migrating whales in the lead system during the spring migration east of Point Barrow, Alaska. The study indicated the predicted response distances for bowheads around an actual icebreaker would be highly variable; however, for typical traveling bowheads, detectable effects on movements and behavior are predicted to extend commonly out to radii of 10 to 30 km (6.2 to 18.6 mi). Predicting the distance a whale would respond to an icebreaker like the Healy is difficult because of propagation conditions and ambient noise varies with time and with location. However, because the closest survey activities and icebreaking are approximately 116 km (72.1 mi) away and are of limited duration (5 days), and the next closest survey activities are 397 km (246.7 mi) away to the north and west in the Arctic ocean, NMFS does not anticipate that icebreaking activities would have biologically significant effects on the movements and behavior of bowhead whales.

TABLE 6—THE ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO SOUND LEVELS GREATER THAN OR EQUAL TO 120 DB (RMS) (FOR ICEBREAKING) OR 160 DB (RMS) (FOR SEISMIC AIRGUN OPERATIONS) DURING USGS'S PROPOSED SEISMIC SURVEY IN U.S. WATERS IN THE NORTHERN BEAUFORT SEA AND ARCTIC OCEAN, IN AUGUST, 2010. RECEIVED LEVELS ARE EXPRESSED IN DB RE 1 μPA (RMS) (AVERAGED OVER PULSE DURATION), CONSISTENT WITH NMFS' PRACTICE. NOT ALL MARINE MAMMALS WILL CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS, BUT SOME MAY ALTER THEIR BEHAVIOR WHEN LEVELS ARE LOWER (SEE TEXT). SEE TABLES 4 TO 5 AND ADD-3 AND ADD-4 IN USGS'S APPLICATION FOR FURTHER DETAIL.

Species	Number of individuals exposed (best) [1] open water, ice margin, polar pack	Number of individuals exposed (max) [2] open water, ice margin, polar pack	Total (best)	Approximate percent of regional population best) [2]
Odontocetes	146	291		
Beluga whale	36	73	224	0.57
(*Delphinapterus leucas*)	42	84		
Narwhal	0	1		
(*Monodon monocerus*)	0	1	0	0
	0	1		
Killer whale	0	0		
(*Orcinus orca*)	0	0	0	0
	0	1		
Harbor porpoise	0	0		
(*Phocoena phocoena*)	0	0	0	0
	0	1		
Mysticetes	25	50		
Bowhead whale	6	13	38	0.36
(*Balaena mysticetus*)	7	1		
Eastern Pacific gray whale	0	0		
(*Eschrichtius robustus*)	0	0	0	0
	0	1		
Minke whale	0	0		
(*Balaenoptera acutorostrata*)	0	0	0	0
	0	1		
Fin whale	0	0		
(*Balaenoptera physalus*)	0	0	0	0
	0	1		
Humpback whale	0	0		
(*Megaptera novaeangliae*)	0	0	0	0
	0	0		
Pinnipeds	39	158		
Bearded seal	13	53	67	0.02
(*Erignathus barbatus*)	15	60		
Spotted seal	0	2		
(*Phoca largha*)	0	0	0	0
	0	0		
Ringed seal	774	3,094		
(*Pusa hispida*)	258	1,031	1,328	7.38
	296	1,185		
Ribbon seal (*Histriophoca fasciata*)	N.A.	N.A.	N.A.	N.A.
Pacific walrus (*Odobenus rosmarus divergens*)	N.A.	N.A.	N.A.	N.A.
Carnivores				
Polar bear (*Ursus maritimus marinus*)	N.A.	N.A.	N.A.	N.A.

N.A.—Data not available or species status was not assessed.
[1] Best estimate and maximum density estimates are from Table 5 and Table Add-3 of USGS's application.
[2] Regional population size estimates are from Table 4.

Conclusions—Bowhead whales are considered by NMFS to be disturbed after exposure to underwater sound levels greater than or equal to 160 dB (rms) for impulse sources and 120 dB (rms) for continuous sources. The relatively small airgun array proposed for use in this survey limits the size of the 160 dB (rms) EZ around the vessel and is not expected to result in any bowhead whale exposures to underwater sound levels sufficient to reach the disturbance criterion as defined by NMFS.

Odontocete reactions to seismic energy pulses are usually assumed to be limited to lesser 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 10 to 20 km (6.2 to 12.4 mi) of seismic vessels during aerial surveys (Miller *et al.,* 2005). Belugas will likely occur in small numbers in the project area within U.S. waters during the survey period. Most belugas will likely avoid the vicinity of the survey activities and few will likely be affected.

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.

Based on the ≥ 160 dB disturbance criterion, the best estimates of the numbers of cetacean exposures to sounds ≥ 160 dB re 1 μPa (rms) represent less than one percent of the populations of each species in the Chukchi Sea and adjacent waters. For species listed as Endangered under the ESA, USGS estimates suggest it is unlikely that fin whales or humpback whales will be exposed to received levels ≥ 160 dB and/or ≥ 120 dB, but that approximately 38 bowheads (0.36 percent of the regional population) may be exposed at this level. The latter is less than one percent of the Bering-Chukchi-Beaufort population of greater than 14,247 assuming 3.4 percent population growth from the 2001 estimate of greater than 10,545 animals (Zeh and Punt, 2005). NMFS does not anticipate bowhead whales to be potentially affected by the proposed survey activities due to its location far offshore of the bowhead fall migration pathway.

Some monodontids may be exposed to sounds produced by the airgun arrays during the proposed survey, and the numbers potentially affected are small relative to the population sizes (*see* Table 6 of the IHA application). The best estimate of the number of belugas (224 animals) that might be exposed to ≥ 160 dB and/or ≥ 120 dB represents less than one percent (0.57 percent) of their regional population.

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. Monitoring and mitigation measures such as controlled vessel speed, dedicated PSOs, non-pursuit, 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.

Several pinniped species may be encountered in the study area, but the ringed seal is by far the most abundant marine mammal species in the survey area. The best (average) estimates of the numbers of individual seals exposed to airgun sounds at received levels ≥ 160 dB re 1 μPa (rms) and/or ≥ 120 dB re 1 μPa (rms) for icebreaking during the marine survey are as follows: Ringed seals (1,328 animals; 7.4 percent of the regional population), bearded seals (67 animals; 0.02 percent of the regional population), and spotted seals (0 animals, 0 percent of the regional population), representing less than a few percent of the Bering-Chukchi-Beaufort populations for each species. It is probable that only a small percentage of the pinnipeds exposed to sound level ≥ 160 dB (rms) or 120 dB (rms) would actually be disturbed. The short-term exposures of pinnipeds to airgun sounds are not expected to result in any long-term negative consequences for the individuals or their populations.

Potential Effects on Habitat

The proposed USGS seismic survey will not result in any permanent impact on habitats used by marine mammals, including the food sources they use. The proposed activities will be of short duration in any particular area at any given time; thus any effects would be localized and short-term. However, the main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as described above.

Icebreaking could alter ice conditions in the immediate area around the vessels. However, ice conditions at this time of year are typically highly variable and relatively unstable in most locations the survey will take place. Although there is the potential for the destruction of ringed seal lairs or polar bear dens due to icebreaking, these animals will not be using lairs or dens at the time of the planned survey.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that, unlike explosives, they do not result in any appreciable fish kill. However, the existing body of information relating to the impacts of seismic on marine fish and invertebrate species, the primary food sources of pinnipeds and belugas, is very limited.

In water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure, and (2) the time required for the pressure to rise and decay (Hubbs and Rechnitzer, 1952; Wardle *et al.,* 2001). Generally, the higher the received pressure and less time required for the pressure to rise and decay, the greater the chance of acute pathological effects. Considering the peak pressure and rise/decay time characteristics of seismic airgun arrays used today, the pathological zone for fish and invertebrates would be expected to be within a few meters of the seismic source (Buchanan *et al.,* 2004). For the proposed survey, any injurious effects on fish would be limited to very short distances from the sound source and well away from the nearshore waters where most subsistence fishing activities occur.

The only designated Essential Fish Habitat (EFH) species that may occur in the area of the project during the seismic survey are salmon (adult), and their occurrence in waters north of the Alaska coast is limited. Adult fish near seismic operations are likely to avoid the immediate vicinity of the source, thereby avoiding injury (*see* Appendix E of the IHA application). No EFH species will be present as very early life stages when they would be unable to avoid seismic exposure that could otherwise result in minimal mortality.

Studies have been conducted on the effects of seismic activities on fish larvae and a few other invertebrate animals. Generally, seismic was found to only have potential harmful effects to larvae and invertebrates that are in direct proximity (a few meters) of an active airgun array (*see* Appendix E and F of the IHA application). The proposed Arctic Sea seismic program for 2010 is predicted to have negligible to low physical effects on the various life stages of life and invertebrates. Therefore, physical effects of the proposed program on fish and invertebrates would not be significant.

The *Healy* is designed for continuous passage at 5.6 km (3 knots) through ice 1.4 m (4.6 ft) thick. During this project the *Healy* will typically encounter first- or second-year ice while avoiding thick ice floes, particularly large intact multi-year ice, whenever possible. In addition, the icebreaker will follow leads when possible while following the survey route. As the icebreaker passes through the ice, the ship causes the ice to part and travel alongside the hull. This ice typically returns to fill the wake as the ship passes. The effects are transitory, *i.e.,* hours at most, and localized, *i.e.,* constrained to a relatively narrow swath perhaps 10 m (32.8 ft) to each side of the vessel.

The *Healy*'s maximum beam is 25 m (82 ft). Applying the maximum estimated amount of icebreaking, *i.e.,* 3,372 km (2,095.3 mi), to the corridor opened by the ship, USGS anticipates that a maximum of approximately 152 km^2 (58.7 mi^2) of ice may be disturbed. This encompasses an insignificant amount (less than 0.005 percent) of the total Arctic ice extent in August and September of 2008 and 2009 which ranged from 3.24 million to 4.1 million km^2 (1,235,527 to 1,583,019 mi^2).

Potential Effects on Marine Mammal Habitat

The proposed airgun operations will not result in any permanent impact on habitats used by marine mammals, or to the food sources they use. The main impact issue associated with the proposed activities will be temporarily elevated noise levels and the associated direct effects on marine mammals, as well as the potential effects of icebreaking. The potential effects of icebreaking include locally altered ice conditions which may temporarily alter the haul-out pattern of seals in the immediate vicinity of the vessel. The destruction of ringed seal lairs or polar bear dens is not expected to be a concern at this time of year.

During the seismic survey only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short-term and fish would return to their pre-disturbance behavior once the seismic activity ceases. Thus, the proposed survey would have little, if any, impact on the abilities of marine mammals to feed in the area where seismic work is planned.

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 other feed intermittently during their westward migration in September and October (Richardson and Thomson, 2002; Lowry *et al.,* 2004; Lyons *et al.,* 2009; Christi *et al.,* 2009). 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, since operations at any specific location will be limited in duration.

Icebreaking will create temporary leads in the ice and could possibly destroy unoccupied seal lairs. Seal pups are born in the spring, therefore, pupping and nursing will have concluded and the lairs will be vacated at the time of the proposed survey. Breaking ice may damage seal breathing holes and will also reduce the haul-out area in the immediate vicinity of the ship's track.

Icebreaking along a maximum of 3,372 km (2,095.3 mi) of trackline will alter local ice conditions in the immediate vicinity of the vessel. This has the potential to temporarily lead to a reduction of suitable seal haul-out habitat. However the dynamic sea-ice environment requires that seals be able to adapt to changes in sea, ice, and snow conditions, and they therefore create new breathing holes and lairs throughout winter and spring (Hammill and Smith, 1989). In addition, seals often use open leads and cracks in the ice to surface and breathe (Smith and Stirling, 1975). Disturbance to the ice will occur in a very small area (less than 0.005 percent) relative to the Arctic icepack and no significant impact on marine mammals is anticipated by icebreaking during the proposed project.

Proposed Mitigation

In order to issue an Incidental Take Authorization (ITA) for small numbers of marine mammals 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 seismic survey in the Arctic Ocean, USGS will deploy an airgun array of three G-airguns. The source will be relatively small in size and source level, relative to airgun arrays typically used for industry seismic surveys. Important mitigation factors built into the design of the survey include the following:

- In deep offshore waters (where the survey will occur), sound from the airguns is expected to attenuate relatively rapidly as compared with attenuation in shallower waters;
- The airguns comprising the array will be clustered with only limited horizontal separation (*see* Appendix B of the IHA application), so the arrays will be less directional than is typically the case with larger airgun arrays. This will result in less downward directivity than is often present during seismic surveys, and more horizontal propagation of sound; and
- Airgun operations will be limited to offshore waters, far from areas where there is subsistence hunting or fishing, and in waters where marine mammal densities are generally low.

In addition to the mitigation measure that are built into the general project design, several specific mitigation measures will be implemented to avoid or minimize effects on marine mammals encountered along the tracklines. These include ramping-up the airguns at the beginning of operations, and power-downs or shut-downs when marine mammals are detected within specified distances from the source. The GSC has written a Categorical Declaration (*see* Appendix C of the IHA application) stating that: "While in U.S. waters (*i.e.,* the U.S. 200 mile EEZ), the GSC operators will comply with any and all environmental mitigation measures required by the U.S. National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service (USFWS)."

Received sound fields were measured for the airgun configuration, in relation to distance and direction from the airgun(s). The proposed radii around the airgun(s) where received levels would be 180 and 190 dB (rms) are shown in Table 2 of the IHA application. The 180 and 190 dB (rms) levels are used to initiate a power-down or, if necessary, shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000).

Vessel-based PSOs will watch for marine mammals near the airgun(s) when they are in use. Mitigation and monitoring measures proposed to be implemented for the seismic survey have been developed and refined in cooperation with NMFS during previous seismic studies in the Arctic and described in associated EAs, IHA applications, and IHAs. The mitigation and monitoring measures described herein represent a combination of the procedures required by past IHAs for Arctic projects.

Some cetacean species (such as bowhead whales) may be feeding or migrating in the Beaufort Sea during August and September. However, most of the proposed geophysical activities will occur north of the main migration corridor and the number of individual animals expected to closely approach the vicinity of the proposed activity will be small in relation to regional population sizes. With the proposed monitoring, ramp-up, power-down, and shut-down provisions (*see* below), any effects on individuals are expected to be limited to behavioral disturbance. The following subsections provide more detailed information about the mitigation measures that are integral part of the planned activity.

Proposed Exclusion Zones (EZ)

Mosher *et al.* (2009) collected received sound level data for the airgun configuration that will be used in the proposed survey in similar water

depths, *i.e.,* greater than 2,000 m (6,561.7 ft). The empirical data were plotted in relation to distance and direction from the three airguns by Roth and Schmidt (2010; *see* Figure B–3). Based on model fit to the measured received levels and source modeling estimates from Gundalf, the 180 and 190 dB (rms) EZ are estimated to be 216 m (708.7 ft) and 68 m (223.1 ft), respectively. As a conservation measure for the proposed EZ, the sound-level EZ indicated by the empirical data have been increased to 500 m (1,640.4 ft) for the 180 dB isopleths and to 100 m (328 ft) for the 190 dB isopleths (*see* Table 2 of the IHA application). The 180 and 190 dB levels are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish the EZs. If the PSO detects marine mammal(s) within or about to enter the appropriate EZ, the airguns will be powered-down (or shut-down if necessary) immediately (*see* below).

Detailed recommendations for new science-based noise exposure criteria were published in early 2008 (Southall *et al.,* 2007). USGS will be prepared to revise its procedures for estimating numbers of mammals "taken," EZs, *etc.,* as may be required by any new guidelines that result. As yet, NMFS has not specified a new procedure for determining EZs. Such procedures, if applicable would be implemented through a modification to the IHA if issued.

In addition to monitoring, mitigation measures that will be adopted during the proposed Arctic Ocean survey include:

(1) Speed or course alteration, provided that doing so will not comprise operational safety requirements;

(2) Power-down procedures;

(3) Shut-down procedures; and

(4) Ramp-up procedures.

No start-up of airgun operations would be permitted unless the full 180 dB (rms) EZ is visible for at least 30 min during day or night. Other proposed provisions associated with operations at night or in periods of poor visibility include the following:

- During foggy conditions or darkness (which may be encountered starting in late August), the full 180 dB (rms) EZ may not be visible. In that case, the airguns could not start-up after a full shut-down until the entire 180 dB (rms) radius was visible.
- During any nighttime operations, if the entire 180 dB (rms) EZ is visible using vessel lights, then start-up of the airgun array may occur following a 30 min period of observation without sighting marine mammals in the EZ.
- If one or more airguns have been operational before nightfall, they can remain operational throughout the night, even though the entire EZ may not be visible.

Speed or Course Alteration—If a marine mammal (in water) is detected outside the EZ and, based on its position and relative motion, is likely to enter the EZ, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect on the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the EZ. If the mammal appears likely to enter the EZ, further mitigative actions will be taken, *i.e.,* either further course alterations or power-down or shut-down of the airgun(s).

Power-down Procedures—A power-down involves reducing the number of airguns in use such that the radius of the 180 dB or 190 dB (rms) EZ are decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power-down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, one airgun (or some other number of airguns less than the full airgun array) will be operated. The continued operation of one airgun is intended to alert (1) marine mammals to the presence of the seismic vessel in the area, and (2) retain the option of initiating a ramp-up to full operations under poor visibility conditions. In contrast, a shut-down occurs when all airgun activity is suspended.

If a marine mammal is detected outside the EZ but is likely to enter the EZ, and if the vessel's speed and/or course cannot be changed to avoid having the marine mammal enter the EZ, the airguns (as an alternative to a complete shut-down) will be powered-down to a single airgun before the animal is within the EZ. Likewise, if a mammal is already within the EZ when first detected, the airguns will be powered-down immediately if this is a reasonable alternative to a complete shut-down. During a power-down of the airgun array, the number of airguns will be reduced to a single 150 in^3 G-airgun will be operated. The 180 dB (rms) EZ for the power-down sound source has been estimated to be 62 m (203 ft), the proposed distance for use by PSOs is 75 m (246 ft). If a marine mammal is detected within or near the smaller EZ around that single 150 in^3 airgun (*see* Table 2 of USGS's application and Table 2 above), all airguns will be shut-down (*see* next subsection).

Following a power-down, operation of the full airgun array will not resume until the marine mammal is outside the EZ for the full array. The animal will be considered to have cleared the EZ if it:

(1) Is visually observed to have left the EZ, or

(2) Has not been seen within the EZ for 15 minutes in the case for species with shorter dive durations (*e.g.,* small odontocetes and pinnipeds); or

(3) Has not been seen within the EZ for 30 minutes in the case for species with longer dive durations (*e.g.,* mysticetes and large odontocetes, including killer whales).

During airgun operations following a power-down (or shut-down) whose duration has exceeded the limits specified above and subsequent animal departures, the airgun array will be ramped-up gradually. Ramp-up procedures are described below.

Shut-down Procedures—The operating airgun(s) will be shut-down if a marine mammal is detected within or approaching the EZ for a single airgun source (*i.e.,* a power-down is not practical or adequate to reduce exposure to less than 190 or 180 dB (rms), as appropriate). Shut-downs will be implemented (1) if an animal approaches or enters the EZ of the single airgun after a power-down has been initiated, or (2) if an animal is initially seen within the EZ of a single airgun when more than one airgun (typically the full array) is operating. Airgun activity will not resume until the marine mammal has cleared the EZ, or until the PSVO is confident that the animal has left the vicinity of the vessel (or the PSVO not observing the animal(s) within the EZ for 15 or 30 min depending upon the species). Criteria for judging that the animal has cleared the EZ will be as described in the preceding subsection. Ramp-up procedures will be followed during resumption of full seismic operations after a shut-down of the airgun array.

Ramp-up Procedures—A ramp-up procedure will be followed when the airgun array begins operating after a specified period without airgun operations or when a power-down (or reduced airgun operations) has exceeded that specified duration period. The specified period depends on the speed of the source vessel, the size of the airgun array that is being used, and the size of the EZ, but is often about 10 min. NMFS normally requires that, once ramp-up commences, the rate of ramp-up be no more than 6 dB per 5 min period. Ramp-up will begin with a

single airgun (the smallest airgun in the array). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5 min period over a total duration of approximately 10 minutes. During ramp-up, the PSVOs will monitor the EZ, and if marine mammals are sighted, a power-down or shut-down will be implemented as though the full array were operational.

If the complete 180 dB (rms) EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp-up will not commence unless at least one airgun (150 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the three G-airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the EZ for that array will not be visible during those conditions. If the entire EZ is visible using vessel lights, then start-up of the airguns from a complete shut-down may occur at night. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away if they choose. Given the responsiveness of bowhead and beluga whales to airgun sounds, it can be assumed that those species in particular will move away during a ramp-up. Ramp-up of the airguns will not be initiated during the day or at night if a marine mammal is sighted within or near the applicable EZ during the previous 15 or 30 min, as applicable.

Helicopter Flights—The use of a helicopter to conduct ice reconnaissance flights and vessel-to-vessel personnel transfers is likely to occur during survey activities in U.S. waters. However, collection of spot bathymetry data or on-ice landings, both of which required low altitude flight patterns, will not occur in U.S. waters.

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) require that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

USGS proposes to sponsor marine mammal monitoring during the proposed project, in order to implement the proposed mitigation measures that require real-time monitoring, to satisfy the anticipated monitoring requirements of the IHA proposed by NMFS, and to meet any monitoring requirements agreed to as part of the Plan of Cooperation. USGS's proposed Monitoring Plan is described below as well as in their IHA application. USGS understands that this Monitoring Plan will be subject to review by NMFS and others, and that refinements may be required as part of the MMPA consultation process.

The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. USGS is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-Based Visual Monitoring

Vessel-based Protected Species Observers (PSOs) will monitor for marine mammals near the seismic source vessel during all daytime airgun operations and during any nighttime start-ups of the airguns. The survey area within U.S. waters is located within high latitudes (approximately 72° to 74° North) and the project will take place during the summer when little darkness will be encountered (*see* Table 9 of the IHA application). Some periods of darkness will be encountered towards the end of the survey when there will be several hours between sunset and sunrise.

The PSO's observations will provide the real-time data needed to implement the key mitigation measures. Airgun operations will be powered-down or (if necessary) shut-down when marine mammals are observed within, or about to enter, designated EZ where there is a possibility of effects on hearing or other physical effects. Vessel-based PSOs will also watch for marine mammals near the seismic vessel for at least 30 min prior to the planned start of airgun operations after an extended shut-down of the airgun. When feasible, observations will also be made during daytime periods without seismic operations (*e.g.,* during transits).

TABLE 7—THE DAYLIGHT TIMES AND PERIODS WITHIN THE PROPOSED PROJECT AREA FROM BEGINNING (AUGUST 7, 2010) TO END (SEPTEMBER 3, 2010) OF THE PLANNED SURVEY ACTIVITIES WITHIN LATITUDES OF THE PLANNED SURVEY WITHIN U.S. WATERS. TIME IS IN ALASKA DAYLIGHT TIME (AKDT).

	72° North		*74° North*	
	August 7	*September 3*	*August 7*	*September 3*
Sunrise	*09:29*	*12:14*	.....	*12:00*
Sunset	*06:42*	*03:45*	.....	*03:59*
Period of daylight (hours)	*21:13*	*15:31*	*24:00*	*15:59*

• During daylight, vessel-based PSOs will watch for marine mammals near the seismic vessel during all periods of airgun activity and for a minimum of 30 min prior to the planned start of airgun operations after an extended *shut-down.*

• Although there will be only a brief period during the survey when darkness will be encountered in U.S. waters, USGS proposes to conduct nighttime as well as daytime operations. PSOs dedicated to protected species observations are proposed not to be on duty during ongoing seismic operations at night, given the very limited effectiveness of visual observation at night. At night, bridge personnel will watch for marine mammals (insofar as practical at night) and will call for the airguns to be shut-down if marine mammals are observed in or about to enter the EZ.

PSOs will be stationed aboard both the seismic source vessel (*St. Laurent*) and *Healy* during the proposed survey. The vessels will typically work together in tandem while making way through heavy ice with the Healy in the lead breaking ice and collecting multi-beam data. The St. Laurent will follow

collecting seismic reflection and refraction data. In light ice conditions, the vessels will separate to maximize data collection. "Real-time" communication between the two vessels regarding marine mammal detections will be available through VHF radio.

During operations in U.S. EEZ waters, a complement of five PSOs will work on the source vessel, the *St. Laurent,* and two will be stationed on the *Healy.* Three trained PSOs will board the *St. Laurent* in Kagluktuk, Nunavut, Canada. Three experienced PSOs and one Alaska Native community observer will be aboard the *Healy* at the outset of the project. Before survey operations begin in U.S. waters, two of the PSOs on the *Healy* will transfer to the *St. Laurent* to provide additional observers during airgun operations. When not surveying in U.S. waters, the distribution of PSOs will return to three on the *St. Laurent* and four on the *Healy.*

PSOs on the *St. Laurent* will monitor for marine mammals during all daylight airgun operations. Airgun operations will be shut-down when marine mammals are observed within, or about to enter, designated EZ (*see* below) where there may be a possibility of significant effects on hearing or other physical effects. PSOs on both the source vessel and the Healy will also watch for marine mammals within or near the EZ for at least 30 min prior to the planned start of airgun operations after an extended shut-down of the airgun array. When feasible, observations will also be made during periods without seismic operations (*e.g.,* during transits). Environmental conditions will be recorded every half hour during PSO watch.

The PSOs aboard the *Healy* will also watch for marine mammals during daylight seismic activities conducted in both U.S. and international waters. They will maximize their time on watch but will not watch continuously, as will those on the *St. Laurent,* because they will not have mitigation duties and there will be only two PSOs aboard the *Healy.* The *Healy* PSOs will report sightings to the PSOs on the *St. Laurent* to alert them of possible needs for mitigation.

In U.S. waters, at least one observer, and when practical two observers, will monitor for marine mammals from the *St. Laurent* during ongoing daytime operations and nighttime start-ups (when darkness is encountered). Use of two simultaneous observers will increase the proportion of the animals present near the source vessel that are detected. PSOs will normally be on duty in shifts of no longer than four hours duration although more than one hour shift may be worked per day with a maximum of 12 hour of daily watch time. During seismic operations in international waters, PSOs aboard the *St. Laurent* will conduct eight hour watches. This schedule accommodates 24 hour/day monitoring by three PSOs which will be necessary during most of the survey when daylight will be continuous. *Healy* PSOs will limit watches to four hours in U.S. waters.

The *St. Laurent* crew will be instructed to assist in detecting marine mammals and implementing required mitigation (if practical). The crew will be given instruction on mitigation requirements and procedures for implementation of mitigation prior to the start of the seismic survey. Members of the *Healy* crew will be trained to monitor for marine mammals and asked to contact the *Healy* observers for sightings that occur while the PSOs are off-watch.

The *St. Laurent* and *Healy* are suitable platforms for observations for marine mammals. When stationed on the flying bridge, eye level will be approximately 15.4 m (51 ft) above sea level on the *St. Laurent* and approximately 24 m (78.7 ft) above sea level on the *Healy.* On both vessels the PSO will have an unobstructed view around the entire vessel from the flying bridge. If surveying from the bridge of the *St. Laurent* or the *Healy* the PSO's eye level will be approximately 12.1 m (40 ft) above sea level or 21.2 m (69 ft) above sea level, respectively. The PSO(s) will scan the area around the vessel systematically with laser range finding binoculars and with the unaided eye.

The survey will be conducted at high latitudes and continuous daylight will persist through much of the proposed survey area through the month of August. Day length will decrease to approximately 18 hours in the northern portion of the survey area by about early September. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation; this equipment is useful in training observers to estimate distances visually, but is generally not useful in measuring distances to animals directly.

When marine mammals are detected within or about to enter the designated EZ, the airgun(s) will be powered-down or shut-down immediately. The distinction between power-downs and shut-downs is described in the IHA application. Channels of communication between the PSOs and the airgun technicians will be established to assure prompt implementation of shut-downs when necessary as has been done in other recent seismic survey operations in the Arctic (*e.g.,* Haley, 2006). During power-downs and shut-downs, PSOs will continue to maintain watch to determine when the animal(s) are outside the EZ. Airgun operations will not resume until the animal is outside the EZ. The animal will be considered to have cleared the EZ if it is visually observed to have left the EZ. Alternatively, in U.S. waters the EZ will be considered clear if the animal has not been seen within the EZ for 15 min for small odontocetes and pinnipeds or 30 min for mysticetes. Within international waters the PSOs will apply a 30 min period for all species.

PSO Data and Documentation

PSOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power-down or shut-down of the seismic source when a marine mammal is within or near the EZ.

When a sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, and age/size/sex categories (if determinable); behavior when first sighted and after initial sighting; heading (if consistent), bearing, and distance from seismic vessel; sighting cue; apparent reaction to the seismic source or vessel (*e.g.,* none, avoidance, approach, paralleling, *etc.*); and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) above will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations, as well as information regarding seismic source power-downs and shut-downs, will be recorded in a standardized format. Data will be entered into a custom database using a notebook computer. The accuracy of data entry will be verified by computerized data validity 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, and other programs for further processing and archiving.

Results for the vessel-based observations will provide:

(1) The basis for real-time mitigation (airgun power-down or shut-down).

(2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS per terms of MMPA authorizations or regulations.

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

(4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

(5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report on USGS activities and on the relevant monitoring and mitigation results will be submitted to NMFS within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all acoustic characterization work and vessel-based monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The number and circumstances of ramp-ups, power-downs, shut-downs, and other mitigation measures will be reported. Sample size permitting, the report will also include estimates of the amount and nature of potential "take" of marine mammals by harassment or in other ways.

All injured or dead marine mammals (regardless of cause) will be reported to NMFS as soon as practicable. Report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

Encouraging and Coordinating Research

USGS will coordinate the planned marine mammal monitoring program associated with the seismic survey in the Arctic Ocean with other parties that may have interest in this area and/or be conducting marine mammal studies in the same region during operations. No other marine mammal studies are expected to occur in the main (northern) parts of the study area at the proposed time. However, other industry-funded seismic surveys may be occurring in the northeast Chukchi and/or western Beaufort Sea closer to shore, and those projects are likely to involve marine mammal monitoring. USGS has coordinated, and will continue to coordinate, with other applicable Federal, State and Borough agencies, and will comply with their requirements.

Negligible Impact and Small Numbers of Marine Mammals Analysis and Determination

The Secretary, in accordance with paragraph 101(a)(5)(D) of the MMPA, shall authorize the take of small numbers of marine mammals incidental to specified activities other than commercial fishing within a specific geographic region if, among other things, he determines that the authorized incidental take will have a "negligible impact" on species or stocks affected by the authorization. NMFS implementing regulations codified at 50 CFR 216.103 states that a "negligible impact is 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."

Based on the analysis contained herein, of the likely effects of the specified activity on marine mammals and their habitat within the specific area of study for the Arctic Ocean marine geophysical survey, and taking into consideration the implementation of the mitigation and monitoring measures NMFS, on behalf of the Secretary, preliminary finds that USGS's proposed activities would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the proposed seismic survey would have a negligible impact on the affected species or stocks of marine mammals. As a basis for its small numbers determination, NMFS evaluated the number of individuals taken by Level B harassment relative to the size of the stock or population.

While the number of marine mammals potentially incidentally harassed will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential Level B incidental harassment takings (*see* Table 6 above) is estimated to be small, less than a few percent of any of the estimated population sizes based on the data disclosed in Table 4 and 6 of this notice, and has been mitigated to the lowest level practicable through the incorporation of the monitoring and mitigation measures mentioned previously in this document. Tables 4 and 6 in this notice disclose the habitat regional abundance, conservation status, density, and the number of individuals exposed to sound levels greater than or equal to 120 dB (rms) (for icebreaking) or 160 dB (rms) (for seismic airgun operations). Also, there are no known important reproduction or feeding areas in the proposed action area.

For reasons stated previously in this document, the specified activities associated with the proposed survey are not likely to cause TTS, PTS or other non-auditory injury, serious injury, or death to affected marine mammals because:

(1) The likelihood that, given sufficient notice through relatively slow ship speed, marine mammals are expected to move away from a noise source that is annoying prior to its becoming potentially injurious;

(2) The fact that cetaceans and pinnipeds would have to be closer than 500 m (1,640.4 ft) and 30 m (98.4 ft), in deep water when the full array is in use at tow depth from the vessel to be exposed to levels of sound (180 dB and 190 dB, respectively) believed to have even a minimal chance of causing PTS;

(3) The fact that marine mammals would have to be closer than 2,500 m (8,202.1 ft) in deep water when the full array is in use at tow depth from the vessel to be exposed to levels of sound (160 dB) believed to have even a minimal chance at causing TTS; and

(4) The likelihood that marine mammal detection ability by trained observers is high at that short distance from the vessel.

As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed monitoring and mitigation measures.

In making a negligible impact determination NMFS evaluated factors such as: no anticipated injury, serious injury or mortality; the number, nature, intensity and duration of harassment (all relatively limited); the low probability that take will likely result in effects to annual rates of recruitment of survival; the context in which it occurs (*i.e.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data); the status of stock or species of marine mammal (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population); impacts on habitat affecting rates of

recruitment/survival; and the effectiveness of monitoring and mitigation measures

Impact on Availability of Affected Species for Taking for Subsistence Uses

There is subsistence hunting for marine mammals in the waters off of the coast of Alaska, in the Arctic Ocean, that implicates MMPA Section 101(a)(5)(D). Subsistence hunting and fishing continue to be prominent in the household economies and social welfare of some Alaska residents, particularly among those living in small, rural villages (Wolfe and Walker, 1987; Braund and Kruse, 2009). 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.

Subsistence Hunting

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. Subsistence remains the basis for Alaska Native culture and community, and subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities.

Bowhead whale hunting is a key activity in the subsistence economies of Barrow and other Native communities along the Beaufort Sea coast. 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 in 1977. The quota is now regulated through an agreement between NMFS and the Alaska Eskimo Whaling Commission (AEWC) which extends to 2012 (NMFS, 2008b). The AEWC allows the number of bowhead whales that each whaling community may harvest annually during five-year periods (USDI/BLM, 2005; NMFS, 2008).

The community of Barrow hunts bowhead whales in both the spring and fall during the whales' seasonal migration along the coast (*see* Figure 2 of the IHA application). Often the bulk of the Barrow bowhead harvest is taken during the spring hunt. However, with larger quotas in recent years, it is common for a substantial fraction of the annual Barrow quota to remain available for the fall hunt (*see* Table 7 of the IHA application). The communities of Nuiqsut and Kaktovik participate only in the fall bowhead harvest. 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. However, in recent years a small number of bowheads have been seen or heard offshore from the Prudhoe Bay region during the last week of August (Treacy, 1993; LGL and Greenridge, 1996; Greene, 1997; Greene *et al.,* 1999; Blackwell *et al.,* 2004).

TABLE 8—NUMBER OF BOWHEAD WHALE LANDING BY YEAR AT BARROW, CROSS ISLAND (NUIQSUT), AND KAKTOVIK, 1993 TO 2008. BARROW NUMBERS INCLUDE THE TOTAL NUMBER OF WHALES LANDED FOR THE YEAR FOLLOWED BY THE NUMBERS LANDED DURING THE FALL HUNT IN PARENTHESES. CROSS ISLAND (NUIQSUT) AND KAKTOVIK LANDINGS ARE IN AUTUMN.

Year	Point hope	Wainwright	Barrow	Cross island	Kaktovik
1993	2	5	23 (7)	3	3
1994	5	4	16 (1)	0	3
1995	1	5	19 (11)	4	4
1996	3	3	24 (19)	2	1
1997	4	3	30 (21)	3	4
1998	3	3	25 (16)	4	3
1999	2	5	24 (6)	3	3
2000	3	5	18 (13)	4	3
2001	4	6	27 (7)	3	4
2002	0	1	22 (17)	4	3
2003	4	5	16 (6)	4	3
2004	3	4	21 (14)	3	3
2005	7	4	29 (13)	1	3
2006	0	2	22 (19)	4	3
2007	3	4	20 (7)	3	3
2008	2	2	21 (12)	4	3

Sources: USDI/BLM and references therein; Burns *et al.,* 1993; Koski *et al.,* 2005; Suydam *et al.,* 2004, 2005, 2006, 2007, 2008, and 2009.

The spring hunt 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 location of the fall subsistence hunt depends on ice conditions and (in some years) industrial activities that influence the bowheads as they move west (Brower, 1996). 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 80 km (49.7 mi). The fall hunts begin in late August or early September in Kaktovik and at Cross Island. At Barrow the fall hunt usually begins in mid-September, and mainly occurs in the waters east and northeast of Point Barrow in the Chukchi Sea (Suydam *et al.,* 2008). The whales have usually left the Beaufort Sea by late October (Treacey, 2002a,b).

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 timing of the proposed seismic survey in early to mid-August will affect neither the

spring nor the fall bowhead hunt. The *Healy* is planning to change crew after the completion of the seismic survey through Barrow via helicopter or boat. That crew change is scheduled for approximately September 4 to 5, 2010, well before the fall bowhead whaling which typically begins late September or early October. All of the proposed geophysical activities will occur offshore between 71° and 84° North latitude well north of Beaufort Sea whaling activities.

Beluga whales are available to subsistence hunters at Barrow in the spring when pack-ice conditions deteriorate and leads open up. Belugas may remain in the area through June and sometimes into July and August in ice-free waters. 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 to 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 zero in 1987, 1988 and 1995 to the high of eight in 1997 (Fuller and George, 1997; Alaska Beluga Whale Committee, 2002 in USDI/BLM, 2005). The proposed seismic survey is unlikely to overlap with the beluga harvest, and the survey initiates well outside the area where impacts to beluga hunting by Barrow villagers could occur.

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 barrier islands are used for hunting ringed seals. The average annual ringed seal harvest by the community of Barrow from the 1960s through much of the 1980s has been estimated as 394 (*see* Table 8 of the IHA application). More recently Bacon *et al.* (2009) estimated that 586, 287, and 413 ringed seals were harvest by villagers at Barrow in 2000, 2001, and 2003, respectively. 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.

The spotted seal subsistence hunt peaks in July and August at least in 1987 to 1990, but involves few animals. Spotted seals typically migrate south by October to overwinter in the Bering Sea, Admiralty Bay, less than 60 km (37.3 mi) to the east of Barrow, is a location where spotted seals are harvested. 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 average annual spotted seal harvest by the community of Barrow from 1987 to 1990 was one (Braund *et al.,* 1993; *see* Table 7 of the IHA application). More recently however, Bacon *et al.* (2009) estimated that 32, 7, and 12 spotted seals were harvested by villagers at Barrow in 2000, 2001, and 2003, respectively. Spotted seals become less abundant at Nuiqsut and Kaktovik and few if any spotted seal are harvested at these villages. The seismic survey will commence at least 115 km (71.5 mi) offshore from the preferred nearshore harvest area of these seals.

Bearded seals, although not favored for their meat, are important to subsistence activities in Barrow 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 summer months in the Beaufort Sea (USDI/BLM, 2005). The animals inhabit the environment around the ice floes in the drifting ice pack, so hunting usually occurs from boats in the drift ice. Braund *et al.* (1993) estimated that 174 bearded seals were harvested annually at Barrow from 1987 to 1990 (*see* Table 8 of the IHA application). More recently Bacon *et al.* (2009) estimated that 728, 327, and 776 bearded seals were harvested by villagers at Barrow in 2000, 2001, and 2003, respectively. Braund *et al.* (1003) mapped the majority of bearded seal harvest sites from 1987 to 1990 as being within approximately 24 km (14.9 mi) of Point Barrow, well inshore of the proposed survey which is to start approximately 115 km (71.5 mi) offshore and terminate greater than 200 km (124.3 mi) offshore. The average annual take of bearded seals by the Barrow community from 1987 to 1990 was 174 (*see* Table 8 of the IHA application).

TABLE 9—AVERAGE ANNUAL TAKE OF MARINE MAMMALS OTHER THAN BOWHEAD WHALES HARVEST BY THE COMMUNITY OF BARROW (COMPILED BY LGL ALASKA RESEARCH ASSOCIATES, 2004)

Beluga whales	Ringed seals	Bearded seals	Spotted seals
5**	394*	174*	1*

* Average annual harvest for years 1987 to 1990 (Braund *et al.,* 1993).
** Average annual harvest for years 1962 to 1982 (MMS, 1996).

Plan of Cooperation

The USGS has communicated with community authorities and residents of Barrow to foster understanding of the proposed survey. There are elements of the proposed survey, intrinsic to the project, that significantly limit the potential conflict with subsistence users. Operations will be conducted during early August before bowhead whale hunting typically occurs off Barrow and approximately 108 km (67.1 mi) offshore, farther offshore than traditional subsistence hunting grounds. USGS continues to work with the people of Barrow to identify and avoid areas of potential conflict.

- The USGS initiated contact with NSB scientists and the chair of the AEWC in mid-December, 2010 via an e-mailed description of the proposed survey that included components intended to minimize potential subsistence conflict.

- Invitations were extended December 31, 2009 to members of the NSB, AEWC, and North Slope Communities to attend a teleconference arranged for January 11, 2010. The teleconference served as a venue to promote understanding of the project and discuss shareholder concerns. Participants in the teleconference included Harry Brower, chair of the AEWC, and NSB wildlife biologist Dr. Robert Suydam.

- To further promote cooperation between the project researchers and the community, Dr. Deborah Hutchinson with USGS presented the proposed survey at a meeting of the AEWC in Barrow on February 11, 2010. Survey plans were explained to local hunters and whaling captains, including NSB Department of Wildlife Management

biologists, Craig George and Dr. Robert Suydam. Dr. Hutchinson consulted with stakeholders about their concerns and discussed the aspects of the survey designed to mitigate impacts.

• Dr. Deborah Hutchinson of the USGS e-mailed a summary of the topics discussed during the teleconference and the AEWC meeting in Barrow to representatives of the NSB, AEWC, and North Slope communities. These included:

○ Surveying within U.S. waters is scheduled early (approximately August 7 to 12) to avoid conflict with hunters.

○ The EA and IHA application will be distributed as early as possible to NSB and AEWC.

○ A community observer will be present aboard the *Healy* during the project.

○ Mitigation of the one crew transfer near Barrow in early September will be arranged—probably through Barrow Volunteer Search and Rescue.

• Representatives of the USGS attended the Arctic Open-water Meeting in Anchorage, March 22 to 24, 2010.

○ Dr. Deborah Hutchinson presented information regarding the proposed survey to the general assembly.

○ Dr. Jonathan Childs and Dr. Deborah Hutchinson met with stakeholders and agency representatives while at the meeting.

Subsequent meetings with whaling captains, other community representatives, the AEWC, NSB, and any other parties to the plan will be held if necessary to coordinate the planned seismic survey operation with subsistence hunting activity. The USGS has informed the chairman of the Alaska Eskimo Whaling Committee (AEWC), Harry Brower, Jr., of its survey plan.

As noted above and in the IHA application, in the unlikely event that subsistence hunting or fishing is occurring within 5 km (3 mi) of the project vessel tracklines, or where potential impacts could occur, the airgun operations will be suspended until the vessel is greater than 5 km away and otherwise not interfering with subsistence activities.

Endangered Species Act (ESA)

On May 21, 2010, USGS initiated informal consultation, under Section 7 of the ESA, with the NMFS, Office of Protected Resources, Endangered Species Division, on this proposed seismic survey. Based on the information provided by USGS, NMFS concurred with their determination that the activities conducted during the proposed seismic survey are not likely to adversely affect endangered whales in the study area. No designated critical habitat occurs within the action area for this experiment, therefore, no critical habitat will be affected by the proposed bathymetric and seismic surveys and other associated activities.

National Environmental Policy Act (NEPA)

With its complete application, USGS provided NMFS an Environmental Assessment (EA) analyzing the direct, indirect and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. The EA, prepared by LGL Environmental Research Associated (LGL) on behalf of USGS, USCG, and NOAA is titled Draft Environmental Assessment of a Marine Geophysical Survey of Portions of the Arctic Ocean, August–September, 2010 (EA). Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or, after review and evaluation of the USGS EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the USGS EA and make a decision of whether or not to issue a Finding of No Significant Impact (FONSI).

Preliminary Determinations

NMFS has preliminarily determined that the impact of conducting the specific marine seismic survey activities described in this notice and the IHA request in the specific geographic region within the U.S. EEZ within the Arctic Ocean may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. No take by injury (Level A harassment), serious injury, or mortality is anticipated, and take by harassment will be at the lowest level practicable due to incorporation of the mitigation and monitoring measures mentioned previously in this document. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. NMFS has preliminarily determined that this proposed activity will not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses. USGS will coordinate with local communities on a Plan of Cooperation.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to USGS for conducting a marine seismic survey in the Arctic Ocean from August to September, 2010, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Information Solicited

NMFS asks interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (*see* **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 29, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–16374 Filed 7–7–10; 8:45 am]

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Federal Register

Thursday,
July 8, 2010

Part III

Environmental Protection Agency

40 CFR Part 52

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0120; FRL–9169–2]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Imperial County Air Pollution Control District (ICAPCD or the District) portion of the California State Implementation Plan (SIP) under the Clean Air Act as amended in 1990 (CAA or the Act). This action was proposed in the **Federal Register** on February 23, 2010 and concerns local rules that regulate coarse particulate matter (PM_{10}) emissions from sources of fugitive dust such as construction sites, unpaved roads, and disturbed soils in open and agricultural areas in Imperial County.

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

ADDRESSES: EPA has established docket number EPA–R09–OAR–2010–0120 for this action. The index to the docket 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: Andrew Steckel, EPA Region IX, (415) 947–4115, *Steckel.andrew@epa.gov.*

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

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I. Summary of Proposed Action

On February 23, 2010 (75 FR 8008), EPA proposed a limited approval and limited disapproval of the following rules listed in Table 1, known collectively as Regulation VIII, that were adopted by ICAPCD and submitted by the California Air Resources Board (ARB) for incorporation into the California SIP for the Imperial County serious PM_{10} nonattainment area.

TABLE 1

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	800	General Requirements for Control of Fine Particulate Matter	11/08/05	06/16/06
	801	Construction & Earthmoving Activities	11/08/05	06/16/06
	802	Bulk Materials	11/08/05	06/16/06
	803	Carry Out & Track Out	11/08/05	06/16/06
	804	Open Areas	11/08/05	06/16/06
	805	Paved & Unpaved Roads	11/08/05	06/16/06
	806	Conservation Management Practices	11/08/05	06/16/06

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some provisions of the rules conflict with the CAA section 110(a) requirement that SIP rules must be enforceable and the requirement in section 189(b)(1)(B) for implementation of best available control measures (BACM) in serious PM_{10} nonattainment areas such as Imperial County. We discuss these statutory requirements and the Regulation VIII deficiencies in detail in the proposed rule and in the Technical Support Document for that proposal (proposal TSD).[1] In the proposed rule and proposal TSD we also discuss our determination of which fugitive dust source categories addressed by Regulation VIII are significant and consequently require BACM pursuant to EPA guidance. This determination was based in part on our 2009 decision[2] to not concur with the State's request pursuant to EPA's exceptional events rule[3] (EER) to exclude certain exceedances of the PM_{10} National Ambient Air Quality Standard (NAAQS) in Imperial County from consideration in regulatory actions under the CAA.[4]

We summarize the Regulation VIII deficiencies addressed in our proposed rule below. These deficiencies concern Regulation VIII provisions relating to open areas, unpaved roads and agricultural lands.

A. BACM-Related Deficiencies for Open Areas

1. Recreational Off-Highway Vehicle Activity

While recreational off-highway vehicle (OHV)[5] activity causes much of the PM_{10} emissions from open areas in Imperial County, Rule 804 regulates only a small portion of these emissions, including those from OHV activity on State lands on which the rule is not being implemented. The vast majority of the OHV emissions in Imperial County are addressed only by requirements in Rule 800 section F.5 for dust control plans (DCPs) for sources under the control of the Bureau of Land Management (BLM). While BLM is required to describe in the DCPs the dust control measures that it intends to implement, BLM is not required to implement any specific BACM-level controls for OHV use. Moreover, ICAPCD has not provided an analysis of BACM for OHV activity, including

[1] Our proposed rule and proposal TSD also describe additional improvements that we recommend for future ICAPCD modifications of the rules. This final action is not based on those recommendations. As a result, we do not respond here to all comments we received on them.

[2] Letter with enclosure from Laura Yoshii (EPA), to James Goldstene (ARB), Re: exceptional events requests regarding exceedances of the PM_{10} NAAQS in Imperial County, CA, December 22, 2009.

[3] 40 CFR 50.1(j) and 50.14.

[4] Issues related to the Regulation VIII deficiencies, significant source categories and our decision not to concur with the State's exceptional events requests are addressed further below in our responses to comments we received on the proposed rule.

[5] As used here and in the proposal TSD, the term "off-highway vehicle" or OHV includes all vehicles subject to the exemption in Rule 800 section E.6 for recreational use of public lands in Imperial County.

potential OHV activity in open areas and on unpaved roads and paths that are exempt from the specific requirements and measures in Rules 804 and 805. The proposed rule and proposal TSD address how ICAPCD can correct these deficiencies.[6]

2. Definition of "Disturbed Surface"

The term "disturbed surface area" is used in several Regulation VIII rules but is never defined. For example, Rule 804 applies to a source category for which BACM is required and relies on the undefined term to describe rule applicability in Rule 804 section B. A definition of this term is necessary in order to ensure that these rules are enforceable at a BACM level.

B. BACM-Related Deficiencies for Unpaved Roads

1. Unpaved Non-Farm Roads

While CAA section 189(b)(1)(B) requires ICAPCD to implement BACM by 2008 (*i.e.,* four years after reclassification to serious),[7] Rule 805 section E.7 allows the County until 2015 to stabilize heavily-travelled unpaved roads. This schedule is inconsistent with the statutory requirement and ICAPCD has not provided adequate evidence that this schedule is as expeditious as practicable, based upon economic feasibility or any other appropriate consideration. In addition, Rule 805 section E.7's requirement to stabilize all non-exempt unpaved County roads is not adequately enforceable as currently structured because it is not clear that the County is required to implement (and not just submit) a stabilization plan; stabilize different unpaved roads each year; and maintain all stabilized roads. The proposed rule and proposal TSD address how ICAPCD can correct these deficiencies.[8]

2. Unpaved Farm Roads and Traffic Areas

Rule 805 section D.2 exempts agricultural roads and traffic areas from the opacity and stabilization requirements applicable to non-agricultural operation sites. Farm roads and traffic areas are only required to implement a conservation management practice (CMP) from the menus for unpaved roads and traffic areas in Rule 806 in contrast to analogous rules in other geographical areas.

Rule 806 sections E.3 and E.4 list CMPs intended to control emissions from agricultural unpaved roads and traffic areas but these measures are broadly defined and there is no other mechanism in the rule to ensure specificity. The absence of sufficiently defined requirements makes it difficult for regulated parties to understand and comply with the requirements, and makes it difficult for ICAPCD or others to verify compliance and to enforce the requirements if necessary. The lack of specificity similarly renders it difficult to assess whether the measures constitute BACM level controls. The proposed rule and proposal TSD address how ICAPCD can correct these deficiencies.[9]

3. Border Patrol Roads

Rule 800 section F.6.c exempts roads owned or operated by the U.S. Border Patrol (BP) from Rule 805 requirements that are "inconsistent with BP authority and/or mission." It is not clear what this exemption is intended to address, or how it would be implemented and enforced in order to meet BACM requirements. The proposed rule addresses how ICAPCD can correct these deficiencies.[10]

C. BACM-Related Deficiencies for Agricultural Lands

1. Tilling and Harvesting

Rule 806 sections E.1 and E.2 list CMPs intended to control emissions from agricultural land preparation and cultivation (including tilling), and harvest activities, but these measures are broadly defined and there is no other mechanism in the rule to ensure specificity. The absence of sufficiently defined requirements makes it difficult for regulated parties to understand and comply with the requirements, and makes it difficult for ICAPCD or others to verify compliance and to enforce the requirements if necessary. The lack of specificity similarly renders it difficult to assess whether the measures constitute BACM level controls.

In addition, Rule 806 section E requires one CMP from the "land preparation and cultivation" category and one CMP from the "harvesting" category, while rules in other geographic areas have more stringent requirements.

The proposed rule and proposal TSD address how ICAPCD can correct these deficiencies.[11]

2. Windblown Dust

Windblown dust from non-pasture agricultural lands is also a significant source of PM_{10} that requires BACM independent of agricultural tilling. The CMPs in Rule 806 section E, however, mainly control emissions by reducing the number of vehicle passes across fields, and sources are not required to select BACM level practices for controlling windblown dust from active or fallow agricultural fields. The proposed rule and proposal TSD address how ICAPCD can correct these deficiencies.[12]

D. Non-BACM Deficiency

Rule 802 section D.1 allows the Air Pollution Control Officer (APCO) to set aside controls that might be used instead of water to stabilize surfaces of bulk materials. This discretion allows ICAPCD to approve alternatives to the applicable SIP without following the SIP revision process described in CAA section 110. Moreover, ICAPCD has not demonstrated why such discretion is needed for measures such as covering, enclosing or sheltering material piles. The proposed rule addresses how ICAPCD can correct these deficiencies.[13]

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received nine unique comment letters from public agencies and broad-based organizations.

- Brad Poiriez, Air Pollution Control Officer, Imperial County Air Pollution Control District, March 25, 2010 (ICAPCD).
- Daniel Steward, Acting Field Manager, United States Department of the Interior, Bureau of Land Management, El Centro Resource Area, March 24, 2010 (BLM).
- Kathleen Dolinar, District Superintendent, Ocotillo Wells District, California State Parks, Off-Highway Motor Vehicle Recreation Division, by e-mail dated March 24, 2010 (OWD).
- Gail Sevrens, Acting District Superintendent, Colorado Desert District, California State Parks, by e-mail dated March 25, 2010 (CDD).
- David P. Hubbard, Gatzke Dillon & Balance LLP, on behalf of EcoLogic

[6] 75 FR 8008, 8010–8011 and our proposal TSD, section III.B.1.

[7] On August 11, 2004, EPA reclassified Imperial County as serious nonattainment for PM_{10}. 69 FR 48835. Since 2008 has passed, BACM is now required to be implemented as expeditiously as practicable. *Delaney* v. *EPA,* 898 F.2d 687 (9th Cir. 1990).

[8] 75 FR 8008, 8011 and our proposal TSD, section III.B.3.

[9] 75 FR 8008, 8011 and our proposal TSD, section III.B.4.

[10] 75 FR 8008, 8011.

[11] 75 FR 8008, 8011–8012 and our proposal TSD, section III.B.4.

[12] 75 FR 8008, 8012 and our proposal TSD, section III.B.4.

[13] 75 FR 8008, 8012.

Partners, Inc., March 25, 2010 (EcoLogic).

- Lisa T. Belenky, Senior Attorney, Center for Biological Diversity, March 25, 2010, representing several listed parties (CBD).
- Jose Luis Olmedo, Executive Director, Comite Civico Del Valle, Inc., March 25, 2010, submitted and joined by other parties (Comite).
- Ayron Moiola, Executive Director, Coalition of Labor, Agriculture & Business, March 24, 2010 (COLAB).
- Mark McBroom, President, Imperial County Farm Bureau, March 24, 2010 (Farm Bureau).

We also received over 100 comment letters from individuals and organizations associated with recreational OHV activities. We reference these comments below by their identification in the Federal docket management system (FDMS) found at regulations.gov. For example, the comment listed in FDMS as document number "EPA–R09–OAR–2010–0120–0219" is referenced below as "0219."

We summarize the comments and provide our responses below. In our responses we identify specific commenters in some cases but not in others, particularly where many commenters made similar points.

A. General

These overarching comments largely provide general support or opposition to our proposal.

General #1: CBD and Comite support EPA's proposal to find that the Regulation VIII submittal does not fully implement BACM level controls for all significant source categories in Imperial County, and support EPA's nonconcurrence with associated exceptional event requests. They ask EPA to finalize the proposed limited disapproval of Regulation VIII and to require additional PM_{10} emissions restrictions. Many other commenters disagree with EPA's proposed limited disapproval, especially with EPA's identification of deficiencies for BACM requirements and EPA's nonconcurrence with exceptional events. ICAPCD, for example, believes that EPA's proposal is arbitrary and capricious, and that California has demonstrated that all required BACM are being implemented in Imperial County.

Response: No response is necessary for the overarching statements of support or opposition. Responses are provided below to the specific comments that support these general statements.

General #2: Several commenters believe that EPA's proposal lacks adequate scientific support. One (0144), for example, states that passing sweeping air quality regulations in an area with unique terrain and climate with only generalities to prove the sources of pollution is unethical and appears anti-development, anti-OHV and anti-agriculture.

Response: The scientific support for EPA's action is documented in our proposal and the associated proposal TSD and discussed further in response to specific comments below. See, for example, response to comment EI #3 below. The serious health impacts of exposure to elevated levels of PM_{10} are well known and well documented and need not be reiterated here.

General #3: ICAPCD objects to EPA taking over four years to act on its submittals of Regulation VIII for approval and claims that EPA is only now raising basic issues that ICAPCD believes should have been resolved before rule adoption. For example, ICAPCD objects to EPA disapproving a definition that it claims is clear and understood by all affected parties. ICAPCD and others (*e.g.,* COLAB) comment that EPA never raised this and other concerns despite ICAPCD's extensive public process and communication with EPA before rule adoption. ICAPCD also cites EPA's testimony before the District Board in which the Agency supported Regulation VIII as BACM. As a result, ICAPCD concludes that EPA's proposal undermines ICAPCD's ability to rely on EPA comments in the future.

Response: EPA reviews and comments on many draft State and local agency rules during their development prior to submittal to EPA for formal approval. It is generally more efficient for all parties to identify and resolve issues early in the process, rather than after rules are adopted and submitted to EPA for inclusion into the SIP. EPA's formal action on local rules, however, can only occur through notice and comment rulemaking after rules have been officially submitted to EPA by the State. If EPA determines during that process that a submittal does not fulfill relevant CAA requirements, we cannot approve the submittal. Given time and resource constraints, it is not always possible for the Agency to identify or analyze fully all issues before State or local rule adoption. Moreover, EPA must carefully consider all public comments submitted on proposed EPA actions on State and local rules. Such comments often identify issues and concerns that may not have arisen during the prior evaluation of drafts of a rule. We continue to believe, however, that communication between EPA and State and local agencies at the rule development stage is productive.

General #4: OWD asks EPA to extend the comment period because it was informed of EPA's proposal only nine days before the close of the comment period. Several commenters also state that EPA did not provide adequate notification time (0218.1 and 0098) or consultation with State Park personnel (0218.1 and OWD).

Response: EPA denied OWD's request to extend the comment period because EPA is under a court order [14] to finalize action by June 15, 2010, and needs time to analyze all comments submitted on the proposal.[15] While more time and outreach before EPA action is always desirable, nothing in the comments suggests that EPA failed to follow relevant public notification requirements found in the Administrative Procedures Act.[16] EPA notes that OWD did comment on the proposal and EPA has taken those comments into consideration in the final action.

B. State Implementation Plan (SIP)

These comments generally address broad SIP issues rather than specific Regulation VIII provisions.

SIP #1: OWD believes the PM_{10} standard is nearly impossible to attain given Imperial's climate, natural desert condition, the cost of inappropriate BACM, and other local conditions. In contrast, Comite asks EPA to find that California has failed to submit a PM_{10} plan as required by 72 FR 70222 (December 11, 2007), and to consider imposing associated CAA section 179 sanctions and a section 110(c) Federal implementation plan (FIP) in this area.

Response: Our proposed action addresses the CAA section 189(b)(1)(B) requirement for BACM for certain PM_{10} sources in Imperial County. The submittal at issue, Regulation VIII, is but one portion of the complete SIP that ICAPCD must develop in order to meet additional CAA requirements. These comments address the separate and broader statutory obligations for the State to submit a PM_{10} plan that, among other things, demonstrates expeditious attainment of the PM_{10} NAAQS. Those other obligations are not the subject of this action.

SIP #2: ICAPCD does not believe that any additional controls such as those that may need to be implemented if EPA partially disapproves Regulation VIII

[14] *Comite Civico Del Valle, Inc.,* v. *Jackson,* No. 09–cv–04095 PJH (N.D. Cal.).

[15] E-mail from Andrew Steckel, EPA, to Kathleen Dolinar, California State Parks, March 29, 2010.

[16] *See* 5 U.S.C. 553.

will prevent PM_{10} exceedances during high winds or otherwise materially benefit air quality on days unaffected by high winds. ICAPCD further believes that such additional controls will waste limited resources that should be used in other ways to improve local air quality in the area.

Response: CAA section 189(b)(1)(B) and EPA guidance [17] require that BACM be implemented for all significant source categories [18] in serious PM_{10} nonattainment areas such as Imperial County. As explained in our proposal,[19] we determined that each of the subcategories under open areas, unpaved roads and agricultural lands below meet or exceed the 5 μg/m³ de minimis level in our guidance and are therefore significant source categories in Imperial County:

Open areas:

—Windblown Dust, Other Open Area.

Unpaved roads:

—Entrained Unpaved Road Dust, City/County.
—Entrained Unpaved Road Dust, Canal.
—Windblown Dust, Unpaved City/County Road.
—Windblown Dust, Unpaved Canal Road.
—Windblown Dust, Unpaved Farm Road.

Agricultural lands:

—Tilling.
—Windblown Dust, Non-Pasture Agricultural Lands.

As EPA stated in the guidance, the structural scheme throughout title I of the CAA, including its provisions for the PM_{10} NAAQS, requires the implementation of increasingly stringent control measures in areas with more serious pollution problems. EPA further stated "that the more serious the air quality problem, the more reasonable it is to require States to implement control measures of greater stringency despite the greater burdens such measures are likely to cause." [20] Imperial County continues to violate the PM_{10} standard [21] and our proposed action identifies several components of the State's Regulation VIII submittal relating to open areas, agricultural lands and unpaved roads that do not fulfill the CAA BACM requirement and the enforceability requirements of CAA section 110(a).

We further address ICAPCD's contention that additional Regulation VIII controls will not prevent PM_{10} exceedances during high winds in our response to comment EE #1 below.

SIP #3: Many commenters emphasize the importance of OHV areas in Imperial County for recreation, and believe that enjoyment of the desert should not be restricted. Commenters note that many organizations help keep the desert clean, and one commenter (0175.1) believes such efforts would be reduced if OHV areas are closed.

Response: Recreation, enjoyment of the desert and clean deserts are certainly desirable, whether for OHV use or otherwise. However, except as implicit in our response to comment OHV #5 below, they are not germane to the evaluation in our proposal and in this final rule of Regulation VIII and its compliance with the applicable CAA requirements.

SIP #4: Two commenters (OWD and 0218.1) question whether EPA's proposal is based on statistically significant data since there were only three PM_{10} exceedances within a three year period.

Response: ICAPCD's obligation to implement BACM for Regulation VIII fugitive dust sources derives from the Imperial County's designation as nonattainment and classification as serious. On November 15, 1990, the date of enactment of the 1990 Clean Air Act Amendments, Imperial County was designated nonattainment and classified as moderate.[22] On August 11, 2004, EPA reclassified the area as serious in compliance with a mandate of the U.S. Court of Appeals for the Ninth Circuit.[23] The reclassification, pursuant to CAA section 188(b)(2), was based on a finding that the area failed to attain the PM_{10} NAAQS by the statutory deadline of December 31, 1994. Once reclassified to serious, the area was required to comply with CAA section 189(b)(1)(B), which required that BACM be implemented for the area four years after its reclassification to serious.

The three exceedances to which OWD refers occurred during 2006 and 2007. The State requested that these exceedances be excluded from use in regulatory actions pursuant to EPA's EER.[24] Because we did not concur with the State's request, BACM is required to be implemented for certain windblown dust source categories, including open areas, for which such controls would not have been required if we had agreed with the State.[25] See our responses to Exceptional Events comments below.

We also note that California has chosen to sample PM_{10} in Imperial County only one out of every six days. As a result, by regulation, each monitored exceedance is estimated to represent approximately six exceedances rather than one.[26] For example, in 2009, ICAPCD reported three monitored exceedances at the Ethel Street monitoring site, which are estimated to represent 18.3 exceedances. Exceedances were also monitored at Brawley, El Centro, Westmorland and Niland in 2009.[27]

SIP #5: Comite believes PM_{10} should be further controlled in Imperial County by adoption of local fugitive dust ordinances like those in Coachella's Cathedral City, and by strengthening open burning regulations to be similar to those in the South Coast Air Quality Management District (SCAQMD) and the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD).

Response: We assume the commenter refers to title 8, chapter 8.54 of Cathedral City's municipal code which describes requirements for construction, unpaved roads and other local dust sources.[28] These requirements are generally similar to the type of controls adopted by SCAQMD (*e.g.,* Rule 403), SJVUAPCD (*e.g.,* Regulation VIII) and ICAPCD (Regulation VIII). The commenter does not identify any specific Cathedral City controls that it believes are needed in ICAPCD Regulation VIII to constitute BACM. Except where identified in our proposal, we believe ICAPCD's BACM analyses include adequate evaluation of analogous fugitive dust controls in other areas.[29] It is possible that the commenter is recommending duplicative city ordinances that overlap County-wide Regulation VIII. While such redundancy could improve compliance, it is generally not necessary

[17] "State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990;" 59 FR 41998 (August 16, 1994) (General Preamble Addendum).

[18] Under the General Preamble Addendum, a source category "will be presumed to contribute significantly to a violation of the 24-hour NAAQS if its PM_{10} impact at the location of the expected violation would exceed 5 μg/m³." This is also referred to as the de minimis level. *Id.* at 42011.

[19] 75 FR 8008, 8010, and proposal TSD, pp. 5–7.

[20] General Preamble Addendum at 42010.

[21] EPA's Air Quality System Preliminary Design Value Report (May 18, 2010) shows 17 exceedances of the 24-hour PM_{10} NAAQS in Imperial County between 2007 and 2009.

[22] 56 FR 56694 (November 6, 1991).

[23] 69 FR 48792; *Sierra Club* v. *United States Environmental Protection Agency, et al.,* 346 F.3d 995 (9th Cir. 2003); cert. denied, 542 U.S. 919 (2004).

[24] See section II.D.1 below.

[25] 75 FR 8008, 8010 and proposal TSD pp. 5–7.

[26] 40 CFR part 50, appendix K.

[27] EPA's Air Quality System Preliminary Design Value Report (May 18, 2010).

[28] Cathedral City Municipal Code, title 8, chapter 8.54, Fugitive Dust Control; *http://qcode.us/codes/cathedralcity/.*

[29] 2009 PM_{10} SIP table 4.2 and 2005 BACM analysis table 4.2.

to meet CAA section 110(a) enforceability requirements.

Finally, our proposed action only addresses the ICAPCD controls for certain PM_{10} source categories encompassed by Regulation VIII, and therefore does not address control of open burning or many other air pollution sources in Imperial County. See also responses to comments SIP #1 and EI #1.

SIP #6: Comite cites *Vigil* v. *Leavitt,* 381 F.3d 826, 834 (9th Cir. 2004) and *Hall* v. *EPA,* 273 F.3d 1146 (9th Cir. 2001), in commenting that measures in other areas can be considered BACM for Imperial County and are per se feasible. Comite further argues that what constitutes BACM can strengthen over time. In contrast, OWD does not believe that Imperial County should apply mitigation measures from other geographic areas (*e.g.,* SJVUAPCD and Maricopa) that have different geologic and other local conditions. Similarly, COLAB believes that different cultural practices prevent ICAPCD from blindly implementing controls imposed in other areas, although the ICAPCD and SJVUAPCD CMP rules are very similar. Still another commenter (0119) claims that similar restrictions on construction, OHVs, farmers, etc., in Las Vegas and elsewhere have not been effective, and there is no need for such draconian and ineffective bureaucratic rules.

Response: EPA believes that it is appropriate, when evaluating what constitutes BACM for a given source category, to consider controls that have been adopted and implemented in other geographical areas. EPA agrees that the facts and circumstances in a given area can affect what constitute BACM for that area, but that this determination must be based upon appropriate consideration of relevant information specific to that area.

Comite does not explain how the cited cases support its position. Nonetheless, we agree that in evaluating BACM for Imperial County, ICAPCD should analyze analogous measures in other areas and that BACM may strengthen over time.[30] Our proposal identifies several significant deficiencies in ICAPCD's analysis to date.[31] While BACM is determined on a case-by-case basis [32] and, as such, the analysis can include evaluation of local conditions that might make specific controls economically and/or technologically feasible in one area but not another,[33] neither the 2009 PM_{10} SIP [34] nor the comment provides sufficient detail to adequately address the deficiencies identified in our proposal.

OWD does not explain how Imperial County differs so markedly from the San Joaquin Valley and the Maricopa area that it would be inappropriate to consider BACM approved in those areas as part of the evaluation of controls for the same source categories in Imperial County. Similarly, COLAB does not elaborate on what "cultural practices" in Imperial County would justify disregarding approved BACM in the San Joaquin Valley and the Maricopa area as part of the evaluation of what controls would be appropriate for comparable source categories in Imperial County.

C. Emissions Inventory (EI)

EI #1: Many commenters oppose further OHV controls because they believe OHVs contribute little to Imperial County's PM_{10} pollution problem compared to other sources. Commenters identify various sources they believe are more significant and/or should be further addressed instead, including fallow fields, fireplaces, feed lots, agricultural burning, pesticides, dirt roads, inefficient street lights, insufficient public transportation, insufficient speed limit enforcement, Interstate 8, the New River, the Salton Sea, Arizona to the east, San Diego to the west, Mexican roads, fires and factories to the south, rain, wind, erosion, dust storms and other natural occurrences. These commenters include OWD, 0096, 0097, 0150, 0139, 0152, 0180, 0192, 0194 and 0219.1.

Response: Our proposal explains that BACM is required for all significant PM_{10} source categories in Imperial County, that windblown dust from open areas is a significant PM_{10} source category, and that OHVs greatly increase emissions from open areas in Imperial County.[35] Our proposal further explains that ICAPCD has not demonstrated implementation of BACM for open areas with respect to OHVs.[36] These conclusions are based on inventory information prepared by ICAPCD and ARB and used during development of Regulation VIII and the 2009 PM_{10} SIP.[37]

The inventory in the 2009 PM_{10} SIP represents the most comprehensive information currently available on OHV emissions in Imperial County.[38] ICAPCD's analysis in the 2009 PM_{10} SIP concluded that windblown dust from open areas was not a significant source category, but this conclusion was premised upon many exceedences of the NAAQS being deemed to be the result of exceptional events. However, EPA's own conclusion regarding those exceedences is that they were not caused by exceptional events and, as a result, we consider windblown dust from open areas to be a significant source category that is subject to the CAA's BACM requirement. See response to comment SIP #4 and responses to Exceptional Events comments in section II.D below. Therefore ICAPCD has failed to meet the BACM requirement for windblown dust from open areas, in part because ICAPCD has not evaluated what controls might be appropriate for OHV activities in such areas.

EPA's action on the Regulation VIII submittal does not address or depend on whether additional controls may also be appropriate for the various other sources identified in the comments.

EI #2: One commenter (0188) had driven past many farms in El Centro during tilling and observes that the dust was very minimal. Another (0201) thinks more attention should be paid to agriculture which the commenter believes is exempt from many of the environmental regulations.

Response: See response to comment EI #1. Similar to emissions from open areas, EPA has concluded that emissions associated with tilling on and windblown dust from agricultural lands are significant source categories in Imperial County and, as such, ICAPCD needs to meet the BACM requirement for such sources.[39]

The commenter (0201) concerned about exemptions for agriculture did not specify which regulations exempt agriculture. As explained in our proposal, however, because certain agricultural-related activities constitute a significant source category for PM_{10} in Imperial County, ICAPCD is required to meet the CAA's BACM requirements for such sources. Any "exemptions" for any such sources would need to be justified and explained in the context of meeting the BACM requirements.

EI #3: Several commenters claim that EPA has not proved the impact of OHVs

[30] General Preamble Addendum at 42013–42014.

[31] *E.g.,* OHV controls in Arizona Revised Statute § 49–457.03 and Clark County Air Quality Regulations, section 90 (75 FR 8011, February 23, 2010).

[32] General Preamble Addendum at 42010 and 42012.

[33] In this respect, we do not agree with Comite that measures adopted in other areas are automatically transferable to Imperial County.

[34] "2009 Imperial County State Implementation Plan for Particulate Matter Less Than 10 Microns in Aerodynamic Diameter, Final," adopted by ICAPCD Governing Board on August 11, 2009. (2009 PM_{10} SIP).

[35] Proposal TSD, pp. 5–8.

[36] *Id.* at p. 8.

[37] *Id.* at pp. 5–8.

[38] 2009 PM_{10} SIP, Chapter 3; Appendix III.

[39] Proposal TSD, pp. 5–8 and 9–11.

on PM_{10} levels sufficient to require additional OHV regulations. OWD notes, for example, that: (1) EPA did not analyze extreme terrain, thermal stability and other effects on winds in the desert; (2) most emissions from open lands come from undisturbed shrub/grassland which are not anthropogenic sources; and (3) ICAPCD's 2009 PM_{10} SIP, on which EPA relies, uses worst-case assumptions rather than actual soil condition information to estimate that OHVs represent less than 5% of the County's total PM_{10} emissions (13.9 of 282 tpd). OWD states that 99% of these total emissions relate to OHVs subject to Federal and State stewardship. Therefore OWD concludes that actual OHV emissions are small compared to worst-case estimates. OWD also questions EPA's reference for the estimate of 22 tpd of windblown PM_{10} from OHVs.

EcoLogic believes that EPA needs monitoring in the Ocotillo Wells State Vehicle Recreation Area (SVRA) and other areas to show how specific OHV activity affects sensitive receptors and for EPA to identify OHV activity as a major contributor to the County's PM_{10} problem. Another commenter believes EPA lacks data tying PM to specific OHV activities (0218.1), and several commenters believe that any pollution from OHVs is virtually immeasurable. Several commenters believe additional inventory analysis is particularly important because OHV areas are far from population centers and monitors with PM_{10} exceedances. One commenter (0131) requests an unbiased third-party study of OHV impacts. CDD explains that PM_{10} emissions from several specific parks in Imperial County should be low, partly because OHV activity is prohibited. In contrast, CBD supports EPA's claim that OHVs on BLM land cause considerable PM_{10} in Imperial County, and notes that BLM previously estimated PM_{10} impacts from OHV activities at the Aldodones Dunes alone as high as 11 tpd on holiday weekends.

Response: It is extremely difficult to quantify and speciate accurately the myriad sources of PM_{10} emissions and PM_{10} precursor emissions spatially and temporally for purposes of modeling air pollution impacts and developing cost effective control programs. As a result, emission inventories are constantly being refined as more and better science and data become available. However, EPA, State and local air pollution agencies must make policy and regulatory decisions based on the best information available to comply with the CAA. As discussed in response to comment EI #1, the inventory and other information underlying our proposal regarding the emissions from OHV activity and the impacts of such activity represent the most comprehensive information currently available.

Regarding specific concerns in this comment:

(1) EPA's conclusion that BACM is required for OHV activity relies on emissions inventory estimates that ICAPCD developed. If appropriate, ICAPCD could choose to refine those estimates to take into consideration factors such as terrain, thermal stability and other effects on winds in the desert, as well as distances between OHV areas and population centers and additional third party analysis. Such refinements are beyond the level of detail normally used in inventories required by CAA section 172(c)(3).[40]

(2) ICAPCD in its 2009 PM_{10} SIP quantifies the impact of soil type and land cover (*e.g.,* shrub/grassland) and degree of OHV disturbance in OHV emission estimates relied on by our proposal.[41]

(3) ICAPCD used the best available information regarding soil types in open areas and determined that the remaining uncertainty does not affect the results of the technical analyses.[42]

(4) Even OWD's 13.9 tpd OHV emission estimate, which we believe is too low,[43] exceeds the presumptive 5 $\mu g/m^3$ de minimis level for source categories requiring BACM.[44]

(5) The reference for 22 tpd of windblown OHV emissions is accurately explained in our proposal.[45]

The comment that monitoring is necessary in the Ocotillo Wells SVRA and other areas before EPA should require controls for OHV activities is incorrect. As stated previously, under CAA section 189(b) and EPA guidance, BACM is required for all significant source categories in the nonattainment area, including windblown dust in open areas caused by OHV activity.[46] Thus monitoring, which could provide valuable information, is nevertheless not necessary to determine which source categories require BACM.

D. Exceptional Events (EE)

1. Background

On March 22, 2007, EPA adopted a final rule to govern the review and handling of certain air quality monitoring data for which the normal planning and regulatory processes are not appropriate.[47] Under the rule, EPA may exclude data from use in determinations of NAAQS exceedances and violations if a State demonstrates that an "exceptional event" caused the exceedances. Before EPA can exclude data from these regulatory determinations, the State must flag the data in EPA's Air Quality System database and, after notice and opportunity for public comment, submit a demonstration to EPA to justify the exclusion. After considering the weight of evidence provided in the demonstration, EPA decides whether or not to concur with each flag.

On May 21, 2009, ARB submitted demonstrations for "high wind" events that allegedly caused ten exceedances of the 24-hour PM_{10} standard at various monitors in Imperial County in 2006 and 2007. The demonstrations consisted of the following support documents (listed in Table 2) prepared by ARB, ICAPCD, and ICAPCD's contractor, ENVIRON:

TABLE 2

Description	Document date	Abbreviated title
Natural Event Documentation: Calexico and Westmorland, California—September 2, 2006.	January 30, 2009	September NED.[48]
Natural Event Documentation: Brawley and Westmorland, California—April 12, 2007 [enclosed with June 13, 2008 letter to Sean Hogan].	April 15, 2008	Original April NED.

[40] See, *e.g.,* AP–42, Fifth Edition, Volume I, Chapter 13: Miscellaneous Sources, 13.2.2—Unpaved Roads, Final Section, EPA, November 2006. This document provides EPA guidance on estimating emissions on unpaved roads and does not, for example, account for road terrain. *http://www.epa.gov/ttn/chief/ap42/ch13/index.html.*

[41] 2009 PM_{10} SIP, appendix III.B.

[42] 2009 PM_{10} SIP, p. 3–2.

[43] In comparison to ICAPCD's 22 tpd estimate. Proposal TSD, footnote 32.

[44] As discussed on pp. 5–8 of the proposal TSD, depending on the specific monitor, 2–3% of Imperial County's annual inventory is calculated to result in a 5 $\mu g/m^3$ contribution, which equates to about 6–8 tpd emissions.

[45] *Id.*

[46] See, e.g., proposal TSD, p. 5.

[47] "Treatment of Data Influenced by Exceptional Events," 72 FR 13560 (March 22, 2007) (EER).

TABLE 2—Continued

Description	Document date	Abbreviated title
Natural Event Documentation: Brawley, Calexico, El Centro, Niland, and Westmorland, California—June 5, 2007, Imperial County Air Pollution Control District [enclosed with June 13, 2008 letter to Sean Hogan].	April 15, 2008	Original June NED.
Natural Event Documentation: Brawley and Westmorland, California—April 12, 2007 [addendum to June 13, 2008 submittal].	March 12, 2009	April NED.
Natural Event Documentation: Imperial County, California—June 5, 2007 [addendum to June 13, 2008 submittal].	March 12, 2009	June NED.

As stated above in section I, on December 22, 2009, EPA denied ARB's request to exclude all of the exceedances as exceptional events. The basis for our decision is specified in an enclosure which accompanied the December 22, 2009 letter.[49] By letter, including Attachment A and Appendix A1, dated March 3, 2010, ICAPCD asked EPA to reconsider this decision.[50]

Our proposal on Regulation VIII explained that our 2009 EE decision led to an adjustment of ICAPCD's significant source analysis which in turn led us to modify the list of significant sources for which BACM must be implemented in Imperial County under CAA section 189(b)(1)(B).[51] As a result, our 2009 EE decision was the subject of public comments on our proposed action. ICAPCD resubmitted its March 3, 2010 letter, including Attachment A and Appendix A1, regarding our 2009 EE decision as Appendix C to its March 25, 2010 comment letter on our Regulation VIII proposed action.[52] EPA also received comments pertaining to our exceptional events decision from Comite and CBD. A summary of these comments and our responses follow.

2. Events Not Reasonably Controllable or Preventable

EE #1: ICAPCD (Attachment) disagrees with EPA's interpretation of the requirement in the EER at 40 CFR 50.1(j) that in order for an event to meet the regulatory definition of exceptional event, such event must be "not reasonably controllable or preventable." Specifically ICAPCD takes issue with EPA's statement in our 2009 EE decision that this criterion inherently implies "a requirement that the State demonstrate that anthropogenic sources contributing to the exceedance caused by the event were reasonably well controlled." ICAPCD believes that under the plain regulatory language it is irrelevant whether "reasonable and appropriate" controls are in place on the day of an otherwise qualifying event when it can be shown that such controls would not reduce emissions and impact at the monitor sufficiently to prevent the exceedance. ICAPCD believes that it is inconsistent with the intent of the CAA for EPA to refuse to concur with an exceptional event claim solely due to EPA's dissatisfaction with the stringency of certain controls when such controls could not have prevented the exceedance.

Response: ICAPCD mischaracterizes both the plain language and the regulatory intent of 40 CFR 50.1(j) by reading the words "reasonably controllable or" out of that section. The regulation clearly requires a showing that the event is not either reasonably controllable or preventable, not as ICAPCD would have it, that the event cannot be controlled to the extent that no exceedance would have occurred. Furthermore, "control" as generally used in the CAA and EPA guidance (*e.g.,* RACT and BACM[53]), and as defined in the dictionary means to regulate or to reduce the incidence or severity.[54] Thus the meaning of the word "control" undeniably differs from the words "eliminate" or "prevent." Therefore, to meet the "not reasonably controllable or preventable" criterion in 40 CFR 50.1(j), states must demonstrate that reasonable controls were implemented to regulate or reduce emissions *regardless* of whether the controls would have prevented exceedances.[55] Finally we note that the relevance of dust controls is inherent in the District's own characterization of the "event" as the combination of wind and dust entrainment from anthropogenic and nonanthropogenic sources.[56]

As discussed in our 2009 EE decision, the State failed to demonstrate that reasonable controls were implemented for anthropogenic sources contributing to the exceedances, including recreational OHVs and fallow agricultural fields.[57] Nor does ARB or ICAPCD provide convincing evidence in the NEDs or elsewhere to support the claim that controls on these sources could not have either prevented the exceedances or reduced emissions.

EE #2: ICAPCD (Attachment) further argues that the consequence of EPA's action would be to require control measures beyond the area's practical abilities—a result the EER is specifically designed to avoid. ICAPCD claims that other specific provisions are in place to prevent such difficulties, and ICAPCD quotes from EPA guidance: "If emissions from anthropogenic sources are reduced to the point that it is no longer technologically or economically feasible to reduce those emissions further, and the area still cannot attain the NAAQS, the EPA may consider waiving the serious area attainment date and appropriate serious area requirements."[58]

Response: The provisions to which ICAPCD refers are contained in CAA section 188(f) which authorizes EPA to waive subpart 4 requirements applicable to serious PM_{10} nonattainment areas, including BACM, where EPA determines that anthropogenic sources of PM_{10} do not contribute significantly to the violation of the standard in the area. Under section 188(f), EPA may

[48] We refer to the natural event documentation in these five documents, collectively, as the NEDs.

[49] See footnote 2. We refer to our December 22, 2009 letter and the enclosure hereafter as "2009 EE decision."

[50] Letter from Brad Poiriez (ICAPCD) to Jared Blumenfeld (EPA), March 3, 2010 with Attachment A and Appendix A1.

[51] See 75 FR 8010 and the proposal TSD, pp. 5–7.

[52] We refer to ICAPCD's March 10, 2010 letter with its Attachment A and Appendix A1, collectively, throughout our responses to the exceptional events comments in section II.D as "Attachment."

[53] "BACM is the maximum degree of emissions reduction of PM_{10} and PM–10 precursors from a source * * * which is determined on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, to be achievable for such source through application of production processes and available methods, systems, and techniques for control of each such pollutant." General Preamble Addendum at 42010.

[54] Merriam-Webster's Ninth New Collegiate Dictionary.

[55] Similarly, EPA explained in the preamble to the EER that analysis of exceptional events includes consideration of whether anthropogenic activities have been controlled to the extent possible through use of all reasonably available reasonable and appropriate measures. 72 FR 13560, 13566, footnote 11.

[56] *E.g.,* September NED, p. 9.

[57] 2009 EE decision, section 4.2.

[58] General Preamble Addendum at 42008.

also waive a specific date for attainment of the PM_{10} standard if the Administrator determines that nonanthropogenic sources contribute significantly to a violation of the standard.

In guidance, EPA has established the same test for determining what constitutes a significant contribution for section 188(f) as is used for determining the sources for which BACM must be implemented under CAA section 189(b)(1)(B).[59] The passage in the guidance, quoted in isolation by ICAPCD, is preceded by a lengthy discussion regarding the circumstances under which a serious area such as Imperial County could qualify for section 188(f) waivers. That discussion makes clear that before EPA will consider waiving a serious area attainment date and requirements for a serious area that failed to attain the standard by the serious area deadline, the State must demonstrate that BACMs for significant anthropogenic sources have been implemented and that the area cannot attain the NAAQS with the implementation of additional control measures to achieve at least 5% annual emission reductions pursuant to CAA section 189(d). As discussed above and in the proposal,[60] ICAPCD has not shown that BACM has been implemented as required by CAA section 189(b)(1)(B) for all significant source categories in Imperial County.[61] Thus it would be difficult to show that additional controls are "beyond the area's practical abilities" or "no longer technologically or economically feasible" without a more thorough BACM analysis.

EE #3: ICAPCD (Attachment) believes, citing the preamble to the EER, that the rule only requires reasonable controls for anthropogenic sources within the State.

Response: While Imperial County air quality may be affected by emission sources from areas outside California, such as Arizona and Mexico, our 2009 EE decision relies on the lack of demonstrated controls for anthropogenic sources within California.

EE #4: ICAPCD (Attachment) believes that EPA has not specified criteria for defining de minimis anthropogenic sources in the EER context, explained how the EER justifies such criteria, or described feasible analyses to implement such criteria.

Response: As noted above, our 2009 EE decision stated that inherent in the "not reasonably controllable or preventable" criterion of the definition of "exceptional event" in 40 CFR 50.1(j) "is a requirement that the State demonstrate that anthropogenic sources contributing to the exceedance caused by the event were reasonably controlled." We also suggested that this requirement be limited to "all non-de minimis anthropogenic sources."[62] In this case, however, rather than further interpreting the EER, we relied on statements in the NEDs acknowledging anthropogenic contributions in order to determine which anthropogenic sources were contributing to the 2006 and 2007 exceedances.[63]

EE #5: ICAPCD (Attachment) opposes the statement in EPA's 2009 EE decision that "because implementation of BACM is required in serious PM_{10} areas such as Imperial County under section 189(b) of the CAA, it is appropriate to consider that level of control in evaluating whether reasonable controls are in place for purposes of the Exceptional Events Rule." Specifically, ICAPCD argues that (1) such a standard would create a new standard for exceptional event showings that is inconsistent with the language and intent of the EER which entails only "reasonable" and not "best" control of anthropogenic sources; (2) the purpose of the EER is to protect states from consequences of reclassification as a result of exceptional events; (3) by definition, exceptional events fall outside the normal planning process and their analysis should not depend on elements of the normal planning process including designation status; and (4) the meaning of "reasonable controls" for the EER should not vary by an area's nonattainment status and should not be as stringent as BACM.

Response: As stated in our 2009 EE decision and in the preamble to the EER, EPA addresses the EER criteria, including that the event must be "not reasonably controllable or preventable," on a case-by-case basis considering the weight of available evidence.[64] Thus it is appropriate to consider the totality of circumstances in Imperial County in determining what constitutes "reasonable" controls. We note again that the County has been designated nonattainment and classified as moderate or serious since 1990. The area was reclassified to serious in 2004.

In evaluating rules as RACM or BACM, EPA has long considered it appropriate to consider local conditions since what is technologically and economically feasible in one area may not be in another.[65] Moreover, EPA's 2009 EE decision did not define reasonable control as BACM in all cases or suggest that the EER mandates such an outcome. Rather, we stated that "[b]ecause implementation of BACM is required in serious PM_{10} nonattainment areas such as Imperial County under CAA section 189(b), it is appropriate to consider that level of control in evaluating whether reasonable controls are in place for purposes of the Exceptional Events Rule."[66] [67] While ICAPCD states that this is inappropriate reliance on the normal planning process, an area's nonattainment designation and classification are inherently part of the local conditions that are appropriately factored into what controls are reasonable for purposes of the EER. We also noted that ARB had failed to demonstrate any meaningful analysis of BACM or any other level of control for either OHVs or fallow fields, despite apparent significant emissions and available controls imposed elsewhere.[68]

EE #6: ICAPCD (Attachment) comments that OHV emissions were quantified in the 2009 PM_{10} SIP at EPA's request, but EPA ignored this information in its analysis of the exceptional event requests.

Response: It is the responsibility of the State to submit demonstrations addressing the EER criteria[69] to support its exceptional event requests and it is generally not appropriate or feasible for

[59] *Id.* at 42004.

[60] 75 FR 8008, 8010–8012 and proposal TSD, pp. 7–11.

[61] The 2009 PM_{10} SIP for Imperial County that is intended to address the 5% requirement in CAA section 189(d) was adopted by ICAPCD in August 2009 but has not been submitted to EPA by ARB. The plan concludes that the area would have attained the PM_{10} standard by the end of 2008 but for transported emissions from Mexico and with the "exclusion of PM_{10} measurements affected by high-wind exceptional events." As a result of the claimed exceptional events, with which we did not concur in our 2009 EE decision, the plan also concludes that "[t]he 5% yearly emission reductions requirement does not apply to future years." 2009 PM_{10} SIP, section 5.3.

[62] 2009 EE decision, section 4.2.

[63] See *id.,* section 4.2.1.

[64] 2009 EE decision, pp. 4 and 7; 72 FR 13560, 13569.

[65] See 57 FR 13498, 13540–13541 (April 16, 1992) and the General Preamble Addendum at 42010.

[66] 2009 EE decision, section 4.2.2; 72 FR 70222.

[67] We note that in EPA's Natural Events Policy which applied prior to the EER, we stated that "BACM must be implemented at contributing anthropogenic sources of dust in order for PM–10 NAAQS exceedances to be treated as due to uncontrollable natural events under this policy." This requirement applied to moderate areas which otherwise would not have been required to implement BACM at all as well as to serious areas. Thus, while the EER does not include such a mandate, it is entirely appropriate and consistent with the Agency's past practice to *consider* a BACM level of control in assessing whether reasonable controls are in place. Memorandum from Mary D. Nichols, EPA, "Areas Affected by PM–10 Natural Events," May 30, 1996, p. 5.

[68] 2009 EE decision, pp. 9–10.

[69] 40 CFR 50.14(c)(3).

us to correct NED deficiencies by searching for additional information. Nonetheless, we did review the 2009 PM_{10} SIP before preparing the 2009 EE decision and did not ignore ICAPCD's efforts to quantify OHV emissions in the 2009 PM_{10} SIP. In fact, the 2009 EE decision references these efforts which undermine the assumption in the NEDs [70] that windblown dust from desert areas is entirely from non-anthropogenic sources.[71]

EE #7: ICAPCD (Attachment) believes it is not clear whether OHV sources should be considered de minimis, what controls EPA expects for illegal OHV use, and why current regulations do not constitute reasonable controls.

Response: As stated previously, the State must demonstrate implementation of reasonable controls in documentation supporting exceptional events requests. It is possible that ICAPCD/ARB may be able to demonstrate in support of future exceptional events requests that OHV sources are de minimis, that there are no reasonable controls for OHVs under certain circumstances (*e.g.,* certain illegal uses), and/or that existing regulations constitute reasonable controls. The 2009 EE decision, however, explains that the NEDs did not provide meaningful analysis of any level of control for OHVs, and that such analysis should include as a starting point evaluation of EPA's RACM guidance [72] and regulations adopted elsewhere under similar conditions.[73]

EE #8: ICAPCD (Attachment) comments that sand dunes are naturally fully disturbed and that the 2009 PM_{10} SIP conservatively projects that OHVs contribute only 0.9 tpd (10%) to the total windblown emissions from them. Other commenters similarly question EPA's assumption that OHVs disturb desert crust. OWD, for example, notes that dune laminae are often mistaken for a crust but are broken by wildlife, foot traffic and high winds.

Response: We agree that effective control of fugitive dust is more difficult for the sand dunes than for other parts of Imperial County with different soil types. As a result, the State may be able to demonstrate in support of future exceptional events requests, or for other CAA purposes such as section 189(b)(1)(B) BACM, that dust control for dunes should be different from and/or less stringent than controls required for other areas with different soil types. However, the September NED failed to provide meaningful analysis of reasonable OHV controls for the sand dunes or any other areas. This comment has no bearing on the April and June NEDs because the sand dunes were not implicated by those events.

EE #9: ICAPCD (Attachment) comments that OHV activity and related direct PM_{10} entrainment should have been negligible because of the high winds during the April 12 and June 5, 2007 events and thunderstorms on September 2, 2006. OWD notes that two of the exceedance events occurred during the OHV off-season and the third occurred in April, when OHV use is also low. Similarly, BLM comments that OHV use is lowest when dust potential is highest (June through September).

Response: Our 2009 EE decision appropriately relies on OHV emission information from the NEDs and the 2009 PM_{10} SIP which estimate large windblown dust emissions and significantly smaller directly entrained emissions.[74] Thus, even if no OHVs operate and entrain dust on any exceedance days, previous [75] OHV activity still contributes to PM_{10} emissions by disturbing surfaces that subsequently emit windblown dust. As a result, documentation supporting future Imperial County exceptional events requests for events with significant emissions from OHV areas should include analysis of reasonable controls for OHVs even if there is no OHV activity during the exceedances.

EE #10: ICAPCD (Attachment) comments that Regulation VIII agricultural controls are well beyond the reasonableness level required in the EER. ICAPCD further states that it and ARB have discussed agricultural controls with EPA for many years, worked with EPA during development of the 2005 BACM analysis, closely modeled Rule 806 on SJVUAPCD Rule 4550 which EPA approved in 2004, and received EPA testimony in 2005 that Regulation VIII, including Rule 806, fulfilled BACM. ICAPCD also points out that the emission inventory in the plan shows that agricultural lands are significantly less emissive than most of the non-populated areas in Imperial County.

Response: Our 2009 EE decision explains that neither Regulation VIII nor any other programs require any level of emissions control of certain fallow fields in Imperial County.[76] Though ICAPCD comments that emissions from agricultural fields are smaller than emissions from other sources in the County, the NEDs for the exceptional events requests do not identify any anthropogenic sources as being de minimis. Rather, there are summary explanations that anthropogenic sources are reasonably controlled through Regulation VIII and other local programs.[77] The only anthropogenic source discussed in any detail is agriculture in the April and June NEDs. These NEDs rely on the Imperial Irrigation District's (IID) fallowing program as the basis for claiming that reasonable measures were in place for fallow fields which are not subject to ICAPCD's Conservation Management Practices (CMP) Rule 806.[78] However, there were approximately 32,000 fallow acres in Imperial County in 2007 that were not subject to either Rule 806 or IID's program which is more than the approximately 18,000 acres that were a part of IID's program in 2007.[79] As explained in our response to comment EE #5, we stated in our 2009 EE decision that it is appropriate to consider a BACM level of control in evaluating whether reasonable controls are in place for purposes of the EER in Imperial County. However, EPA found no meaningful analysis of BACM or any other level of control for fallow land outside of IID's program referenced or provided in the NEDs.

EE #11: ICAPCD (Attachment) comments that EPA's 2009 EE decision fails to mention Rule 806 in the discussion of controls for agricultural lands. ICAPCD notes that fallowed land issues were included in the 2005 BACM analysis [80] and concludes that failure to address Rule 806 makes EPA's conclusions regarding agricultural areas suspect.

Response: EPA did consider and reference Rule 806 in our 2009 EE decision.[81] Although the 2005 BACM analysis includes incidental references to fallow lands, neither it nor the NEDs attempts to quantify the fallow acreage in Imperial County. Nor has the State demonstrated how any existing windblown dust controls might constitute BACM for fallow fields outside of IID's program.

3. High/Unusual Wind Events

EE #12: Comite agrees with EPA's disapproval of ARB's request to exclude the monitored exceedances as

[70] *E.g.,* June NED, p. 2.

[71] *E.g.,* 2009 EE decision, footnotes 12, 15 and 16.

[72] 57 FR 18070, 18072 (April 28, 1992).

[73] 2009 EE decision, pp. 8–9.

[74] *E.g.,* 22 tpd windblown and 1.34 tpd entrained emissions, 2009 EE decision, p. 9.

[75] Particularly recent activity where there has not been time or conditions to repair surface crusts.

[76] 2009 EE decision, section 4.2.3.

[77] April and June NEDs, pp. 13–14, and September NED, p. 18.

[78] April and June NEDs, p. 13.

[79] 2009 EE decision, p. 9.

[80] "Draft Final Technical memorandum: Regulation VIII BACM Analysis," October 2005 (2005 BACM Analysis).

[81] 2009 EE decision, p. 9.

exceptional events. In support of our disapproval the commenter makes several arguments: (1) That there is no statutory or regulatory authority which allows windblown dust from land that has been disturbed by human activity to be considered "natural;" (2) that while the final rule includes specific language regarding the treatment of anthropogenic emissions associated with fireworks and prescribed burns, it does not include special provisions for anthropogenic sources affected by the wind; (3) that the portion of the preamble which suggests dust from anthropogenic sources may be treated as natural events in certain circumstances was a drafting error and is legally null; (4) where the Act does allow for consideration of human activity, it is limited to activity that is unlikely to recur at a particular location and agriculture does not meet that definition; and (5) regardless of whether a high wind event is classified as "natural" or "human activity," such an event exists only where the wind is objectively a "high wind" and sufficiently high to cause a monitored violation even in light of the implementation of whatever measures are "necessary" to protect public health under CAA section 319(b)(3)(A)(iv).

Response: Comite's support for our decision not to concur with the State's exceptional events claims is noted. We agree with Comite that the events in question are not due to human activity that is unlikely to recur and that the State failed to demonstrate that the events qualify as natural events. However our conclusions with respect to natural events are not based on all of the legal arguments proffered by the commenter. We also are not relying on that portion of the preamble that the commenter correctly points out is a legal nullity [82] and instead, where appropriate, we rely on and cite to other parts of the preamble regarding natural events and high winds that remain applicable. While EPA's views of the statute and the EER differ from Comite's, we need not address Comite's arguments in detail because its intent was clearly to support the outcome we have reached regarding the exceptional events claims.

EE #13: Comite cites additional support for nonconcurrence with the State's 2007 exceptional events requests beyond what was relied upon by EPA, namely that wind speeds were not shown to be "exceptional" for the area or "unusual" since the State relied on flawed comparisons to average wind speeds.

Response: For the 2006 events, the State did not assert that the winds were unusually high. For both sets of 2007 events, the evidence provided by the State did lead EPA to conclude that winds were unusually high.[83] However, EPA's 2009 EE decision did not rely on the State's conclusions about unusual winds for any of the exceedances and we note that this commenter does not disagree with EPA's conclusions on the exceptional events, or with EPA's proposed limited disapproval of Regulation VIII.

4. Clear Causal Relationship

EE #14: Comite agrees with EPA that the State did not demonstrate there was a clear causal relationship between the exceedances and the events that are claimed to have occurred, as required under the EER. With regard to the 2007 exceedances, the commenter cites the lack of sufficiently detailed source attribution data. With regard to the 2006 exceedances, the commenter concludes that the proximity and nature of the thunderstorms that occurred in northwest Mexico made them "unlikely" to be the cause of the winds at Calexico. This commenter also believes that the possibility of any winds associated with thunderstorm activity north of the County being the cause of the Westmorland exceedance is "problematical at best."

Response: Comite's agreement with EPA's 2009 EE decision regarding the 2006 and 2007 exceedances is noted.

EE #15: ICAPCD (Attachment) objects to EPA's analysis of a section of the ARB documentation that compares September 2, 2006 to other days with similar meteorological conditions in order to establish a causal relationship between the claimed high wind event and the Calexico exceedances on September 2, 2006. ICAPCD also rejects EPA's concerns regarding the effect of emissions from OHVs and fallow fields on the September 2, 2006 Calexico exceedances. ICAPCD concludes that EPA's lack of sound technical understanding regarding the meteorological evidence and OHV and agricultural emissions led EPA to erroneously reject the State's finding of a "clear causal relationship" for the September 2, 2006 Calexico exceedances.

Response: In its documentation supporting its exceptional events request, the State compared PM_{10} concentrations on September 2, 2006 to those on fifteen other days that had similar meteorology at Calexico.[84] The PM_{10} concentrations on most of the days were low, but on August 18, 2002, August 19, 2003 and September 2, 2006 the PM_{10} concentrations were high. The concentrations on these days in 2002 and 2003 are described in attachments to the State's Natural Events Documentation [85] as being due to transport from Mexico under high wind conditions, and these conditions are stated to be meteorologically different than the other days at locations other than Calexico itself. Thus winds at Calexico were similar for all sixteen days, but on these specific days the wind elsewhere and the Calexico concentrations are higher. The State considered this to be evidence of an association or causal relationship between high wind elsewhere and high Calexico concentrations.

While we acknowledge that we misinterpreted the above portion of the State's argument in our initial analysis, our ultimate conclusion remains unchanged. As we discussed in our 2009 EE decision,[86] the State's argument is flawed because there were in fact no high wind measurements on September 2, 2006; instead, the State merely assumed that wind speeds increased to the east. As a result, the association between the winds and concentrations that was seen for the events in 2002 and 2003 may not reflect what occurred on September 2, 2006. Thus our original conclusion is still valid because the fact remains that ARB's argument is founded on speculation. As we explained in our 2009 EE decision,[87] such speculation is not adequate to establish a clear causal relationship.

Furthermore, as also discussed in our 2009 EE decision,[88] significantly lower PM_{10} measurements in neighboring Mexicali contradict ARB's assertion that the September 2, 2006 Calexico exceedances were caused by windblown dust from a large-scale, regional event that originated to the south or southeast of Calexico. Such an event would have affected both Calexico and Mexicali. ICAPCD itself concedes that its explanation for the Calexico exceedances does not account for the difference in the PM_{10} concentrations

[82] *NRDC* v. *EPA,* 559 F.3d 561, 565 (DC Cir. 2009).

[83] 2009 EE decision, pp. 19–20.

[84] September NED, pp. 12–14.

[85] September NED, p. 12, and Attachment G, "179B(d) 'But For' Analyses—High-Wind Events from Mexico", excerpt from Technical Support Document: Exclusion of PM10 Measurements in Excess of the 24–Hour PM10 NAAQS for Imperial County from 2001 through 2003 Due to Natural Events and Emissions from Mexico, Volume I of II, ENVIRON International Corporation, November 2004.

[86] 2009 EE decision, pp. 11 and 15.

[87] *Id.* at p. 11.

[88] *Id.* at p. 12.

measured at the Calexico and Mexicali stations.[89]

ICAPCD further offers what it characterizes as the only three possible explanations for the Calexico exceedances, and suggests that EPA should accept the long range transport argument because it is the most plausible one.[90] To do so would be to make a decision based on a predetermined outcome rather than reliable scientific data that establish a clear causal relationship as required by the EER.

ICAPCD's next objection to our analysis of ARB's exceptional event request with respect to the September 2, 2006 Calexico exceedances is that EPA's concern regarding OHV and agricultural emissions [91] is not relevant because there are no OHV or domestic agricultural lands south, southeast or south-southeast of the Calexico monitors. EPA disagrees. The September NED states that the "source of the PM_{10} that impacted the Calexico stations corresponds to lands east and southeast of the Mexicali stations * * *"[92] In fact, as shown in the TSD for this final action,[93] there is agricultural land immediately east of Calexico.[94] As also shown in the final TSD,[95] the southern end of the Imperial Sand Dunes OHV area is also directly east of Calexico, though it is admittedly farther away. Thus consideration of these sources was not inappropriate.

In summary, we are not persuaded by the above comments and we reject the allegation that we did not have a sound technical understanding of the claims ARB made as to the cause of the exceedances. We therefore reaffirm our conclusion that ARB not only failed to demonstrate that a high wind event occurred, but also that there was a clear causal relationship between the alleged event and the September 2, 2006 exceedances at the Calexico monitoring stations.

EE #16: ICAPCD (Attachment) states that EPA mischaracterized some evidence and inappropriately dismissed other evidence provided by the State regarding a causal relationship between the claimed high wind event and the Westmorland exceedance on September 2, 2006, and that this led EPA to erroneously reject the State's finding of a clear causal relationship. The comment has three parts, relating to alleged EPA mischaracterizations of the timing of high winds, direction of thunderstorm travel, and wind trajectories.

Response: In response to this comment, we have again reviewed the wind data provided in the September NED and, as explained further below, we believe our original conclusion in our 2009 EE decision remains correct, *i.e.,* that the data presented by ARB did not demonstrate a clear causal relationship between the claimed high wind event and the Westmorland exceedance on September 2, 2006.

The first part of ICAPCD's comment focuses on a statement made by EPA that the increased wind at Oasis toward Westmorland was simultaneous with the concentration spike that occurred at Westmorland during the 19th hour rather than an hour or two before, as would be necessary based on the distance between the two locations.[96] We agree with the comment that the increased wind at Oasis did in fact occur the hour before the concentration spike. In addition, we stated that this wind was directed toward Westmorland when in fact it was directed toward the east-northeast.

ARB presented the wind speed and direction data in a tabular format that is difficult to interpret.[97] To more clearly articulate why we do not believe these data show a clear causal relationship between the event and the exceedance, we have presented the data in the final TSD in a visual form that is more readily understood.[98] The arrows represent the wind directions at Indio, Oasis, Salton Sea West, and Westmorland during each of the four color-coded hours (*e.g.,* all of the yellow arrows represent the wind direction during hour 17, etc.). The numbers above each arrow represent the wind speed for that hour, and the numbers below the Westmorland arrows represent the PM_{10} concentration. The data show that the PM_{10} concentration spike occurred during hour 19.

ARB claimed that thunderstorm outflows on September 2, 2006 led to high wind locally to the northwest and northeast of Imperial County, and that dust generated there was carried to Westmorland. More specifically, ARB stated the following:

Very high winds were observed at the 17th and 18th hours north of Imperial County, both to the west (*in particular at the Oasis CIMIS station,* see Table 1) and to the east (see measurements at the Blythe, Ripley, and Palo Verde stations, Table 1). These *strong winds were of very short duration and of changing direction * * *,* consistent with the collapse of one or several thunderstorm cells north of Imperial County * * *. Very sharp peaks in PM_{10} concentrations were also observed at the 19th hour at the Brawley and Westmorland stations (and to a lesser extent at the Niland station), and *appear to be long-range effects of the same events* (i.e. collapsing thunderstorm to the north of Imperial County) * * *. [A]n analysis of wind direction at select stations between the 18th and 20th hours indicates that northwest winds (e.g. *6 p.m. at the SSW and Indio stations, 7 p.m. at Oasis and Indio, and 8 p.m. at Indio*) and east-northeast winds (e.g. 7 p.m. at the Niland and SSE stations) likely carried air containing elevated PM_{10} concentrations from areas northwest and northeast of Imperial County stations toward the stations.(Emphasis added).[99]

ARB's explanation first points to the "very high" winds (of 23.2 mph) recorded at the Oasis station and the northwest winds at Salton Sea West during the 18th hour as factors that contributed to the exceedance. As a preliminary matter, we note [100] that no particular wind speed has been established as "high" for Imperial County. Further, winds with an average speed of 23.2 mph are not what we would consider "very high" in the generally accepted meaning of the term. With the exception of this value, the data in Figure 2 of our final TSD show that the winds in this area were not very elevated.[101] We also note that the winds at Oasis during the 18th hour had a northerly component rather than a southerly one, and while it is true that the winds at Salton Sea West were blowing toward Westmorland at this time and that these winds could have contained some of the dust that may have been generated in the Oasis area, the winds at Westmorland were blowing in almost the opposite direction. It is thus unclear how much, if any, dust generated at Oasis during the 18th hour was actually transported to Westmorland.

ARB also points to the 7 p.m. winds at Oasis (hour 19) as a contributing factor. While these winds were directed

[89] ICAPCD Attachment A, Appendix A–1.

[90] *Id.*

[91] 2009 EE decision, p. 14.

[92] September NED, p. 15.

[93] "Technical Support Document for EPA's Notice of Final Rulemaking on Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District Regulation VIII—Fugitive Dust Rules 800–806" EPA Region IX, June 2010 (final TSD), Figure 1.

[94] Similar land use maps were provided in Figure 3 of both the April and June NEDs.

[95] Final TSD, Figure 1.

[96] 2009 EE decision, p. 16.

[97] September NED, Tables 1 and 2, and Figure 19.

[98] Final TSD, figure 2.

[99] September NED, pp. 10–11.

[100] As we did in our 2009 EE decision, pp. 15 and 19.

[101] EPA received comments on its proposed EER which stated that we should replace the term "high winds" with the term "wind-generated dust." In response to those comments, EPA explained in the final EER that the Agency chose to retain the original language because it accurately connotes the type of natural event that should be excluded under this rule and it serves as an indicator concerning the level of wind that caused the exceedance. See 72 FR 13560, 13566.

toward Westmorland, the winds at Salton Sea West had a distinct westerly component so it is not clear that the winds at Oasis continued on this path past Salton Sea West. In addition, as for the previous hour, the winds at Westmorland were blowing counter to the wind at Oasis and it is again not clear that any dust generated north of Imperial County was transported to Westmorland during this hour as ARB claims.

The State finally points to the 8 p.m. winds at Indio as a contributing factor. We find it unlikely that these winds made a significant contribution to the exceedance at Westmorland given that they were recorded after the concentration spike occurred and that the winds at Oasis, Salton Sea West, and Westmorland all had northerly components that ran counter to the winds at Indio.

As stated in our 2009 EE decision,[102] and as ARB stated in the paragraph quoted above, the winds northwest of Imperial County (particularly around the Oasis and Salton Sea West areas) were variable in speed and direction. This variability is inconsistent with ARB's hypothesis that the winds remained at an elevated speed and along a straight line over the 45 mile distance between Oasis and Westmorland for an hour or more. Thus it is anything but clear that dust generated northwest of Imperial County caused the exceedance at Westmorland. As a result, EPA's minor errors regarding the timing and direction of the winds at Oasis do not undermine the Agency's conclusion that the contradictory evidence does not support a finding of a clear causal relationship.

The second part of ICAPCD's comment on the causal relationship regarding the Westmorland exceedance argues that the speed and direction of the increased winds (27.0 mph) recorded at the Palo Verde station during hour 17 are consistent with transport to Westmorland and that the uncertainty of the precise location of the thunderstorms in time is not relevant to a cause and effect analysis. The commenter further states that EPA does not appear to argue that the wind speed or direction is inconsistent with transport of dust from Palo Verde to Westmorland.

While we agree with the commenter that the winds at Palo Verde (which is separated from Westmorland by a north-south distance of about 24 miles) were directed toward Westmorland during the 17th hour, the winds at Westmorland were consistently from the south-southeast, southeast, and east-southeast directions beginning at the 6th hour and lasting until the end of the day. While it is remotely possible that the winds that occurred at Palo Verde during the 17th hour led to the transport of dust to Westmorland, the EER requires a demonstration of a clear causal relationship and the limited data available do not rise to that level.

We also disagree with the commenter that the location of the thunderstorms over time is not relevant to a cause and effect analysis. The EER explicitly mentions the use of data that show the relationship in time between the event, transport of emissions, and recorded concentrations in exceptional event demonstrations.[103] Furthermore, in this case, ARB's basic premise is that "thunderstorm activity caused strong outflow winds over areas in close proximity to Imperial County monitors * * * [which contributed] to the elevated PM_{10} concentrations that were recorded in Imperial County on that day." [104] ARB could have attempted to provide more support for its case by, for example, considering whether historical radar data showed thunderstorms were at various locations around the time the high winds occurred.

Given the level of uncertainty as to the cause of the concentration spike at Westmorland during the 19th hour and the statutory requirement that EPA's exceptional events regulations be based on the principle that protection of public health is the highest priority,[105] we are again led to the conclusion that the data before the Agency does not establish a clear causal relationship between the exceedance and the event that is claimed to have occurred.

The third part of ICAPCD's comment regarding causal relationship for the Westmorland exceedance criticizes EPA's use of wind trajectories from the HYSPLIT model since it is expected to capture the underlying flow pattern but may not be able to capture the direction of short-lived high winds that could transport dust from the north to Westmorland.

EPA acknowledges that the HYSPLIT model uses meteorological data with relatively coarse resolution, *e.g.,* a 40 km grid, and that there may be short-lived or local deviations from the overall wind flow. However, it remains true that the HYSPLIT back-trajectories are inconsistent with transport from northern stations since they show winds from the south.[106] The HYSPLIT data simply add to the list of inconsistencies in the State's explanation. In addition, ICAPCD's suggestion that the high winds were "short-lived" is inconsistent with ARB's hypothesis of straight line transport from the Oasis or Palo Verde stations for an hour or more over the 45–55 mile distance to Westmorland. Thus EPA disagrees with this comment.

EE #17: ICAPCD (Attachment) makes an additional two-part comment about the causal relationship claim for the September 2, 2006 exceedances at both the Calexico and Westmorland monitoring stations. In order to buttress its argument that these exceedances were not the result of recurring anthropogenic sources within Imperial Valley, ICAPCD first states that it is extremely unlikely that all monitors in the County would simultaneously have had unusually high PM_{10} concentrations if the causes were local to the monitors. The second part of the additional comment states that since there were no high winds throughout Imperial Valley on September 2, 2006, the cause of the exceedances could not have been unpaved roads or agricultural or OHV land within the Valley.

Response: With respect to the first part of ICAPCD's comment, EPA acknowledged the elevation of PM_{10} at all monitors, but did not take a position on whether the causes were local or regional.[107] Rather, we concluded that a clear causal relationship had not been demonstrated since the regional sources alleged by ARB to be the cause were not identified. Related to this lack of identification of the contributing sources, EPA found that the State did not demonstrate that the event was not reasonably controllable or preventable as there was no attempt to analyze controls on the non-local sources. Thus this comment does not affect our decision to not concur with the State's exceptional event claims.

With respect to the second part of ICAPCD's comment, as discussed above, the State argued that high winds associated with thunderstorm activity led to the generation of dust north of the County, which was then transported to the Westmorland monitor. Even though agricultural land and other anthropogenic sources do exist in areas north of the County including Oasis,[108] where the State claimed winds were high, the State made no attempt to analyze controls on contributing sources outside the County in order to address the EER requirement that the event must be "not reasonably controllable or preventable." Thus, this requirement

[102] 2009 EE decision, p. 16.

[103] 72 FR 13560, 13573.

[104] September NED, p. 2.

[105] See CAA section 319(b)(3)(A)(i).

[106] 2009 EE decision, p. 17.

[107] 2009 EE decision, p. 14.

[108] See Figure 1 in the final TSD.

was not met even if the commenter's arguments regarding transport were correct. With respect to the Calexico exceedances, the State speculated that high winds occurred east and southeast of Calexico based on extrapolation of a west to east trend of increasing wind speed. The same argument could have been used to conclude that there was high wind east of Calexico within Imperial County, including over agricultural and OHV lands. Therefore the commenter's claim that there were no high winds throughout the Imperial County is not completely supported by the State's own arguments that a high wind event occurred.

5. Concentrations in Excess of Normal Historical Fluctuations

EE #18: Comite cites additional support for nonconcurrence beyond what was relied upon by EPA. Specifically, the commenter states that numerous monitored exceedances comparable to those that Imperial County seeks to exclude from the data have been measured in the County from 2003–2007. Therefore, the commenter claims, the concentrations are not "in excess of normal historical fluctuations" as required by the rule and are not exceptional events.

Response: EPA's conclusions about the requirement that the events be associated with measured concentrations in excess of normal historical fluctuations mainly relied on the concentrations' rarity relative to past measurements. For example, the September NED states that the 167 µg/m3 measurement at the Westmorland station was in the 98th percentile of all PM_{10} recordings at that station in the 2001–2007 time period. As explained in our 2009 EE decision,[109] we found similar evidence that the exceedances measured on the other days in question also exceeded normal historical fluctuations. However, we do agree with the commenter that the monitoring data for Imperial County continue to show violations of the 24-hour PM_{10} standard. We believe that improvements to the ICAPCD's rules will lead to improvements in air quality and we note that this commenter does not disagree with EPA's conclusions regarding the State's exceptional events requests, or with EPA's proposal to disapprove Regulation VIII.

6. Level of Documentation Required for EER

EE #19: ICAPCD (Attachment) takes issue with EPA's suggestions that additional data and analysis would have helped establish causality for the 2006 Westmorland and the 2007 events. Specifically, ICAPCD states:

> Although EPA suggests that higher levels of documentation for source attribution, thunderstorm activity, or investigation of other potential causes would be preferred, EPA does not suggest reasonable, technically implementable analyses to achieve these higher levels of documentation. We would question what technical analyses EPA suggests should be conducted. We would also question whether these analyses and the required level of data are achievable or realistic now or in the future for similar events in Imperial County and in other areas (particularly those surrounded by remote, non-populated, non-monitored source areas), and whether these analyses exceed the requirements for SIP planning itself. EPA has not (and, we believe, cannot) propose reasonable, technically achievable investigations and analyses superior to those produced by the District and ARB that would address EPA's stated concerns. Thus, we find that both EPA's conclusions on causality and EPA's position on the level of analysis required to demonstrate causality are incorrect and inconsistent with the purpose of the EER * * *. Such a narrow application of the EER will preclude states from excluding from regulatory consideration exceptional PM data that are completely inappropriate for inclusion in the normal planning process.

ICAPCD also includes a table on page A–8 which cites specific passages of EPA's 2009 EE decision pertaining to source apportionment, satellite imagery, and consideration of other causes.

Response: Regarding the need for better source apportionment data, it is important to identify contributing sources when evaluating exceptional event claims involving windblown dust because it must be demonstrated that anthropogenic sources contributing to the exceedances at issue were reasonably controlled.[110] Better source identification is especially important in situations where we do not have confidence that all potential anthropogenic sources are reasonably controlled and where there are exceedances just above the NAAQS (such as the April 12, 2007 exceedance at Westmorland) which may have been preventable with additional controls. In addition, the inability to identify the source of the PM emissions associated with a wind event (*i.e.,* the "cause" of the dust that led to the exceedance) hinders our ability to make affirmative findings that the "clear causal relationship" and "but for" provisions of the EER have been satisfied. A County-wide monthly average emission inventory such as the one used by ARB that omits some source types (e.g., OHVs) is insufficient for these purposes.

While perhaps not required for all demonstrations, our suggestion for a wind field and a more highly resolved inventory are not unreasonable given ARB's failure in the present case to demonstrate that reasonable controls were in place for contributing sources. Moreover, a more highly resolved inventory would provide better support for any future exceptional events claims involving Imperial County. Another method ARB could have potentially considered for identifying the source of the emissions and supporting its claim of a causal relationship is to collect and examine pollutant species-specific information. As discussed in the EER preamble,[111] such information may be available through routine speciation, monitoring networks, or from selective laboratory analysis of archived particulate matter filters for the day thought to be impacted by an event. In this case, such an analysis might have helped ascertain how much of the PM_{10} that impacted certain monitors was from agricultural sources versus natural desert sources.

Regarding ICAPCD's objection to our statement that the satellite imagery provided was not frequent enough to compare the images with the timing of the concentration spike at Westmorland during the 19th hour,[112] we note that ARB could have provided additional information to supplement the satellite imagery. Such information could include, but may not be limited to radar data and weather observations that note the presence of blowing dust in areas around the monitors.

Finally, ICAPCD takes exception to our desire for better documentation regarding the investigation of other potential causes. In this regard, ARB made the following statement:[113]

> (ICAPCD) investigated emission generating activities during this episode, and found that PM_{10} emissions for BACM controlled sources were approximately constant before, during and after the event. The District determined that the * * * concentrations of PM_{10} * * * were instead primarily the result of wind-entrained dust * * * associated with a mesoscale convective system * * *.

Although the preceding passage suggests that ICAPCD conducted an

[109] pp. 25–27.

[110] See, *e.g.,* 2009 EE decision, p. 7 and our responses to comments EE #s 1 and 4. See also 72 FR 49046, 49051 (August 27, 2007) and 72 FR 13560, 13566, footnote 11, explaining that the weight of evidence approach to our analysis may consider winds that produce emissions contributed to by anthropogenic activities that have been controlled to the extent possible through use of all reasonably available reasonable and appropriate measures.

[111] 72 FR 13560, 13573.

[112] 2009 EPA decision, pp 17–18.

[113] September NED, p. 2.

active investigation of other emission generating activities on the day of the event, this claim is largely unsupported except for an interoffice memo included in Attachment H to the September NED. The memo states that various records were inspected in 2008 but that no inspections were conducted on the day of the event. We were thus left wondering how a file review conducted two years after the fact qualifies as an investigation of emission generating activities "during [the] episode" and how ICAPCD came to the somewhat substantial conclusion that emissions from BACM controlled sources were constant before, during, and after the event.

E. OHV Controls

OHV #1: ICAPCD believes that EPA should have concurred with all of the exceptional event requests associated with high winds as discussed in the Exceptional Events comments summarized in section II.D above. As a result, ICAPCD believes that windblown dust from open areas is not a significant source category in Imperial County, and therefore is not subject to the BACM requirement as part of the SIP.

Response: In our proposed action on Regulation VIII, we explained why windblown dust from open areas is treated as a significant source category subject to BACM.[114] We have not received information in the comments or elsewhere that changes this conclusion or the related decision to not concur with the State's exceptional event requests for Imperial County. See also responses to Exceptional Events comments in section II.D above.

OHV #2: CBD comments that BLM land is the largest PM_{10} source in Imperial County and should be subject to the same controls as adjacent land. CBD believes the Dust Control Plan (DCP) requirement for BLM land in Rule 800 section F.5 is unenforceable, in conflict with the CAA, while other areas are subject to more stringent Regulation VIII requirements.

In contrast, ICAPCD believes that Rule 800's DCP implements BACM, and that Rule 800's exemption for BLM does not relax other Regulation VIII requirements. For example, Rule 800 section F.5.c requires BLM's DCP to be consistent with Rules 804 and 805 except where otherwise prohibited, in which case section F.5.e requires all feasible control measures during off-road events. ICAPCD also notes that where there are such prohibitions, section F.5.d requires the DCP to discuss and implement "other possible control measures" and that Rule 800 section D.3 requires the DCP to be submitted to ICAPCD, ARB and EPA for review and comment and to be updated every two years.

ICAPCD believes BLM should be treated separately in Regulation VIII because there are many restrictions imposed by a variety of laws other than the CAA that apply to actions on Federal lands and that the District's involvement in these issues would delay implementation of the PM control program on BLM lands. ICAPCD also believes that BLM should be treated separately because some Federal land uses preclude traditional dust controls and because BLM's OHV areas are far from Imperial County populations. ICAPCD argues that even if Rule 800 section F.5.c corresponds to requirements that are less effective than those of Rules 804 and 805, such lower stringency is both necessary and appropriate given the special nature of BLM lands.

BLM agrees that many traditional BACM are not possible on Federal land because of the large expanses of desert ecosystems. BLM continues evaluating the DCP, however, which has led to closing areas and routes to vehicle use, restoring closed surfaces to natural conditions, hardening high traffic areas, posting and enforcing speed limits, educating desert users, and controlling dust from non-OHV activities.

Response: BACM is required but has not been demonstrated for OHV activity on BLM land in Imperial County.[115] EPA guidance explains that this demonstration should include evaluation and documentation of the technological and economic feasibility of potential control measures, including implementation of measures on a limited basis if full implementation is not feasible. As stated in our guidance, "the documentation should compare the control efficiency of technologically-feasible measures, their energy and environmental impacts and the costs of implementation."[116] ICAPCD's demonstration should include careful consideration of analogous controls implemented on private lands in Imperial County and on public lands in Maricopa and Clark Counties and elsewhere, as well as controls recommended in EPA's RACM guidance,[117] and suggestions provided in our proposal[118] and comments on the proposal.[119]

The evaluation of technological feasibility may appropriately consider the alleged "special nature" of BLM lands. Such an evaluation, if conducted appropriately, may be sufficient to demonstrate that what constitutes BACM for BLM land in Imperial County is different from what constitutes BACM in other geographical areas and for private land in Imperial County. The information provided in the comments and Regulation VIII submittal, however, is not sufficient to support such a distinction. For example, ICAPCD and other commenters have not demonstrated how existing BLM controls implement BACM in the Plaster City areas, which are open to OHV activity at all times, and, if such controls do constitute BACM, why they cannot be incorporated into Regulation VIII and the SIP.

Furthermore, with regard to CBD's comment concerning the enforceability of DCPs, State and local requirements that implement BACM are subject to the enforceability requirement of CAA section 110(a). As we stated in our proposal, BACM has not been demonstrated for OHV sources because, among other things, none of the OHV restrictions are in regulatory form and submitted for inclusion in the SIP.[120]

OHV #3: OWD notes that California State Parks (CSP) manages OHV recreational activity in Imperial County at Heber Dunes State Vehicular Recreation Area, Ocotillo Wells SVRA, and in an interdepartmental joint management agreement at the Freeman Properties immediately north of Ocotillo Wells SVRA and east of Anza Borrego Desert State Park. OWD also notes that Ocotillo Wells SVRA alone represents approximately 85,000 acres of managed OHV recreational activity within Imperial County. While much of this land is designated trail riding only and is primarily defined by terrain constraints, OWD states that the majority of the area is designated open riding, where OHVs are not limited to defined trails. Rather than implement generalized BACM for OHV activity in Ocotillo Wells SVRA and other State Parks, OWD explains that it has adopted State mandated soil standards, a habitat monitoring system and other policies tailored for the case-by-case conditions found in each park unit. OWD believes

[114] Proposal TSD, pp. 5–7.

[115] Proposal TSD, pp. 7–8.

[116] General Preamble Addendum at 42012–42014.

[117] 57 FR 18070, 18072.

[118] See proposal TSD, pp. 8 and 14–15.

[119] Moreover, as stated in the General Preamble Addendum at 42013, "any control measures that a commenter indicates during the public comment period is available for a given area should be reviewed by the planning agency."

[120] Proposal TSD, p. 14.

that fencing, and then maintaining, a vast amount of land is neither economically nor environmentally feasible. OWD also believes that watering, laying gravel, or applying a chemical solution to the miles of trails that would be encompassed is neither economically nor environmentally feasible. In contrast, CBD argues that further implementation of Rule 804 and additional OHV controls may be needed for State lands including the Ocotillo Wells SVRA in order to attain air quality standards.

Response: Rule 804 requires all persons, including public entities such as CSP, with jurisdiction over open areas in Imperial County with over 1,000 square feet of disturbed surface area to maintain a stabilized surface, limit opacity to 20% and comply with at least one of the following: (a) Apply and maintain water or dust suppressant to all unvegetated areas; (b) establish vegetation on all previously disturbed areas; or (c) pave, gravel or chemically stabilize.[121] OWD's comment acknowledges that CSP has jurisdiction over open areas with over 1,000 square feet of disturbed surface area within Imperial County. Because these areas are not addressed by exemptions in Rule 800 section E or Rule 804 section D,[122] these areas must comply with the above requirements. However, from OWD's comment, CSP is clearly not currently complying with these requirements. As a result of the inclusion of Rule 804 into the SIP, these requirements will become federally enforceable upon the effective date of this final action, and such noncompliance could result in civil action under CAA section 113 and/or 304.

OHV #4: Various commenters argue that controls suggested in our proposal as part of the BACM analysis that ICAPCD still needs to conduct would not reduce PM_{10} impacts from OHVs in Imperial County.

- Many commenters oppose further restrictions during the summer, claiming that OHV activity and emissions are very low in Imperial County due to high temperatures and existing red sticker regulations that restrict certain vehicles during the summer. BLM concurs that OHV use is already lowest in the summer, and ICAPCD also concurs and argues that OHV restrictions during the summer would burden public resources without reducing emissions. However, one commenter (0100) states that OHV use during summer nights is a great activity which creates minimal dust because travel is at low speeds on established trails. Another commenter (0204) indicates that many promoters run OHV races at night that allow for fun recreational activity in cooler temperatures. This commenter believes night races decrease risks to spectators which is more important than reducing dust emissions. Some commenters also observe that wind events can occur in the summer and cause severe dust days. By contrast, another commenter (0146) believes that the desert is mainly dry and free of wind in the summer.
- ICAPCD believes that restrictions like those in place in Arizona, during pollution advisory days, would be unproductive because high-PM forecasts in Imperial County only occur on high-wind days when OHVs are not used.
- Many commenters (*e.g.,* 0094) observe that OHVs are already restricted to certain areas, causing crowding and injuries. ICAPCD notes that OHVs are restricted to 11% of local BLM land, and additional closure would probably shift OHV activity and emissions to other areas nearby. OWD also believes EPA's action could force OHV users to other areas, causing environmental effects outside Imperial County.
- ICAPCD comments that EPA cannot demonstrate that OHV restrictions would reduce windblown dust emissions because there is no basis for EPA's contention that surfaces impacted by OHVs would form any appreciable crust given Imperial's low level of rain. OWD similarly comments that crust repair would be difficult due to the limited rain in Imperial County. Another commenter (0120) believes that restricting OHV areas could increase PM_{10} emissions because more vehicles in smaller areas would disturb more soil that cannot crust over. See also comment EE #8.
- OWD comments that fencing, watering, gravelling or chemically stabilizing miles of OHV areas is not feasible. For example, water resources are scarce and modification of existing OHV trails could alter natural drainage patterns and increase erosion.

Response: EPA believes that some of the information provided in these comments could be relevant considerations in the comprehensive BACM analysis that ICAPCD needs to undertake in order to determine what controls constitute BACM for OHV activity in Imperial County. However, in general, the comments are conclusory and not supported by data, detailed information, or other evidence that would be required for an adequate BACM demonstration under our guidance.[123] As summarized in the guidance:

> In summary, the State must document its selection of BACM by showing what control measures applicable to each source category (not shown to be de minimis) were considered. The control measures selected should preferably be measures that will prevent PM–10 emissions rather than temporarily reduce them. The documentation should compare the control efficiency of technologically-feasible measures, their energy and environmental impacts and the costs of implementation.[124]

Furthermore, contradictions in the comments also serve to illustrate that there are fundamental factual questions that need to be addressed about the amount of OHV activity during different seasons and different times of the day, and the best ways to mitigate emissions from such activities. At this juncture, ICAPCD has not conducted an adequate analysis.

OHV #5: Many commenters (*e.g.,* 0108 and OWD) state that further OHV restrictions would hurt the already depressed local economy, and cite potential effects on local business owners, farmers, land owners, OHV users, race car owners, construction companies, ranchers, the Imperial Irrigation District and others. Commenters observe that recreational activities generate substantial revenue (0196), and one (0156.1) claims that OHVs have contributed several hundred million dollars to the local economy. ICAPCD believes that the economic cost of OHV activity restrictions is far more than appropriate for BACM. For example, ICAPCD estimates that closing the Imperial Sand Dunes Recreational Area would cost $370,000 to $640,000 per ton of PM_{10} reductions. ICAPCD provides specific references to support its cost/benefit analysis. Another commenter (0219) similarly believes that additional OHV restrictions, such as closing land in the summer, would provide few benefits given the relatively small emissions from OHVs, but would have significant economic impacts.

Response: We appreciate the value of OHV tourism to the local economy, and agree that ICAPCD must consider economic feasibility in BACM analyses evaluating potential controls for emissions from OHV activities. However, the relevant inquiry in the economic feasibility analysis required in BACM determinations is "the cost of reducing emissions from a particular source category and costs incurred by

[121] ICAPCD Rule 804, sections B, C.29, E and F.

[122] See also "Fugitive Dust Control Plan," Bureau of Land Management El Centro Field Office, June 29, 2006; "Fugitive Dust Control Plan," Bureau of Land Management El Centro Field Office, January 25, 2010 Draft; e-mail from Andrew Trouette (BLM) to Andrew Steckel (EPA), May 24, 2010.

[123] General Preamble Addendum at 42010–42014.

[124] *Id.* at 42014.

similar sources that have implemented emission reductions."[125] In this case, the cost of OHV restrictions on OHV area owners (*i.e.,* the State and Federal governments) and users would appear to be minimal, and the secondary economic impacts on businesses supporting OHV tourism are not relevant to the required BACM analysis. In any event, ICAPCD needs to evaluate the economic feasibility of potential controls, including those adopted in other areas, in determining what controls constitute BACM in this area.

OHV #6: EcoLogic asks EPA to clarify whether and where OHV restrictions are being contemplated in the Imperial Sand Dunes Recreation Area and elsewhere and to what extent OHV activity on Federal land is subject to the proposed rule or ICAPCD jurisdiction. EcoLogic and another commenter (0141) also request clarification on which of the 250 square miles of OHV areas EPA is asking ICAPCD to evaluate for closure and what the basis is for claiming that these areas are likely to impact populations.

Response: State and Federal agencies are subject to many local requirements including Regulation VIII and other air quality related ICAPCD rules.[126] Our proposal explains why ICAPCD must analyze whether additional controls (potentially including closure) are appropriate for public land in Imperial County open to OHVs, which ICAPCD estimates at over 250 square miles.[127] We did not identify any specific geographic areas needing more or less analysis or control or having more or less impact on populations. Rather, in the analysis ICAPCD should consider all potential available OHV controls in all OHV areas in Imperial County and, where feasible, should consider whether different areas within the County have different impacts on populations or areas with exceedances of the NAAQS.

OHV #7: Several commenters believe additional OHV restrictions should be analyzed and/or incorporated into Regulation VIII. CBD believes that OHV requirements in Rule 804 are too vague to be enforceable as required by CAA section 110(a), particularly regarding BLM and State managed land. CBD believes Regulation VIII should require specific BACM measures, such as restrictions on the number of OHV vehicles operating each day, to improve emission quantification and control. CBD believes such carrying capacity caps or other restrictions should also address weather conditions when they exacerbate PM_{10} emissions, such as during windy weather and the summer. Comite comments that ICAPCD should analyze whether OHV permit requirements, such as those that are required in San Bernardino County, should be required in Imperial County. Comite also believes that ICAPCD should analyze controls described in the California State Parks Off-Highway Motor Vehicle Recreation Division's 2008 Soil Conservation Standard and Guidelines.[128] Lastly, instead of decreasing the size of OHV areas, one commenter (0120) suggested rotating OHV areas to help surface crust formation.

Response: The commenters as a group make constructive suggestions that would be appropriate for consideration in a comprehensive evaluation of BACM for this source category. We believe ICAPCD should analyze all potential available OHV controls to meet the CAA's BACM requirement, including those mentioned in the comments and those adopted in other areas, pursuant to EPA guidance.[129]

F. Definition of Disturbed Surface (DS)

DS #1: ICAPCD believes the term "disturbed surface" is self-evident and that no questions have been raised about it since rule adoption. ICAPCD believes Rule 804 is clear that an area is deemed disturbed if it shows any sign of man-made disturbance (*e.g.,* vehicle traffic) and the owner/operator cannot prove that the area meets the characteristics of a stabilized surface. ICAPCD is willing to define this term more clearly during the next revision to Rule 101, but strongly objects to EPA disapproving Regulation VIII on this basis. In contrast, CBD supports EPA's concerns regarding this definition in Regulation VIII, and further believes the definition should be tailored to Imperial Valley and explicitly include open areas on BLM land that emit significant PM_{10} including the Algodones Dunes. In this regard, CBD suggests specific edits to SJVUAPCD's analogous rule.

Response: We believe the explanation provided in ICAPCD's comment is a logical interpretation of the undefined term in its regulation. However, we also believe that alternate definitions are possible (such as that recommended by CBD in its comment), and it is common practice to define all terms used in rules that are needed in order to ensure clarity and enforceability. We encourage ICAPCD to clarify its regulation by including an appropriate definition of this critical term and to consider CBD's recommendations for the wording of the rule.

G. Unpaved Road (UR) Controls

UR #1: ICAPCD projects that control of unpaved non-farm roads provides 55% of Regulation VIII's emission reductions. ICAPCD believes this demonstrates a good faith effort to reduce PM_{10} emissions from road stabilization, and asserts that the County is trying to increase funding for such projects. ICAPCD states that the $2 million/year available to the County Department of Public Works (PWD) for road maintenance and stabilization reflects great needs and low availability of public funds in the County. According to ICAPCD, this budget is for maintenance of 1,350 miles of paved roads which require resurfacing every 10–15 years, or 90 miles of extensive maintenance each year. Thus, ICAPCD argues that allocation of 9% of this budget to stabilize 19 miles of unpaved road represents, contrary to EPA's assertion, the most expedited schedule possible with the present level of available funding.

Response: Where economic feasibility of control depends on public funding, EPA will consider past funding and the future availability of funding sources to determine if a good faith effort is being made to implement BACM expeditiously.[130] The fact that unpaved road controls provide 55% of Regulation VIII's estimated emission reductions is not in itself sufficient to demonstrate good faith efforts to control road dust expeditiously. Alternatively, for example, this high percentage of the total amount of reductions could occur if other sources are under-controlled or are less feasible to control. Nonetheless, EPA believes that some of the information ICAPCD provides in its comment on this point could help to demonstrate a good faith effort to control road dust expeditiously. Given ICAPCD and Imperial County's limited resources, we do not believe this analysis needs to be exhaustive, but it should be more thorough and documented than presented in the Regulation VIII submittal and this comment. For example, ICAPCD indicates in this comment that the County is trying to increase funding for road stabilization but provides no documentation to help establish this point. Nor has ICAPCD explained how the road stabilization budget was derived in light of various Federal,

[125] General Preamble Addendum at 42013.

[126] See CAA section 116.

[127] See, *e.g.,* proposal TSD, pp. 8 and 13–15.

[128] Submitted as Exhibit D to Comite comment letter.

[129] See, *e.g.,* General Preamble Addendum at 42012–42013.

[130] Proposal TSD, p. 16, and General Preamble Addendum at 42013.

State, and local (including local Measure D) funding sources for public works construction and maintenance, or otherwise provided the demonstration contemplated by the relevant EPA guidance.[131]

UR #2: ICAPCD disagrees with EPA that there could be problems enforcing Rule 805 section E.7. As evidence, ICAPCD explains that Imperial County PWD is meeting its commitment to implement its submitted plan, which includes stabilizing different unpaved roads each year and maintaining all stabilized roads as intended by the rule.

Response: CAA section 110(a) requires that control measures be enforceable. While Rule 805 section E.7 requires that a compliance plan be submitted to ICAPCD, the rule is not clear about the specific requirements of the plan (i.e., that the County must stabilize different roads each year and must maintain all stabilized roads) and does not contain a mandate that the terms of the plan be carried out. Evidence that Imperial County PWD is in fact currently implementing the plan is not sufficient to ensure enforceability as required by the CAA.[132] ICAPCD should revise the rule to clarify this section consistent with enforceability requirements of CAA section 110(a).

UR #3: Comite believes that ICAPCD should incorporate additional restrictions into Regulation VIII, including property line visible emissions (VE) limits such as those adopted by Maricopa County and SCAQMD, dust controls for unpaved roads subject to Rule 805 section E.7, and other more stringent requirements adopted by SCAQMD, SJVUAPCD, Maricopa County and Clark County.

Response: ICAPCD's analysis of BACM did consider controls implemented in other areas, including those adopted by SCAQMD, SJVUACPD, and Maricopa and Clark Counties. Our proposal TSD recommends several specific controls from these areas for further consideration by ICAPCD, including imposition of a fence-line opacity standard.[133]

However, with the exception of the deficiencies identified in our proposal, we believe that ICAPCD sufficiently analyzed controls in other areas for potential BACM.[134] For example, ICAPCD explains that SCAQMD has only a 0% fence-line opacity standard, whereas ICAPCD and other agencies with adopted rules approved as BACM all have a similar general 20% opacity standard applicable everywhere, and not just at the fence-line.[135] ICAPCD claims that SCAQMD's 0% fence-line standard is less stringent than a general 20% standard. While it is difficult to compare the two standards,[136] we do not have evidence that SCAQMD's standard is more stringent than the general standard used by ICAPCD and by other air districts.

UR #4: One commenter (0154) states that it is not feasible or cost effective to eliminate all dust from dirt roads.

Response: We agree with this comment. Neither Regulation VIII nor our proposal or this final action assumes that dust emissions can be completely eliminated from farm and non-farm dirt roads.

H. Border Patrol (BP) Controls

BP #1: ICAPCD comments that Rule 800 section F.6.c does not explicitly exempt BP from fugitive dust controls, but requires BP to control dust from roads it owns/operates consistent with Rule 805 except where inconsistent with BP's authority or mission. ICAPCD indicates that, while BP does not own any roads, it uses public roads to accomplish its mission, and some roads adjacent to the border are used exclusively by BP. ICAPCD states that most of these roads are below Rule 805's applicability threshold, are located in remote areas that are for the most part restricted to BP vehicles, and PM_{10} controls are not feasible and are inconsistent with BP's mission. ICAPCD explains that although BP neither owns nor operates these roads, BP is committed to implement PM_{10} controls such as vehicle speed restrictions and access controls. ICAPCD indicates that since adoption of Regulation VIII, BP has submitted two productive DCPs. Therefore, ICAPCD disagrees with EPA's recommendation to remove or narrow the exemption for BP activities, and proposes to continue addressing BP through a DCP requirement to insure that BP continues controlling fugitive dust.

Response: First, we note that nothing in our proposal affects Regulation VIII's requirement for BP to develop and implement DCPs pursuant to Rule 800 sections F.6.a and F.6.b. However, ICAPCD's explanation is unclear as to whether or not BP operates any roads subject to the rule. If ICAPCD can support its assertion that BP neither owns nor operates such roads, the exemption in Rule 800 section F.6.c. is simply unnecessary and should be removed. If BP does own or operate such roads, we continue to believe that the exemption is unnecessarily broad and should be removed or narrowed and demonstrated to be consistent with BACM requirements.

ICAPCD offers no evidence or explanation to support its contention that Rule 805 requirements are potentially inconsistent with BP's authority and/or mission. We also note that BP has not raised concerns with our proposal, although we informed BP of it before publication. EPA appreciates BP's efforts to limit PM_{10} pollution through DCPs. Our concern, however, is with ICAPCD's Regulation VIII submittal and the lack of clarity in, and analysis to support, the actual provisions in Regulation VIII intended to govern these activities.

BP #2: OWD comments that BP frequently goes off-road within Ocotillo Wells SVRA, beyond OWD's control.

Response: Rule 804 section E imposes requirements on owners of open areas such as Ocotillo Wells SVRA regardless of who owns vehicles driving on the open areas. Nothing in our proposal would affect these existing ICAPCD requirements.

I. Unpaved Farm Roads and Traffic Areas (UFRTA) Controls Introduction

The comments summarized in this section and sections II.J and K relate to ICAPCD Rule 806, Conservation Management Practices. In discussing our proposal regarding Rule 806, a number of these comments address various aspects of analogous rules adopted by State and local agencies in California and Arizona for controlling PM_{10} from agricultural sources. All of these rules are menu-based and as such divide the control measures, known as conservation management practices (CMPs) or best management practices (BMP), into three or more menus known as "categories." We provide the following information on these rules as an introduction to inform our responses to the comments in this section and sections II.J and K.

ICAPCD Rule 806, Conservation Management Practices, is a menu-based rule that has four categories:

- Land preparation and cultivation.
- Harvesting.
- Unpaved roads.
- Unpaved traffic areas.

All persons who own or operate an agricultural operation site of forty acres or more are required to implement one

[131] See proposal TSD, p. 16.

[132] See *id.,* p. 9.

[133] *Id.,* p. 11.

[134] 2005 BACM analysis, chapter 4, and 2009 PM_{10} SIP, table 4.2.

[135] 2005 BACM analysis, p. 21.

[136] For example, a 40% opacity plume in the middle of a large property that disperses to 0% opacity by the property fence-line violates ICAPCD's rule but not SCAQMD's. Conversely, a 10% opacity plume that disperses to 5% opacity by the fence-line violates SCAQMD's rule but not ICAPCD's.

CMP from each of these categories. Table 3 summarizes the relevant categories from Rule 806 and the other menu based rules to which we refer:

TABLE 3

State or local agency	Rule	Area	Categories for on-field agricultural operations	Categories for unpaved Ag. roads and traffic areas
Imperial County APCD (ICAPCD)	806	Imperial County	■ Land Preparation and Cultivation (including tillage). ■ Harvesting	■ Unpaved Roads. ■ Unpaved Traffic Areas.
San Joaquin Valley Unified APCD (SJVUAPCD).	4550	San Joaquin Valley Planning Area.[137]	■ Land Preparation and Cultivation (including tillage). ■ Harvest ■ Cropland—Other.	■ Unpaved Roads. ■ Unpaved Traffic Areas.
Arizona Department of Environmental Quality (ADEQ).	Arizona Administrative Code (A.A.C) R18–2–610 and R18–2–611.	Phoenix Planning Area.[138]	■ Tillage and Harvest ■ Cropland.	■ Noncropland.
Great Basin Unified APCD (GBUAPCD).	502	Alpine, Inyo, and Mono Counties.[139]	■ Land preparation ■ Harvest ■ Other Cultural Practices.	■ Unpaved Roads. ■ Unpaved Traffic Areas.
South Coast AQMD	Rule 403 And Agricultural Handbook.	South Coast Air Basin.[140]	■ Active Conservation Practices. ■ Inactive Conservation Practices.	■ Unpaved Roads.
South Coast AQMD	Rule 403 And Coachella Valley Agricultural Handbook.	Coachella Valley Planning Area.	■ Active Conservation Practices. ■ Inactive Conservation Practices.	■ Unpaved Roads.

We also refer below to SJVUAPCD's Rule 8081, Agricultural Sources, which has opacity and stabilization requirements for high traffic agricultural unpaved roads and traffic areas.

UFRTA #1: Comite believes that California has not demonstrated why agricultural paved and unpaved roads should be subject to less stringent requirements than other roads in Imperial County (*i.e.,* those subject to Rule 803 regarding track-out/carry-out and Rule 805) and cites San Joaquin Valley where such roads must meet CMPs as well as general requirements.

In contrast, ICAPCD and the Farm Bureau believe Regulation VIII is more stringent regarding unpaved farm roads and traffic areas than analogous rules in other areas even though Imperial County farm roads and traffic areas are not subject to opacity limits. These latter commenters note that Rule 806 requires CMPs for all unpaved roads and traffic areas regardless of vehicle trips per day (VTD), unlike SJVUAPCD Rule 4550. COLAB also explains that ICAPCD Rule 806 was designed to address all unpaved roads by applying to parcels greater than 40 acres (97% of farmland in Imperial County) compared to SJVUAPCD's Rule 4550 which addresses roads on parcels larger than 100 acres (91% of farmland in the San Joaquin Valley). Lastly, ICAPCD and the Farm Bureau assert that most private unpaved farm roads are less used and are therefore below Rule 805's 50 VTD threshold. Regardless of VTD, however, these latter commenters argue that owners of these roads must implement Rule 806 CMPs.

Response: EPA's proposal noted that ICAPCD has not demonstrated BACM for unpaved farm roads and traffic areas because of the exemption in Rule 805 section D.2 from opacity and stabilization requirements applicable to non-agricultural operation sites. EPA further noted that SJVUAPCD does not provide such an exemption, and ICAPCD had not justified such an exemption.[141]

ICAPCD and other commenters do not offer evidence that Regulation VIII is as stringent as comparable controls in this regard, but instead claim that Regulation VIII is more stringent in other respects. For example, no commenter disputes our conclusion that an unpaved farm road with 75 VTD would be subject to opacity standards in SJVUAPCD's Rule 8081 but not in ICAPCD's Regulation VIII. However, ICAPCD and others argue that the applicability threshold for unpaved farm roads subject to Rule 806, for example, is more stringent than SJVUAPCD's analogous requirements. Because opacity and surface stabilization requirements on heavily-used farm roads and traffic areas are being implemented in other areas, we believe that, absent an adequate explanation, these requirements are at least presumptively BACM for this source category in Imperial County. Accordingly, these controls should be evaluated as potential BACM by ICAPCD. However, as stated previously, ICAPCD may consider conditions

[137] SJVUAPCD's jurisdiction includes the entire counties of San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, and Kings and part of Kern County. SJVUAPCD does not include the parts of East Kern that are not in the San Joaquin Valley Air Basin. See 40 CFR 81.305.

[138] The Phoenix Planning Area includes Maricopa County and a portion of Pinal County. See 40 CFR 81.303.

[139] See section 1 and 2 of GBUAPCD Rule 502. Also see 40 CFR 81.305.

[140] SCAQMD's jurisdiction includes the South Coast Air Basin and the Coachella Valley Planning Area. For a description of the boundaries of the Los Angeles-South Coast Air Basin Area and the Coachella Valley Planning Area, see 40 CFR 81.305. The South Coast Air Basin includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties. The Coachella Valley Planning Area includes central Riverside County in the Salton Sea Basin.

[141] Proposal TSD, pp. 8–9.

specific to Imperial County in a revised BACM evaluation for unpaved roads and traffic areas, as appropriate.

We also agree with Comite that it is not clear why Rule 803 section D.1 exempts farm roads and traffic areas from certain carry-out and track-out requirements that apply to similar non-farm roads. We encourage ICAPCD to consider removing this exemption, although such a rule modification is not mandated by the CAA at this time because carry-out/track-out has not been identified as a significant source category subject to the BACM requirement.

UFRTA #2: Comite believes that Rule 806's CMPs are not sufficiently specific regarding agricultural unpaved roads and traffic areas. In contrast, ICAPCD comments that Rule 806 section F.6 requires CMP plans to include other relevant information, which gives ICAPCD authority to require adequate specificity. COLAB also comments that the CMP forms provided in the rule are examples and if the relevant information was provided the form could be changed.

Response: Issues raised regarding specificity of CMPs for unpaved roads and traffic areas are similar to issues raised regarding the specificity of CMPs for other agricultural operations. See response to comment AL #3 below.

J. Agricultural Land Controls (AL)

See Introduction in section II.I above.

AL #1: ICAPCD comments that Rule 806's CMP requirements are similar to requirements adopted by SJVUAPCD, Maricopa County [142] and SCAQMD,[143] and are directly based on SJVUAPCD requirements that EPA approved as BACM in 2004, citing 69 FR 30035.[144] ICAPCD asserts that the individual CMPs in Rule 806 are similar to those found in SJVUAPCD Rule 4550 and GBUAPCD Rule 502 and concludes that the only differences in the rules are due to differences in local agricultural practices. The Farm Bureau also states that there is little difference between GBUAPCD and ICAPCD control measures.

Response: We agree that many individual CMPs and requirements in the rules outlined in Table 3 are similar. However, this overall similarity does not affect the two specific BACM deficiencies in ICAPCD Rule 806 for tilling and harvesting emissions identified in our proposed action.[145] One of these deficiencies concerns the lack of sufficiently defined requirements in contrast to the application submittal and review processes in the SJVUAPCD and GBUABCD rules that insure more effective implementation and enforcement of the requirements.[146] The other deficiency is related to the number of CMPs required by Rule 806. Rule 806 section E requires one CMP from the "land preparation and cultivation" category and one CMP from the "harvesting" category, while SJVAPCD Rule 4550 requires an additional CMP from the "cropland-other" category. GBUAPCD Rule 502 also requires that one CMP each be selected from the "land preparation and cultivation," "harvest," and the "other cultural practices" categories.[147]

AL #2: ICAPCD believes that EPA disregards that Imperial County crops are irrigated, and that continued irrigation and conditioning of soil dramatically reduce its potential for both entrained and windblown emissions. ICAPCD believes this fact must be considered when comparing Rule 806 to rules in other areas.

Response: As stated previously above, EPA agrees that it is appropriate to consider conditions specific to an area when evaluating potential BACM.[148] However, most of the harvested cropland in other areas subject to comparable requirements is also irrigated. The following table shows data from the 2007 Census of Agriculture [149] for the total acres of harvested cropland and the acres of irrigated harvested cropland in relevant counties in California and Arizona. Imperial County and the counties in the SJVUAPCD [150] are included. Riverside County in California [151] and Maricopa County in Arizona are also included.

TABLE 4

County, State	Total harvested cropland (acres)	Irrigated harvested cropland (acres)
Imperial, CA	375,904	375,167
Maricopa, AZ	190,182	189,141
Riverside County, CA	163,783	158,437
San Joaquin County, CA	444,670	426,670
Stanislaus, CA	307,992	297,053
Merced, CA	466,304	458,017
Madera, CA	264,767	260,596
Fresno, CA	978,948	960,215

[142] Although ICAPCD refers to requirements adopted by Maricopa County in its comments, Arizona's rules, A.A.C. R18–2–610 and R18–2–611, for controlling PM–10 from agricultural sources apply to some sources beyond the boundaries of Maricopa County.

[143] As noted in Table 3 above, SCAQMD's Rule 403 has requirements for agricultural activities that apply to both the South Coast Air Basin and Coachella Valley Planning Area.

[144] EPA approved SJVUAPCD Rule 4550 in 2006, not in 2004. See 71 FR 7683. EPA approved a commitment for the San Joaquin Valley CMP Program in 2004. See 69 FR 30006.

[145] See 75 FR 8008, 8011–8012.

[146] See SJVUAPCD Rule 4550 section 6.3 and 6.4 and GBUAPCD Rule 502 section 6.3 and 6.4.

[147] See SJVUAPCD Rule 4550 section 6.2 and SJVUAPCD "List of Conservation Management Practices." See also GBUAPCD Rule 502 section 6.2 and, for example, GBUAPCD Supplemental Application Form for Alfalfa. See also "Conservation Management Practices for Farms in Inyo, Mono and Alpine Counties, Program Description and Plan Application Forms," December 19, 2008, Great Basin Unified Air Pollution Control District, at *http://www.gbuapcd.org/farm/CMPprogramdescriptionandforms.pdf.*

[148] General Preamble Addendum at 42010 and 42012.

[149] 2007 Census of Agriculture, California, State and County Data, and 2007 Census of Agriculture, Arizona, State and County Data, United States Department of Agriculture, National Agricultural Statistics Service. See *http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_2_County_Level/California/cav1.pdf* and *http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_2_County_Level/Arizona/azv1.pdf.*

[150] See footnote 141 above. The census data in Table 4 are for all of Kern County.

[151] Of all the counties included in SCAQMD, Riverside County has the largest acreage of harvested cropland. According to the 2007 Census of Agriculture, Orange County has 7,846 acres of harvested cropland, Los Angeles County has 25,829 acres of harvested cropland, San Bernardino County has 27,516 acres of harvested cropland, and Riverside County has 163,783 acres of harvested cropland. 2007 Census of Agriculture, California, State and County Data, United States Department of Agriculture, National Agricultural Statistics Service. See *http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_2_County_Level/California/cav1.pdf.*

TABLE 4—Continued

County, State	Total harvested cropland (acres)	Irrigated harvested cropland (acres)
Kings, CA	419,964	419,080
Tulare, CA	560,320	540,887
Kern, CA	764,929	756,645

Thus, the mere fact that crops are grown using irrigation in Imperial County does not in and of itself justify different standards for BACM.

AL #3: ICAPCD comments that Rule 806 section F.6 specifies that the CMP plan shall include "other relevant information as determined by the ICAPCD," which gives ICAPCD authority to modify the CMP plans to specify frequency of CMP applicability. Therefore ICAPCD believes a mechanism is in place in the rule for modification of CMPs to provide such details, and therefore this should not be a basis for disapproval of Regulation VIII as BACM. ICAPCD notes its commitment to modify the CMP plans to provide such details.

Response: As noted by ICAPCD, Rule 806 section F.6 provides a mechanism that could be used by ICAPCD to provide greater specificity. However there is no required process in the rule for sources to provide such information to ICAPCD or for ICAPCD to review the CMPs and/or to require revision of the CMPs that sources have chosen to implement. Under section F, sources are only required to prepare a plan containing minimal information and to maintain a copy of the plan. Thus the CMPs would continue to be broadly defined unless or until ICAPCD proactively determines that greater specificity is needed. Absent such vital details, it would be difficult for regulated entities to know precisely what is required of them to comply with a BACM level of control, and it would be difficult for ICAPCD, EPA, or others to enforce these requirements.[152] In contrast, SJVUAPCD Rule 4550 section 5 requires sources to prepare and submit a CMP application to the District for approval and section 6 requires the District to evaluate and either approve or disapprove the application in writing. GBUAPCD Rule 502 sections 5 and 6 contain substantially identical requirements. Such requirements provide a mandatory process that is far more likely to ensure that the CMPs are implemented and enforceable at a BACM level of control than the provision in ICAPCD Rule 806.

Finally, even if ICAPCD were to routinely exercise its discretionary authority in Rule 806 to specify the frequency of CMP applicability, the deficiency noted in our proposed action related to lack of CMP specificity extends beyond the issue of frequency.[153]

AL #4: ICAPCD claims that BACM should not be required for harvest activities because the emissions from these activities (0.01 tpd) are negligible. ICAPCD argues that efforts to increase regulation of emissions from harvesting would waste resources. In addition, ICAPCD claims that the CMPs in Rule 806 related to harvesting are similar to those in SJVUAPCD Rule 4550.

Response: ICAPCD has identified tilling emissions as a significant source.[154] As stated in our proposal for this action, measures in Rule 806 for harvesting must also meet BACM because the activities occur at the same facilities and are integrally related to tilling emissions.[155] By analogy, where enforceable volatile organic compound (VOC) reasonably available control technology (RACT) level controls are required for refineries, SIP rules generally impose leak detection and repair requirements on valves, flanges, threaded connections and other related equipment even if emissions from any one of these taken individually might be much smaller than the major source threshold requiring RACT.[156]

We agree that individual CMPs for emissions from harvesting activities in Rule 806 are generally similar to CMPs for such emissions in the San Joaquin Valley. However, both SJVUAPCD and GBUAPCD require one more CMP for on-field agricultural sources than does Rule 806.[157] This additional CMP may reduce emissions from harvesting activities. ICAPCD must establish that requiring fewer controls for on-field agricultural activities is consistent with BACM requirements. Thus far ICAPCD has not provided a convincing justification.

AL #5: ICAPCD disagrees with our identification of the requirements of Rule 806 for tilling as a deficiency in the BACM analysis. In support of its position, ICAPCD asserts that San Joaquin Valley sources may select two CMPs that reduce emissions from tilling from the list of measures, but they are not required to do so. ICAPCD also claims that because per-acre emissions from land preparation are about four times as high in the San Joaquin Valley as they are in Imperial County, the cost-effectiveness of emission reductions from tilling activities through the implementation of any CMP should be four times as high in Imperial County as in the San Joaquin Valley. For these two reasons, ICAPCD believes that Rule 806 requirements for tilling are as stringent as analogous SJVUAPCD requirements. In contrast, Comite comments that Arizona Rules 18–2–610 and 611 require at least two CMPs from each

[152] For instance, one of the CMPs that is both in the "land preparation and cultivation" category in Rule 806 section E.1 and the "harvesting" category in section E.2 is "equipment changes/technological improvements" which is defined in section C.15 as "To modify the equipment such as tilling; increase equipment size; modify land planning and land leveling; match the equipment to row spacing; granting to new varieties or other technological improvements. It reduces the number of passes during an operation, thereby reducing soil disturbance." This definition is too broad to ensure enforceability. Moreover, because there is no mechanism to narrow the definition for a particular agricultural operation, a CMP may be implemented in a manner less stringent than a BACM level of control. In a similarly broad fashion, Rule 806 section C.34 defines "speed limits," a CMP in both the "unpaved roads" category in section E.3 and the "unpaved traffic areas" category in section E.4, as "enforcement of speeds that reduce visible dust emissions. The dust emissions from unpaved roads are a function of speed, meaning reducing speed reduces dust." However, an appropriate speed limit or range of speed limits is not specified or otherwise insured.

[153] See 75 FR 8008, 8011–8012.

[154] Proposal TSD, pp. 5–6.

[155] Proposal TSD, p. 10, footnote 25.

[156] SJVUAPCD Rule 4451, Valves, Pressure Relief Valves, Flanges, Threaded Connections and Process Drains at Petroleum Refineries and Chemical Plants, amended April 20, 2005.

[157] See SJVUAPCD Rule 4550 section 6.2 and SJVUAPCD "List of Conservation Management Practices." See also GBUAPCD Rule 502 section 6.2 and, for example, GBUAPCD Supplemental Application Form for Alfalfa. See also "Conservation Management Practices for Farms in Inyo, Mono and Alpine Counties, Program Description and Plan Application Forms," December 19, 2008, Great Basin Unified Air Pollution Control District, at *http://www.gbuapcd.org/farm/CMPprogramdescriptionandforms.pdf.*

category in the rule whereas Rule 806 requires only one, and that SJVUAPCD requires up to three CMPs.

Response: Although ICAPCD focuses here on emissions from tillage, the deficiency in our proposed rule is related to requirements in Rule 806 for sources to implement one fewer CMP overall for on-field agricultural sources than is required by SJVUAPCD Rule 4550 and GBUAPCD Rule 502. Thus the fact that sources subject to SJVUAPCD Rule 4550 are not required to select two CMPs for reducing emissions from tillage is irrelevant. ICAPCD needs to assess whether additional CMPs for on-field agricultural sources are BACM for Imperial County.

ICAPCD has not established that the agricultural activities in Imperial County are significantly different from those in other areas. Accordingly, EPA believes that ICAPCD should have BACM level controls for both tillage and harvest emissions as do other areas with programs for emissions from agricultural activities, and should consider SJVUAPCD and controls from other areas with analogous rules when assessing whether a requirement for additional CMPs would be economically and technologically feasible to control emissions from these activities. ICAPCD claims that implementing tillage CMPs may be more cost-effective in the San Joaquin Valley, but does not address whether it would be economically feasible to require additional CMPs in Imperial County.

We agree with Comite that sources subject to Arizona Rules 18–2–610 and 611 are required to implement two practices each from the "tillage and harvest" and "cropland" categories. ICAPCD needs to consider whether requiring four practices for on-field agricultural sources constitute BACM for Imperial County.

AL #6: Comite claims that Maricopa's inspection regime for agricultural sources is more rigorous than ICAPCD's.

Response: Comite provides no supporting information on either the Maricopa County or ICAPCD inspection program on which to base a response and we are not otherwise aware of information that supports this comment.

AL #7: The Farm Bureau agrees that SJVUAPCD requires an additional CMP from the "cropland-other" category but notes that the same requirement is found in ICAPCD's "land preparation and cultivation" and "harvest activities" categories. As a result, the Farm Bureau believes that including an additional category would be redundant and onerous for participants.

Response: The deficiency identified in our proposed action is related to the requirement in Rule 806 for Imperial County sources to implement one fewer practice for on-field agricultural sources overall without a sufficient justification.[158] ICAPCD does not necessarily need to add a category to Rule 806 in order to address this deficiency. For example, depending on what is most appropriate for conditions in Imperial County, ICAPCD may be able to require that more than one CMP be implemented from the categories that currently exist in Rule 806. Moreover, it would not be redundant to require Imperial County sources to implement an additional CMP for on-field agricultural sources. Rule 806 has two categories for on-field agricultural sources, "land preparation and cultivation" and "harvesting," and requires sources to implement one practice from each category. As noted in Table 3 above, SJVUAPCD Rule 4550 and GBUAPCD Rule 502 have three categories for on-field agricultural sources, and require that sources implement one practice from each of these categories. Moreover, as noted in our response to comment AL #5 above, sources subject to Arizona Rules 18–2–610 and 611 are required to implement four practices for on-field agricultural sources. As part of a BACM analysis, ICAPCD should consider the economic and technological feasibility of requiring additional CMPs for on-field agricultural sources, including consideration of the requirements in rules adopted by SJVUAPCD, GBUAPCD and Arizona.

K. Agricultural Land Windblown Dust Controls (ALWD)

See Introduction in section II.I above.

ALWD #1: COLAB comments that the deficiencies identified by EPA related to windblown dust are particularly troublesome because they are so surprising. COLAB believes that Rule 806 exceeds CAA needs because windblown dust from agriculture is insignificant. Comite, on the other hand, notes SCAQMD's requirements for reducing windblown dust from active and inactive agricultural fields as BACM measures that ICAPCD should consider along with recommendations in U.S. Department of Agriculture's (USDA) National Agronomy Manual for reducing such dust.

Response: EPA has determined that windblown dust from agriculture is a significant PM_{10} source category in Imperial County for which ICAPCD must demonstrate, but has not yet demonstrated, implementation of BACM level controls.[159] ICAPCD should include in its BACM analysis consideration of whether existing SCAQMD controls, among others, and USDA recommendations for controlling wind erosion, are economically and technologically feasible measures to reduce windblown dust from active and fallow agricultural fields. Also see response to comment General #3 above.

ALWD #2: ICAPCD believes that EPA should have concurred with exceptional event requests associated with high winds as discussed in the exceptional event comments above. As a result, ICAPCD believes that windblown dust from agricultural lands is not a significant source category in SIP development, and therefore not subject to BACM.

Response: In our proposed action on Regulation VIII, we explained how we determined that windblown dust from agricultural lands is a significant source category subject to BACM.[160] We have not received information in the comments or elsewhere that affects this conclusion or the related 2009 EE decision. See also responses to exceptional event comments above and comment OHV #1.

ALWD #3: ICAPCD disagrees that Rule 806 does not apply to fallow agricultural fields. ICAPCD states that there are no exemptions in Rule 806 for fallow fields and fallowing is an optional CMP to control emissions from "land preparation and cultivation" under Rule 806 section E.1.

Response: Fallowing land is defined in Rule 806 section C.16 as "Temporary or permanent removal from production. Eliminates entire operation/passes or reduces activities." We note that the fallowing CMP is an option under both the "land preparation and cultivation" category in section E.1 and the "harvesting" category in section E.2. While the fallowing CMP in Rule 806 section E.1 may reduce emissions from "land preparation and cultivation" and from "harvesting," it does not address any windblown dust emissions that may occur once a field is removed from production. EPA believes that the evaluation of BACM level controls for windblown dust from fallow fields should include consideration of USDA-approved conservation systems and activities.[161]

ALWD #4: ICAPCD comments that ICAPCD farms are all irrigated and historically well watered, which leads to stable clods and/or aggregates that lower susceptibility to wind erosion

[158] 75 FR 8008, 8012.

[159] Proposal TSD, pp. 10–11.

[160] *Id.,* pp. 5–7.

[161] *Id.,* pp. 10–11 and 17.

consistent with USDA's National Agronomy Manual. ICAPCD estimates that long-term irrigation reduces PM_{10} emissions by 25–45% from the predominant cultivated soil types in Imperial County, so local fallow and active agricultural land is controlled for windblown emissions relative to land not previously used for irrigated agriculture. In contrast, ICAPCD believes that SCAQMD's farm acreage is overwhelmingly devoted to dryland grain farming, and EPA has not shown that SCAQMD controls are appropriate for ICAPCD's irrigated fields.

Response: Based on data in Table 4, EPA believes that the majority of ICAPCD harvested acreage is irrigated. However, EPA disagrees that farm acreage subject to SCAQMD controls is overwhelmingly devoted to dryland farming. See total harvested cropland acres and irrigated harvested cropland acres for Riverside County in Table 4. While historic irrigation may provide for some level of control, windblown dust from agriculture is a significant source, and ICAPCD is required to implement BACM level controls for windblown emissions from active and fallow agricultural fields. ICAPCD has not provided a convincing justification for why controls in the Coachella Valley Planning Area are not applicable to Imperial sources. ICAPCD's evaluation for BACM level controls for windblown dust from agricultural sources should include requirements in SCAQMD Rule 403 and the Coachella Valley Agricultural Handbook.

ALWD #5: ICAPCD notes that winds above 25 mph are extremely rare in the agricultural portion of Imperial Valley, and farmers usually avoid tilling on windy days to conserve soil. As a result, ICAPCD does not believe that SCAQMD's restriction for soil preparation and maintenance during days with winds above 25 mph would impact windblown dust emissions from agricultural fields in Imperial County. In contrast, Comite points to SCAQMD's requirements as potential BACM that ICAPCD has not properly considered.

Response: ICAPCD must analyze and implement BACM for agricultural windblown dust emissions.[162] Such analysis may consider whether a restriction on tilling activities on days with winds above 25 mph is appropriate in Imperial County pursuant to our guidance.[163] However, ICAPCD has not provided such analysis in the Regulation VIII submittal, its comments or elsewhere. To the extent that farmers avoid tilling on windy days to conserve soil anyway, this restriction would not seem to be onerous.

ALWD #6: ICAPCD comments that SCAQMD's only additional requirement for active fields besides the restriction on tilling on days with winds above 25 mph is to implement one more CMP from a list that includes minimum tillage. ICAPCD believes this CMP is not directly effective at reducing windblown emissions, and hence ICAPCD believes that by EPA's own reasoning, this requirement does not require windblown control on active fields in the South Coast Basin.

Response: ICAPCD has not explained why minimum tillage would not directly reduce windblown dust from active fields. EPA expects that minimum tillage would reduce windblown emissions by maintaining more plant residue on the field than conventional tillage. Establishing and maintaining land cover is one of the five principles noted in the National Agronomy Manual for wind erosion control.[164]

ALWD #7: Comite believes that more specificity and information must be provided concerning IID's Fallowing Program to ensure that emission reductions from it are quantifiable, verifiable and enforceable.

Response: ICAPCD must analyze and implement BACM for agricultural windblown dust emissions.[165] If, as a result of this analysis, ICAPCD concludes that IID's Fallowing Program is needed to implement BACM, then we agree that ICAPCD needs to provide more information about IID's program and ensure that controls that are provided through the program are enforceable.

ALWD #8: Regarding EPA concerns with agricultural windblown dust controls, ICAPCD and the Farm Bureau note that Rule 806 was modeled after EPA-approved SJVUAPCD Rule 4550 at EPA's recommendation.

Response: EPA's guidance provides that BACM is determined on a case-by-case basis and can consider the specific conditions of the nonattainment area.[166] When we approved SJVUAPCD Rule 4550, we did not believe that SJVUAPCD had a regular and repeated windblown dust problem.[167] However, ICAPCD asserts in its 2009 PM_{10} Plan that the "overwhelming majority of airborne PM in Imperial County is primary PM. The major source of primary PM is fugitive windblown dust * * *."[168] Moreover, ICAPCD's 2009 PM_{10} Plan discusses how the flat terrain of Imperial Valley and strong temperature differentials produce moderate winds and how Imperial County occasionally experiences high winds with speeds greater than 30 mph in April and May. In addition, the 2009 PM_{10} Plan attributes monitored exceedances in September and June to high winds.[169] As a result, EPA believes that ICAPCD must consider windblown dust controls for agricultural sources. Also, see responses to comments General #3 and EE #5.

ALWD #9: The Farm Bureau notes that both Rule 806 and the "Agricultural Air Quality Conservation Management Practices for Imperial Valley" were developed consistent with rules adopted in other areas and EPA recommendations. As a result, the Farm Bureau believes that this ensured Rule 806 was adequate.

Response: See response to comment General #3.

L. Other Controls (OC)

OC #1: Comite believes Regulation VIII should be further strengthened by removing director's discretion in Rule 802 section D.1, and removing the exemption in Rule 802 section D.4. ICAPCD objects to EPA's concerns regarding Rule 802 section D.1 because: (1) The APCO's discretion is limited to a determination of whether any of the controls in sections F.1 through F.3 can be implemented to satisfy the 20% opacity and stabilized surface requirements; (2) where a SIP-approved rule provides APCO discretion, the APCO can exercise the discretion without further SIP-approval; and (3) EPA has final enforcement authority for SIP-approved rules.

Response: EPA believes that the director's discretion provisions in Rule 802 are generally not acceptable under the CAA. Regarding ICAPCD's first argument, Rule 802 section D.1 provides the APCO discretion to waive completely the opacity and stabilized surface requirements without limiting discretion either by a procedure that the APCO must use (*e.g.,* test method X) or by boundaries to the discretion (*e.g.,* up to 30% opacity instead of 20% opacity). Thus, the discretion is not "limited."

Regarding ICAPCD's second argument, we note initially that EPA has a long history of rejecting such broad APCO discretion in SIP rules.[170]

[162] Proposal TSD, pp. 5–7.

[163] General Preamble Addendum at 42013.

[164] See p. 502–17 of the USDA NRCS National Agronomy Manual, October 2002.

[165] Proposal TSD, pp. 5–7.

[166] See General Preamble Addendum at 42010 and 42012.

[167] *See, e.g.,* 73 FR 14687, 14693 (March 19, 2008).

[168] 2009 PM_{10} SIP, p. 1–1.

[169] 2009 PM_{10} SIP, pp. 1–3 and 2–4.

[170] *See, e.g.,* "Guidance Document for Correcting Common VOC and Other Rule Deficiencies," U.S.

Continued

Moreover, we limit such discretion precisely because the APCO can exercise it without further SIP approval where a SIP-approved rule provides APCO discretion.

Regarding ICAPCD's third argument, while we can enforce SIP-approved rules, as stated, director's discretion provisions undermine their enforceability because enforcement of the rules are constrained by their terms. In this case, EPA or others could be restricted in enforcing against activity exempted by the APCO if this provision were SIP-approved.

While we share Comite's concerns with Rule 802 section D, our limited disapproval with respect to Rule 802 section D will not trigger sanctions or a FIP obligation because Rule 802 does not address a source category identified as significant and thus requiring BACM at this time. Therefore our limited disapproval will not trigger sanctions under CAA section 179 or a FIP obligation under section 110(c) with respect to bulk materials regulated by Rule 802. However, should regulation of bulk materials be subject to the BACM requirement in the future or to meet other SIP planning requirements under CAA title I, part D such as reasonable further progress or attainment, the APCO discretion in Rule 802 section D.1 or the exemptions in Rule 802 section D.4 could result in such consequences and/or affect the emission reduction credit for the rule.

M. Statutory and Executive Order Reviews (SEO)

SEO #1: OWD believes that EPA should address Executive Order 12898, which requires Federal agencies to identify and address disproportionately adverse health or environmental impacts on minority and low-income populations. Specifically, OWD believes that EPA's action may impact Imperial County's Hispanic and low-income population by reducing tourist income from OHV users. In contrast, Comite applauds the commitment of the Regional Administrator of EPA Region 9 to environmental justice principles, and notes that relatively large portions of the population in this area are not only Hispanic and poor, but are also suffering from poor health and this is exacerbated by air pollution problems in this area.

Response: EPA agrees it is important to consider environmental justice in our actions and we briefly addressed environmental justice principles in our proposal TSD.[171] Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 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. The Executive Order has informed the development and implementation of EPA's environmental justice program and policies. Consistent with the Executive Order and the associated Presidential Memorandum, the Agency's environmental justice policies promote environmental protection by focusing attention and Agency efforts on addressing the types of environmental harms and risks that are prevalent among minority, low-income and Tribal populations.

This action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or Tribal populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Specially, EPA's limited approval and limited disapproval of Regulation VIII would have the affect of strengthening environmental requirements throughout ICAPCD, and would not relax environmental requirements in any area. Thus it promotes environmental justice by increasing the level of human health and environmental protection for an area where, as the commenters note, relatively large portions of the population are low income and/or minority.

SEO #2: OWD notes that EPA's action may be subject to NEPA evaluation.

Response: EPA actions under the CAA are exempt from NEPA.[172]

SEO #3: OWD believes that EPA should address increased management costs for Imperial County's OHV recreation areas and the effects on OHV areas outside Imperial County. As a result, OWD does not believe that EPA has a basis to claim (regarding the Unfunded Mandates Reform Act), that no additional costs result from this action.

Response: As explained in our proposal, our action would approve and disapprove pre-existing requirements under State or local law, and impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.[173]

III. EPA Action

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

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

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

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the

EPA Region IX, August 21, 2001 (the Little Bluebook); and "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," U.S. EPA, OAQPS, May 25, 1998 (The Bluebook).

[171] Proposal TSD, p. 3.

[172] *See* 40 CFR 6.101(b).

[173] 75 FR 8008, 8012–8013.

agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

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

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

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval and limited disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves and disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves and disapproves State rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

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

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

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

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

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

I. National Technology Transfer and Advancement Act

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

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

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 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. The Executive Order has informed the development and implementation of EPA's environmental justice program and policies. Consistent with the Executive Order and the associated Presidential Memorandum, the Agency's environmental justice policies promote environmental protection by focusing attention and Agency efforts on addressing the types of environmental harms and risks that are prevalent among minority, low-income and Tribal populations.

This action will not have disproportionately high and adverse human health or environmental effects on minority, low-income or Tribal populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Specially, EPA's simultaneous limited approval and limited disapproval of Regulation VIII would have the effect of strengthening environmental requirements throughout ICAPCD, and would not relax environmental requirements in any area.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective on August 9, 2010.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 7, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirement.

Dated: June 15, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(345)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(345) * * *

(i) * * *

(E) Imperial County Air Pollution Control District.

(1) Rule 800,"General Requirements for Control of Fine Particulate Matter (PM–10)," adopted on October 10, 1994, revised on November 25, 1996 and revised on November 8, 2005.

(2) Rule 801,"Construction & Earthmoving Activities," Rule 802, "Bulk Materials," Rule 803,"Carry-Out & Track-Out," Rule 804,"Open Areas," Rule 805,"Paved & Unpaved Roads," Rule 806,"Conservation Management Practices," adopted on November 8, 2005.

* * * * *

[FR Doc. 2010–16350 Filed 7–7–10; 8:45 am]

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Thursday,
July 8, 2010

Part IV

Farm Credit Administration

12 CFR Part 615

Funding, Fiscal Affairs, Loan Policies and Funding Operations; Proposed Rule

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC61

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy; Capital Components—Basel Accord Tier 1 and Tier 2

AGENCY: Farm Credit Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Farm Credit Administration (FCA or we) is considering the promulgation of Tier 1 and Tier 2 capital standards for Farm Credit System (FCS or System) institutions. The Tier 1/Tier 2 capital structure would be similar to the capital tiers delineated in the Basel Accord that the other Federal financial regulatory agencies have adopted for the banking organizations they regulate. We are seeking comments to facilitate the development of this regulatory capital framework, including new minimum risk-based and leverage ratio capital requirements that take into consideration both the System's cooperative structure of primarily wholesale banks owned by retail lender associations that are, in turn, owned by their member borrowers, and the System's status as a Government-sponsored enterprise.

DATES: You may send comments on or before November 5, 2010.

ADDRESSES: There are several methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (faxes) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act (29 U.S.C. 794d), we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- *Federal E–Rulemaking Web site: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Send mail to Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or on our Web site at *http://www.fca.gov.* Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Laurie Rea, Associate Director, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4232, TTY (703) 883–4434, or

Chris Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4204, TTY (703) 883–4434, or

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I. Objective

The objective of this advance notice of proposed rulemaking (ANPRM) is to seek public comments to help us formulate proposed regulations that would:

1. Promote safe and sound banking practices and a prudent level of regulatory capital for System institutions;
2. Minimize differences, to the extent appropriate, in regulatory capital requirements between System institutions [1] and federally regulated banking organizations; [2]
3. Improve the transparency of System capital for System stockholders, investors, and the public; and
4. Foster economic growth in agriculture and rural America through the effective allocation of System capital.

II. Summary and List of Questions

A. Introduction

In October 2007, the FCA published an ANPRM on the risk weighting of assets—the denominator in our risk-based core surplus, total surplus, and permanent capital ratios; a possible leverage ratio, and a possible early intervention framework (October 2007 ANPRM).[3] The comment letter we received in December 2008 from the Federal Farm Credit Banks Funding Corporation on behalf of the System (System Comment Letter) focused primarily on the numerators of those regulatory capital ratios.[4] The System urged us to replace the core surplus and total surplus capital standards with a "Tier 1/Tier 2" capital framework consistent with the Basel Accord (Basel I) and the other Federal financial regulatory agencies' (FFRAs [5]) guidelines to help provide a level playing field for the System in competing with commercial banks in accessing the capital markets. Furthermore, the System recommended that we replace our net collateral ratio (NCR), which is applicable only to

[1] For the purposes of this ANPRM, "System institutions" include System banks and associations but do not include service organizations or the Federal Agricultural Mortgage Corporation (Farmer Mac).

[2] Banking organizations include commercial banks, savings associations, and their respective holding companies.

[3] 72 FR 61568 (October 31, 2007).

[4] Comment letter dated December 19, 2008, from Jamie Stewart, President and CEO, Federal Farm Credit Banks Funding Corporation, on behalf of the System. This letter and its attachments are available in the "Public Comments" section under "Capital Adequacy—Basel Accord—ANPRM" at *http://www.fca.gov.*

[5] We refer collectively to the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) as the other "Federal financial regulatory agencies" or FFRAs.

banks, with a non-risk-based leverage ratio applicable to all System institutions. We have responded to a number of issues and comments raised in the System Comment Letter in drafting this ANPRM.

Basel I is a two-tiered capital framework for measuring capital adequacy that was first published in 1988 by the Basel Committee on Banking Supervision.[6] Tier 1 capital, or core capital, consists of the highest quality capital elements that are permanent, stable, and immediately available to absorb losses and includes common stock, noncumulative perpetual stock, and retained earnings. Tier 2 capital, or supplementary capital, includes general loan-loss reserves, hybrid instruments such as cumulative stock and perpetual debt, and subordinated debt. Basel I established a minimum 4-percent Tier 1 risk-based capital ratio and an 8-percent total risk-based capital ratio (Tier 1 + Tier 2).

In December 2009, the Basel Committee published a consultative document (Basel Consultative Proposal) that proposes fundamental reforms to the current Tier 1/Tier 2 capital framework.[7] The Basel Committee's primary aims are to improve the banking sector's ability to absorb shocks arising from financial and economic stress, to mitigate spillover risk from the financial sector to the broader economy, and to increase bank transparency and disclosures. The Basel Committee intends to develop a set of new capital and liquidity standards by the end of 2010 to be phased in by the end of 2012. Although the FFRAs have discretion whether or not to adopt the new standards, they are members of the Basel Committee and have encouraged the public to review and comment on the Basel Committee's proposals. Consequently, we believe it is important for the FCA to consider the Basel Consultative Proposal in formulating new capital standards for System institutions, and we encourage commenters on our ANPRM also to review and consider the Basel Committee's proposals.

B. The Farm Credit System

The Farm Credit System (FCS or System) is a federally chartered network of borrower-owned lending cooperatives and related service organizations. Cooperatives are organizations that are owned and controlled by their members who use the cooperatives' products or services. The System was created by Congress in 1916 as a farm real estate lender and was the first Government-sponsored enterprise (GSE); in subsequent years, Congress expanded the System to include production credit, cooperative, rural housing, and other types of lending. The mission of the FCS is to provide sound and dependable credit to its member borrowers, who are American farmers, ranchers, producers or harvesters of aquatic products, their cooperatives, and certain farm-related businesses and rural utility cooperatives. The FCA is the System's independent Federal regulator that examines and regulates System institutions for safety and soundness and mission compliance. The System's enabling statute is the Farm Credit Act of 1971, as amended (Act).[8]

The System is composed of 88 associations that are direct retail lenders; four Farm Credit Banks that are primarily wholesale lenders to the associations; an Agricultural Credit Bank (CoBank, ACB) that makes retail loans to cooperatives as well as wholesale loans to associations; and a few service organizations.[9] Each System bank has a district, or lending territory, which includes the territories of the affiliated associations that it funds; CoBank, in addition, lends to cooperatives nationwide. There are currently two types of System association structures: Agricultural credit associations (ACAs) that are holding companies with subsidiary production credit associations (PCAs) and Federal land credit associations (FLCAs), and stand-alone FLCAs. PCAs make short- and intermediate-term operating or production or rural housing loans, and FLCAs make real estate mortgage loans and long-term rural housing loans. ACAs have the authorities of both PCAs and FLCAs.

The five banks collectively own the Federal Farm Credit Banks Funding Corporation (Funding Corporation), which is the fiscal agent for the System banks and is responsible for issuing and marketing Systemwide debt securities in domestic and global capital markets. The proceeds from the securities are used by the banks to fund their lending and other operations, and the banks are jointly and severally liable on the debt.

C. The FCA's Current Capital Regulations

The FCA currently has three risk-based minimum capital standards: A 3.5-percent core surplus ratio (CSR), a 7-percent total surplus ratio (TSR), and a 7-percent permanent capital ratio (PCR).[10] Congress added a definition of "permanent capital" to the Act in 1988 and required the FCA to adopt risk-based permanent capital standards for System institutions. The FCA adopted permanent capital regulations in 1988 and, in 1997, added core surplus and total surplus capital standards for banks and associations, as well as a non-risk-based net collateral ratio (NCR) for banks.[11] Since then, we have made only minor changes to these regulations.

Permanent capital is defined primarily by statute and includes current earnings, unallocated and allocated earnings, stock (other than stock retirable on repayment of the holder's loan or at the discretion of the holder, and certain stock issued before October 1988), surplus less allowance for losses, and other debt or equity instruments that the FCA determines appropriate to be considered permanent capital. Core surplus contains the highest quality capital, similar (but not identical) to Basel I's Tier 1 capital and generally consists of unallocated retained earnings, certain allocated surplus, and noncumulative perpetual preferred stock less, for associations, the association's net investment in its affiliated bank. Total surplus generally contains most of the components of permanent capital but excludes stock held by borrowers as a condition of obtaining a loan and certain other instruments that are routinely and frequently retired by institutions.

Section IV of this ANPRM provides more detailed information for readers who are not familiar with our regulatory capital requirements; the FCA's October 2007 ANPRM and comments; and Basel I and the Basel Consultative Proposal.

D. List of Questions

This ANPRM poses questions on the possible promulgation of regulatory capital standards based on Basel I and the FFRAs' guidelines while keeping in mind the reforms being proposed by the Basel Committee. It is tailored to account for the member-owner cooperative structure and GSE mission of the System. The questions are listed

[6] Basel I has been updated several times since 1988. The Basel Committee's documents are available at *http://www.bis.org/bcbs/index/htm.*

[7] "Basel Consultative Proposals to Strengthen the Resilience of the Banking Sector," December 17, 2009. The document is available at *http://www.bis.org/publ/bcbs164.htm.*

[8] 12 U.S.C. 2001–2279cc. The Act is available at *http://www.fca.gov* under "FCA Handbook."

[9] This is the System's structure as of April 30, 2010. Farmer Mac, which is a corporation and federally chartered instrumentality, is also an institution in the System. The FCA has a separate set of capital regulations that apply to Farmer Mac, and the questions in this ANPRM do not pertain to Farmer Mac's regulations.

[10] *See* 12 CFR 615.5201–5216 and 615.5301–5336.

[11] *See* 53 FR 39229 (October 6, 1988) and 63 FR 39229 (July 22, 1998).

below and followed by a full discussion in Section III.

1. We seek comments on the different ways System banks and associations retain and distribute capital, how their borrowers influence the System institution's retention and distribution of capital, and how such differences should be captured in a new regulatory capital framework. Should we adopt separate and tailored regulatory capital standards for banks and associations? Why or why not?

2. We seek comments on ways to address bank and association interdependent relationships in the new regulatory capital framework. Should we establish an upper Tier 1 minimum standard for banks and associations? Why or why not? If so, what capital items should be included in upper Tier 1, and should bank requirements differ from association requirements?

3. We seek comments on ways to ensure that the majority of Tier 1 and total capital is retained earnings and capital held by or allocated to an institution's borrowers. Should we establish specific regulatory restrictions on third-party capital? Why or why not? If so, should there be different restrictions for banks and associations?

4. We seek comments on the role that permanent capital will play in a new regulatory capital framework. Should we replace any regulatory limits and/or restrictions based on permanent capital with a new limit based on Tier 1 or total capital? If so, what should the new limits and/or restrictions be? Also, we ask for comments on how, or whether, to reconcile the sum of Tier 1 and Tier 2 (*e.g.,* total capital) with permanent capital.

5. We seek comments on other types of allocated surplus or stock in the System that could be considered unallocated retained earnings (URE) equivalents under a new regulatory capital framework. We ask commenters to explain how these other types of allocated surplus or stock are equivalent to URE.

6. We seek comments on ways to limit reliance on noncumulative perpetual preferred stock (NPPS) as a component included in Tier 1 capital while avoiding the downward spiral effect that can occur when other elements of Tier 1 capital decrease.

7. We seek comments to help us develop a capital regulatory mechanism that would allow System institutions to include allocated surplus and member stock in Tier 1 capital. Using the table titled "System Institutions Capital Distributions Restrictions and Reporting Requirements" as an example, what risk metrics would be appropriate to classify a System institution as Category 1, Category 2, or Category 3? What percentage ranges would be appropriate for each risk metric under each category? We also seek comments on the increased restrictions and/or reporting requirements listed in Category 2 and Category 3.

8. We seek comments on whether the FCA should count a portion of the allowance for loan losses (ALL) as regulatory capital. We also seek information on how losses for unfunded commitments equate to ALL and why they should be included as regulatory capital. We ask commenters to take into consideration the Basel Consultative Proposal and any recent changes to FFRA regulations in relation to the amount or percentage of ALL includible in Tier 2 capital.

9. We seek comments on the treatment of cumulative perpetual and term-preferred stock as Tier 2 capital subject to the same conditions imposed by the FFRAs.

10. We seek comments on authorizing System institutions to include a portion of unrealized holding gains on available-for-sale (AFS) equity securities as regulatory capital. We ask commenters to provide specific examples of how this component of Tier 2 capital would be applicable to System institutions.

11. We seek comments on the treatment of intermediate-term preferred stock and subordinated debt as Tier 2 capital and conditions for their inclusion in Tier 2 capital.

12. We seek comments on how to develop a regulatory mechanism to make a type of perpetual preferred stock that can be continually redeemed (referred to as H stock by most associations that have issued it) more permanent and stable so that the stock may qualify as Tier 2 capital.

13. We seek comments on the regulatory adjustments in our current regulations that we expect to incorporate into the new regulatory capital framework. We also seek comments on the regulatory capital treatment for positions in securitizations that are downgraded and are no longer eligible for the ratings-based approach under the new regulatory capital framework.

III. The Tier 1/Tier 2 Capital Framework Under Consideration by the FCA and Associated Questions

The table below displays the possible treatment of the System's capital components under a framework that is consistent with the FFRAs' current Tier 1/Tier 2 capital framework. We anticipate that the Basel Consultative Proposal could lead to significant changes to this framework, and we ask commenters to take the Basel Committee's proposals into consideration when answering the questions in this ANPRM.

Capital element	Comments
Tier 1 Capital	
URE & URE Equivalents	We may create the term "URE equivalents" and ask commenters to help us identify types of allocated surplus and/or stock that would constitute URE equivalents.
Noncumulative Perpetual Preferred Stock (NPPS).	We may limit NPPS to an amount less than 50 percent of Tier 1 capital. We seek comments on ways to limit NPPS as Tier 1 capital while avoiding the downward spiral effect that can occur when other elements of Tier 1 capital decrease.
Allocated Surplus and Member Stock	We may treat most forms of allocated surplus and member stock as Tier 1 capital, provided System institutions are subject to a regulatory mechanism that would give the FCA the additional ability to effectively monitor and, if necessary, take actions that would restrict, suspend, or prohibit capital distributions before a System institution reaches its regulatory capital minimums. We ask commenters to help us develop this mechanism.
Tier 2 Capital	
Association's Excess Investment in the Bank	We may treat the amount of an association's investment that is in excess of its bank requirement, whether counted by the bank or the association, as Tier 2 capital.
Allowance for Loan Losses (ALL)	We have not determined whether any portion of ALL should be treated as Tier 2 capital. We seek comments as to why the FCA should count a portion of ALL as regulatory capital.

Capital element	Comments
Cumulative Perpetual Preferred Stock and Long-Term Preferred Stock.	We may adopt the definitions, criteria and/or limits consistent with future revisions to the Basel Accord and FFRA guidelines. We also may adopt aggregate third-party capital limits that are unique to the System.
Unrealized Holding Gains on AFS Securities	This element is currently addressed in the FFRAs' guidelines but is subject to change. We seek comment on the appropriate treatment of this element and specific examples of how this application would affect System institutions.
Intermediate-term Preferred Stock and Subordinated Debt.	We may adopt the definitions, criteria and/or limits consistent with future revisions to the Basel Accord and FFRA guidelines. We also may adopt aggregate third-party capital limits that are unique to the System.
Association Continuously Redeemable Preferred Stock.	We view this element as a 1-day term instrument that would not currently qualify as Tier 1 or Tier 2 capital. We seek comments to help us develop a regulatory mechanism that would make the stock sufficiently permanent to be included in Tier 2 capital.
Regulatory Adjustments	
We may apply most of the deductions currently in our egulations to the new regulatory capital ratios. However, in view of the Basel Consultative Proposal, we are considering reflecting the net effect of accumulated other comprehensive income in the new regulatory capital ratios.	

A. The Tier 1/Tier 2 Capital Structure Within a Broader Context

1. Discussion of Bank and Association Differences

We established core surplus and total surplus standards in 1997 to ensure System institutions would have a more stable capital cushion that would provide some protection to System institutions, investors, and taxpayers; reduce the volatility of capital in relation to borrower stock retirements; and ensure that the institutions always maintain a sufficient amount of URE to absorb losses. Our determinations were influenced, in part, by what we learned in the 1980s when the System experienced severe financial problems.[12] At that time, the System was employing an average-cost pricing strategy that caused System loans to be priced below rates offered by other lenders when interest rates were high (*e.g.,* in the early 1980s) and above rates offered by other lenders when interest rates fell (*e.g.,* in the mid-1980s). When the System's rates were no longer competitive, many higher quality borrowers who could easily find credit elsewhere began to leave the System. Those who left early in the crisis were able to have the institution retire their stock at par, which at that time was around 5 to 10 percent of the loan (or some borrowers simply paid down their loans to an amount equal to their stock), causing capital and loan portfolio quality to drop sharply at many associations.

Some association boards had the legal discretion to suspend stock retirements but did not do so, perhaps to help their borrowers in times of distress but also to avoid sending a message to remaining and potential borrowers that borrower stock was risky. The result was that, in many cases, these actions left remaining stockholders bearing the brunt of more severe association losses. We concluded from these events that associations needed to build surplus cushions to be able to continue retiring borrower stock on a routine basis and to reduce the volatility associated with borrower stock retirements, and our 1997 regulations have effectively required associations to establish such cushions. System banks and associations retain and distribute capital differently. For this reason, we will consider whether to establish separate and tailored regulatory capital standards for banks and for associations as we construct a new regulatory capital framework.

System banks do not routinely retire their stock in the ordinary course of business or revolve surplus in the same manner as associations. At the present time, each bank has established a "required investment,"[13] which may consist of both purchased stock and allocated surplus, for each of its affiliated associations.[14] This required investment, which is generally a percentage of the association's direct loan outstanding from the bank, can fluctuate within a bank board's established range depending upon the bank's capital needs. The bank's bylaws usually require an association that falls short of the required investment to purchase additional stock in the bank.[15] In most cases, the banks make little distinction between purchased stock and allocated surplus.

Associations make a greater distinction between borrower stock and the surplus they allocate to borrowers.[16] Borrower stock held by retail borrowers as a condition of obtaining a loan is routinely retired by the association at par when the borrower pays off or pays down the loan. Some associations allocate earnings, and others do not. Some associations do not have allocated equity revolvement plans and distribute patronage only in the form of cash on an annual basis.[17] Other associations do not have allocated equity revolvement plans but distribute some patronage in the form of nonqualified or qualified allocated equities on a regular basis; they generally determine how such equity will be distributed on an ad hoc or annual basis after assessing market conditions. Still other associations have equity revolvement plans and distribute earnings as either cash or nonqualified or qualified allocated equities consistent with the plan; however, they have the power to withhold or suspend cash distributions to respond to changing economic and financial conditions.

The cooperative structure and operations of System associations are significantly different from a typical corporate structure in that a borrower's

[12] This discussion presents a simplified explanation of the System's financial problems in the 1980s. *See* 60 FR 38521 (July 27, 1995) and 61 FR 42092 (August 13, 1996) for a more comprehensive discussion. These **Federal Register** documents are available at *http://www.fca.gov.* To find them, go to the home page and click on "Law & Regulations," then "FCA Regulations," then "Public Comments," then "View **Federal Register** Documents."

[13] *See* Section III.B.1.c. for a more detailed discussion of the bank's required investment.

[14] We are generalizing about how banks retain and distribute capital. In practice, each bank has its own unique policies and practices for retaining and distributing capital. For example, one bank distributes patronage to its associations in the form of either cash or stock, and the associations' investments consist only of bank stock. This bank retires its stock over a long period of time, depending upon its capital needs.

[15] *See* Section III.B.2.a. for a more detailed discussion of the excess investment.

[16] *See* Section III.B.1.c. for a more detailed discussion of association borrower stock and allocated surplus.

[17] All associations are required to have capital plans, but these plans may or may not include regular allocated equity revolvement plans.

expectation of patronage distributions can and does influence the permanency and stability of association stock and allocated surplus. In addition, a System bank's retention and distribution of bank stock and bank surplus are different from those of associations for a number of reasons, including the tax implications and the fact that an association cannot easily find debt financing from sources other than the bank. We are asking commenters to consider the unique structure and practices of System banks and associations, the characteristics and expectations of their borrowers, and how such characteristics and expectations can impact the stability and permanency of stock and surplus.

Question 1: We seek comments on the different ways System banks and associations retain and distribute capital, how their borrowers influence the System institution's retention and distribution of capital, and how such differences should be captured in a new regulatory capital framework. Should we adopt separate and tailored regulatory capital standards for banks and associations? Why or why not?

2. *Limits and Minimums*

The current regulatory capital minimums imposed by the FFRAs include a 4-percent Tier 1 risk-based capital ratio, an 8-percent minimum total risk-based capital ratio with the amount of Tier 2 components limited to the amount of Tier 1, and a 4-percent minimum Tier 1 non-risk-based leverage ratio. These standards could change as a result of efforts to revise the risk-based capital ratios and introduce a non-risk-based leverage ratio that may integrate off-balance sheet items as outlined in the Basel Consultative Proposal. We are also considering an "upper Tier 1" minimum consistent with the Basel Committee's proposed common equity standard. An upper Tier 1 minimum would ensure that the predominant form of a System institution's Tier 1 capital consists of the highest quality capital elements. Finally, we are studying third-party capital limits that take into consideration the System's GSE charter and cooperative form of organization.[18] These limits and/or minimums for System banks may differ from the limits and minimums for associations.

a. Upper Tier 1 Minimum

Upper Tier 1 in a commercial banking context is typically referred to as "tangible common equity"; it is the highest quality portion of a commercial bank's Tier 1 capital and consists of common stockholder's equity and retained earnings. A commercial bank's upper Tier 1 capital, or tangible common equity, is the most permanent and stable capital available to absorb losses to ensure it continues as a going concern. The FRB's and FDIC's regulatory guidelines state that the dominant form of Tier 1 capital should consist of common stockholder's equity and retained earnings.[19] Upper Tier 1 in a System lending institution context would not necessarily have the equivalent components of tangible common equity at a commercial bank. The FCA's position has been that borrower stock and many forms of allocated surplus are generally less permanent, stable and available to absorb losses than URE and URE equivalents [20] because suspension of patronage distributions and stock retirements can have negative effects on the institution's relationship with its existing and prospective customers. We currently restrict all forms of allocated equities includible in core surplus to 2 percentage points [21] of the 3.5-percent CSR unless a System institution has at least 1.5 percent of uncommitted, unallocated surplus and noncumulative perpetual preferred stock.[22]

As noted above, the Basel Committee is considering establishing a new common equity standard [23] and has described the characteristics that instruments must have to qualify as common equity. Instruments such as member stock and surplus in cooperative financial institutions must also have these characteristics to be included in common equity. The FCA will take into account these characteristics as it considers an upper Tier 1 standard for System institutions.

We are also considering an upper Tier 1 minimum to address interdependency risk within the System. Because of their financial and operational interdependence, financial problems at one System institution can spread to other System institutions. An upper Tier 1 capital requirement could help moderate these interdependent relationships if it contains uncommitted, high quality, loss-absorbing capital that protects the investors of a System institution from its own financial problems as well as from the financial problems of other System institutions.

A commercial bank that needs additional upper Tier 1 capital may have the ability to issue additional common stock to investors without any direct impact on its customers. System institutions have fewer options to increase their highest quality capital, and exercising these options could have negative effects on their member borrowers in adverse situations. For example, if a System bank suffers severe losses and needs to replenish capital, its only options might be to reduce or suspend patronage distributions to its affiliated associations or to increase its associations' minimum required investments in the bank, or both. Since an association depends, to some extent, on the earnings distributions it receives from its bank, the association would have less income to purchase additional capital to support its struggling bank. The association might have to use its earnings from its own operations to recapitalize the bank instead of making cash patronage distributions to its borrowers or capitalizing new loans. The bank's financial weakness could spur the association to try to reaffiliate with another System bank; however, as the System Comment Letter points out,[24] associations cannot easily reaffiliate with another funding bank or voluntarily liquidate or terminate System status under a stressed bank financial scenario. A sufficient amount of upper Tier 1 capital at the bank that consists of unallocated capital would help cushion the bank losses that can negatively impact the associations and their borrowers. It would protect the association's investment and reduce the likelihood that the bank will raise the association's capital requirement at a

[18] Third-party capital is capital issued to parties who are not borrowers of the System institution and are not other System institutions. Existing third-party regulatory capital in System institutions includes both preferred stock and subordinated debt.

[19] FRB guidelines for state member banks are in 12 CFR part 208, App. A, II.A.1. FRB guidelines for bank holding companies (BHCs) are in 12 CFR part 225, App. A, II.A.1.c(3). FDIC guidelines for state non-member banks are in 12 CFR part 325, App. A, I.A.1(b).

[20] URE is earnings not allocated as stock or distributed through patronage refunds or dividends. URE equivalents are other forms of surplus that have the same or very similar characteristics of permanence (*i.e.,* low expectation of redemption), stability and availability to absorb losses as URE.

[21] In other words, if an institution has at least 1.5 percent of uncommitted, unallocated surplus and noncumulative perpetual preferred stock, it may include qualifying allocated equities in core surplus in excess of 2 percentage points.

[22] The NCUA has taken a similar position as it considers adopting a Tier 1/Tier 2 regulatory capital framework for the institutions it regulates. The NCUA has also proposed a retained earnings minimum for corporate credit unions to help prevent the downstreaming of the losses to the credit unions they serve. *See* 74 FR 65209 (December 9, 2009).

[23] *See* paragraph 87 of the Basel Consultative Proposal.

[24] *See* footnote 4 above.

time when the association is least able to afford it.

Upper Tier 1 requirements at associations would also protect the borrowers' investments in the institution. Associations with financial problems might not have additional capital to meet the bank's required investment, and the bank might, in turn, try to obtain additional capital from healthier associations to ensure the bank remains adequately capitalized. Because of these interdependent relationships, it is possible that weaker associations could pull down healthier associations. An adequate amount of upper Tier 1 capital at the associations would help protect the borrower's investment from losses resulting from these interdependent relationships.

If the FCA determines that borrower stock and allocated surplus can be treated in part or in whole as Tier 1 capital (depending upon appropriate regulatory mechanisms as discussed below), we may establish an upper Tier 1 minimum at both the banks and the associations to protect against systemic risks outside the control of the System institution. The upper Tier 1 requirement for System banks might be different from the requirement for associations. For example, an upper Tier 1 minimum at the banks might include only URE and URE equivalents to protect the associations' required investments in the bank. An upper Tier 1 minimum at the associations might include some forms of allocated surplus but exclude other forms of allocated surplus and most or all borrower stock.[25]

Question 2: We seek comments on ways to address bank and association interdependent relationships in the new regulatory capital framework. Should we establish an upper Tier 1 minimum for banks and associations? Why or why not? If so, what capital items should be included in upper Tier 1, and should bank requirements differ from association requirements?

b. Third-Party Capital Limits

System institutions capitalize themselves primarily with member stock and surplus. System institutions are also authorized to raise capital from third-party investors who are not borrowers of the System. Third-party capital may include various kinds of hybrid capital instruments such as preferred stock and subordinated debt. While diverse sources of capital improve a System institution's risk-bearing capacity and, to a certain extent, improve corporate governance through increased market discipline, the FCA believes that too much third-party capital would compromise the cooperative nature and GSE status of the System. Consequently, we have imposed limits on the amount of third-party capital that is includible in a System institution's regulatory capital.[26]

The FCA agrees with the position of the Basel Committee that the predominant form of capital should be stable, permanent, and of the highest quality. While NPPS provides loss absorbency in a going concern, it absorbs losses only after member stock and surplus have been depleted. Since member stock and surplus rank junior to NPPS, it is more difficult for a System institution to raise additional capital from its patrons during periods of adversity if it holds a significant amount of NPPS. Furthermore, while dividends can be waived and do not accumulate to future periods, System bank issuers of NPPS, like commercial banks, appear to have strong economic incentives not to waive dividends since doing so would send adverse signals to the market.[27] Additionally, unlike customers of commercial banks, the customers of System institutions are impacted when System institutions are prohibited from paying patronage because they skipped dividends on preferred stock. For these reasons, we are considering maintaining limits on third-party capital in both Tier 1 and total capital to ensure that member stock and surplus remain the predominant form of System capital.[28]

Question 3: We seek comments on ways we can ensure that the majority of Tier 1 and total capital is retained earnings and capital held by or allocated to an institution's borrowers. Should we establish specific regulatory restrictions on third-party capital? Why or why not? If so, should there be different restrictions for banks and associations?

3. The Permanent Capital Standard

Permanent capital is defined by statute to include stock issued to System borrowers and others, allocated surplus, URE, and other types of debt or equity instruments that the FCA determines is appropriate to be considered permanent capital, but expressly excludes ALL.[29] The Act imposes a permanent capital requirement and, therefore, it will remain part of the System's regulatory capital framework. The FCA will continue to enforce any restrictions or other requirements prescribed in the Act relating to the permanent capital standard. (One such restriction prohibits a System institution from distributing patronage or paying dividends (with specific exceptions) or retiring stock if the institution fails to meet its minimum permanent capital standard.)[30]

Several existing FCA regulations refer to measurements of permanent capital outstanding or PCR minimums.[31] For example, § 614.4351 sets a lending and leasing base for a System institution equal to the amount of the institution's permanent capital outstanding, with certain adjustments. Section 615.5270 permits a System institution's board of directors to delegate authority to management to retire stock as long as the PCR of the institution is in excess of 9 percent after any such retirements. Section 627.2710 sets forth the grounds for the appointment of a conservator or receiver for System institutions and defines a System institution as unsafe and unsound if its PCR is less than one-half of the minimum required level (3.5 percent). We could retain these regulations in their current form, but it may be more appropriate to change any or all of them to fit the new regulatory capital framework.

Question 4: We seek comments on the role that permanent capital will play in the new regulatory capital framework. Should we replace any regulatory limits and/or restrictions based on permanent capital with a new limit based on Tier 1 or total capital? If so, what should the new limits and/or restrictions be? Also, we ask for comments on how, or whether, to reconcile the sum of Tier 1 and Tier 2 (e.g., total capital) with permanent capital.

[25] We discuss the individual components of System capital in more detail below in Section III.B.

[26] The FCA currently limits NPPS to 25 percent of core surplus outstanding and imposes aggregate third-party regulatory capital limits of the lesser of 40 percent of permanent capital outstanding or 100 percent of core surplus outstanding. We also limit the inclusion of term preferred stock and subordinated debt to 50 percent of core surplus outstanding. (Institutions can issue third-party stock or subordinated debt in excess of these limits but cannot count it in their regulatory capital.)

[27] Market analysts might perceive a financial institution to be in worse financial condition when it waives preferred stock dividends, because it implies that the institution has previously eliminated its common stock dividends (or, in the case of a cooperative, its patronage).

[28] *See* also the discussion in Section III.B.1.b.

[29] Section 4.3A(a) of the Act (12 U.S.C. 2154a(a)).

[30] Section 4.3A(d) of the Act (12 U.S.C. 2154a(d)). Any System institution subject to Federal income tax may pay patronage refunds partially in cash as long as the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of the refund paid qualifies as permanent capital.

[31] The FCA's regulations are set forth in chapter VI, title 12 of the Code of Federal Regulations and available on the FCA's Web site under "Laws & Regulations."

B. The Individual Components of Tier 1 and Tier 2 Capital

1. Tier 1 Capital Components

We ask commenters to consider the Basel Consultative Proposal when addressing questions 5 through 7 below. The Basel Committee's proposed Tier 1 capital would include two basic components: Common equity (including current and retained earnings) and additional going-concern capital. Common equity must be the predominant form of Tier 1 capital. Common equity is, among other things, the highest quality of capital that represents the most subordinated claim in liquidation of a bank and takes the first and, proportionately, greatest share of losses as they occur. The instrument's principal must be perpetual, and the bank must do nothing to create an expectation at issuance that the instrument will be bought back, redeemed, or canceled. Additional going-concern capital is capital that is, among other things, subordinated to depositors and/or creditors, has fully discretionary noncumulative dividends or coupons, has no maturity date, and has no incentive to redeem.[32]

a. URE and URE Equivalents

URE is current and retained earnings not allocated as stock or distributed through patronage refunds or dividends. It is free from any specific ownership claim or expectation of allocation, it absorbs losses before other forms of surplus and stock, and it represents the most subordinated claim in liquidation of a System institution. The FCA expects to propose to treat URE as Tier 1 capital under the new regulatory capital framework.

URE equivalents are other forms of surplus that have the same or very similar characteristics of permanence (*i.e.,* low expectation of redemption) and loss absorption as URE. For example, the System Comment Letter recommends treating association and bank nonqualified allocated surplus not subject to revolvement (NQNSR) as Tier 1 capital.[33] In the comment letter, the System characterizes NQNSR as allocated equity on which the institution is liable for taxes in the year of allocation and which the institution does not anticipate redeeming. In addition, the institution has not revolved NQNSR outside of the context of liquidation, termination, or dissolution. The System explains that the "member [is] aware that his ownership interest in the [institution] has increased such that, in the event of liquidation of the [institution], the member has a larger claim on the excess of assets over liabilities." The FCA will likely consider such NQNSR to be the equivalent of URE and expects to propose to treat it as Tier 1 capital under a new regulatory capital framework.

The System recommends that the FCA treat "Paid-In Capital Surplus" resulting from an acquisition in a business combination as Tier 1 capital. Current accounting guidance for business combinations under U.S. generally accepted accounting principles (U.S. GAAP)[34] requires the acquirer in a business combination to use the acquisition method of accounting. This accounting guidance applies to System institutions and became effective for all business combinations occurring on or after January 1, 2009. For transactions accounted for under the acquisition method, the acquirer must recognize assets acquired, the liabilities assumed and any non-controlling interest in the acquired business measured at their fair value at the acquisition date. For mutual entities such as System institutions, the acquirer must recognize the acquiree's net assets as a direct addition to capital or equity in its statement of financial position, not as an addition to retained earnings.[35]

The System provided the FCA with three examples of potential acquisitions under FASB guidance on business combinations. In each example, the retained earnings of the acquiree are transferred to the acquirer as Paid-In Capital Surplus.[36] Under these three scenarios, Paid-In Capital Surplus functions similarly to URE and would likely be treated as Tier 1 capital under a new regulatory capital framework. However, it is equally plausible that under other scenarios, as part of the terms of the acquisition, the acquirer might allocate some or all of the acquiree's retained earnings subject to some plan or practice of revolvement or retirement. Under such scenarios, the allocated portion may or may not qualify as Tier 1 capital. The FCA would likely look at the specific acquisition before determining whether the capital transferred in the acquisition would be Tier 1 or Tier 2 capital.

Question 5: We seek comments on other types of allocated surplus or stock in the System that could be considered URE equivalents under a new regulatory capital framework. We ask commenters to explain how these other types of allocated surplus or stock are equivalent to URE.

b. Noncumulative Perpetual Preferred Stock

NPPS is perpetual preferred stock that does not accumulate dividends from one dividend period to the next and has no maturity date. The noncumulative feature means that the System institution issuer has the option to skip dividends. Undeclared dividends are not carried over to subsequent dividend periods, they do not accumulate to future periods, and they do not represent a contingent claim on the System institution issuer. The perpetual feature means that the stock has no maturity date, cannot be redeemed at the option of the holder, and has no other provisions that will require future redemption of the issue.

The FFRAs treat some, but not all, forms of NPPS as Tier 1 capital. For example, the FRB emphasizes that NPPS with credit-sensitive dividend features generally would not qualify as Tier 1 capital.[37] The FDIC views certain NPPS where the dividend rate escalates excessively as having more in common with limited life preferred stock than with Tier 1 capital instruments.[38] Furthermore, the OCC, FRB, and FDIC do not include NPPS in Tier 1 capital

[32] *See* paragraph 89 of the Basel Consultative Proposal.

[33] The associations refer to NQNSR in various ways such as "nonqualified retained earnings" or "nonqualified retained surplus." The System Comment Letter refers to bank NQNSR as "nonqualified allocated stock to cooperatives not subject to revolvement."

[34] On June 30, 2009, the Financial Accounting Standards Board (FASB) established the FASB Accounting Standards Codification™ (FASB Codification or ASC) as the single source of authoritative nongovernmental U.S. GAAP. In doing so, the FASB Codification reorganized existing U.S. accounting and reporting standards issued by the FASB and other related private-sector standard setters. More information about the FASB Codification is available at *http://asc.fasb.org/home.*

[35] This guidance was formerly included in pre-codification reference Statement of Financial Accounting Standards (SFAS) No. 141(R), *Business Combinations,* and is now incorporated into the FASB Codification at ASC Topic 805, *Business Combinations.*

[36] Since the System submitted its comment letter in December 2008, there have been several System mergers that were accounted for under the acquisition method and resulted in recording additional paid-in capital similar to the System's examples.

[37] *See* 12 CFR part 225, App. A, II.A.1.c.ii(2) for BHCs and Part 208, App. A, II.A.1.b for state member banks. If the dividend rate is reset periodically based, in whole or in part, on the institution's current credit standing, it is not treated as Tier 1 capital. However, adjustable rate NPPS where the dividend rate is not affected by the issuer's credit standing or financial condition but is adjusted periodically according to a formula based solely on general market interest rates may be included in Tier 1 capital.

[38] *See* 12 CFR part 325, App. B, IV.B. This is an issuance with a low initial rate that is scheduled to escalate to much higher rates in subsequent periods and become so onerous that the bank is effectively forced to call the issue.

if an issuer is required to pay dividends other than cash (*e.g.,* stock) when cash dividends are not or cannot be paid, and the issuer does not have the option to waive or eliminate dividends.[39]

As noted above, the Basel Committee is proposing to establish a set of criteria for including "additional going-concern capital" such as NPPS in Tier 1 capital.[40] We will consider these criteria in a future proposed rulemaking.

Consistent with the Basel Committee's position, the FCA believes that high quality member stock and surplus should be the predominant form of Tier 1 capital. We are seeking comments on how to ensure that NPPS remains the minority of Tier 1 capital under most circumstances. We note that a specific limit on the amount of NPPS that is includible in Tier 1 capital may create a downward spiral effect in adverse situations where decreases in high quality member stock and surplus also decrease the amount of NPPS includible in Tier 1 capital.

One option would be to establish a hard limit that is something less than 50 percent of Tier 1 capital at the time of issuance. If this limit is subsequently breached due to adverse circumstances, the System institution would be required to submit a capital restoration plan to the FCA that includes increasing surplus through earnings in order to bring the percentage of NPPS in Tier 1 capital back below the limit that is imposed at the time of issuance. During such adversity, the System institution may be limited in its ability to issue additional NPPS that would qualify for Tier 1 regulatory capital treatment.

Question 6: We seek comments on ways to limit reliance on NPPS as a component of Tier 1 capital while avoiding the downward spiral effect that can occur in adverse situations as described above.

c. Allocated Surplus and Member Stock

i. Overview of System Bank and Association Allocated Surplus and Member Stock

Each System bank provides its affiliated associations with a line of credit, referred to as a direct note, as the primary source of funding their operations. Each association, in turn, is required to purchase a minimum amount of equity in its affiliated bank. This required investment minimum is generally a percentage of its direct note outstanding.[41] For example, suppose a bank that has a required investment range of 2 percent to 6 percent, as set forth in its bylaws, establishes a current required investment minimum of 3 percent of an association's direct note outstanding.[42] If the association falls short of the 3-percent minimum, it would be required to purchase additional stock in the bank. If the association's investment is over the 3-percent minimum, the bank would distribute (sometimes over a long period of time through a revolvement plan) or allot, for regulatory capital purposes, the "excess investment" back to the association.

CoBank, ACB makes direct loans to System associations and is also a retail lender to agricultural cooperatives, rural energy, communications and water companies and other eligible entities. CoBank builds equity for its retail business using a "target equity level" that is similar to the required investment minimum described above.[43] The target equity level includes the statutory minimum initial borrower investment of $1,000 or 2 percent of the loan amount, whichever is less,[44] and equity that is built up over time through patronage distributions. The CoBank board annually determines an appropriate targeted equity level based on economic capital and strategic needs, internal capital ratio targets, financial and economic conditions, market expectations and other factors. CoBank does not automatically or immediately pay off the borrower's stock after the loan is paid in full. Rather, it retires the stock over a long period of time.[45]

Borrowers from System associations are statutorily required to purchase association stock as a condition of obtaining a loan. The purchase requirement is set by the association's board and, by statute, must be at least $1,000 or 2 percent of the loan amount, whichever is less. In practice over the past two decades, association boards have set the member stock (or participation certificates for individuals or entities that cannot hold voting stock) purchase requirement at the statutory minimum and routinely retire the purchased stock when the borrower pays off his or her loan.[46] Consequently, the borrower has a high expectation of stock retirement when his or her loan is paid off. Currently, member stock is not includible in core surplus or total surplus and makes up only a small portion of the association's capital base.

The majority of an association's regulatory capital base comes through retained earnings as either allocated surplus or URE. Allocated surplus is earnings that are distributed as patronage to an individual borrower but retained by the association as part of the member's equity in the institution. We do not consider allocated surplus that is subject to revolvement to be a URE equivalent, because the borrower has an expectation of distribution at some future point in time through a System association's equity revolvement program. These revolvement programs vary depending upon the unique circumstances of the association. Currently, allocated surplus that is subject to revolvement is a small part of the capital base of most associations.

ii. The System Comment Letter and FCA's Responses to Treating Allocated Surplus and Member Stock as Tier 1 Capital

The System Comment Letter recommends that all at-risk allocated surplus and member stock be Tier 1 capital. We have categorized the System's comments into broad arguments. We respond below after each broad argument.

The System's first argument is that various systems and agreements are in place to ensure the stability and permanency of allocated surplus and borrower stock. For example, while a regular practice or plan of retirement may give rise to an expectation of equity retirement, borrowers do not have the legal right to demand retirement. A System institution board has the sole discretion to suspend or stop equity distributions at any time if warranted by changing economic and financial conditions. Moreover, an institution's bylaws and capital plans put some restraints on capital distributions under certain conditions. The System also comments that the System banks and

[39] The OTS may allow this type of NPPS to qualify as Tier 1. *See* 73 FR 50326 (August 26, 2008), "Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies; Report to the Congressional Basel Committees."

[40] *See* paragraphs 88 and 89 of the Basel Consultative Proposal.

[41] The minimum may not be lower than the statutory minimum stock purchase requirement of $1,000 or 2 percent of the loan amount, whichever is less (section 4.3A(c)(1)(E) of the Act). The banks also have other programs in which associations and other lenders participate that require investment in the bank. We collectively refer to these investments as the bank's required minimum investment.

[42] The bank board may increase or decrease this minimum within the required investment range from time to time, depending upon the capital needs of the bank.

[43] For more detail on CoBank's target equity level, see CoBank's 2008 Annual Report. This document is available at *http://www.cobank.com.*

[44] Section 4.3A(c)(1)(E) of the Act (12 U.S.C. 2154a(c)(1)(E)).

[45] CoBank stated in its 2008 annual report that the target equity level is expected to be 8 percent of the 10-year historical average loan volume for 2009 and remain at that level thereafter.

[46] Under section 4.3A(c)(1)(I) of the Act (12 U.S.C. 2154a(c)(1)(I)), this stock is retired at the discretion of the association.

the Funding Corporation have entered into a Contractual Interbank Performance Agreement and a Market Access Agreement, which provide early and quick enforcement triggers to protect against a bank's weakening capital position. In addition, each bank has a General Financing Agreement (GFA) with its affiliated associations. The GFA requires each association to maintain a satisfactory borrowing base, which is a measure of capital adequacy. Third-party capital issuances (*e.g.,* preferred stock and subordinated debt) have terms that prohibit the payment of outsized cash patronage dividends and stock retirements if regulatory capital ratios are breached.

In our 1997 final rule on System regulatory capital, we addressed similar arguments and observed that internal systems and agreements alone do not ensure that System institutions consistently maintain sufficient amounts of high quality capital.[47] At the time, we decided to exclude member stock from core surplus and limit the inclusion of allocated surplus to ensure that System institutions had an adequate amount of uncommitted, unallocated surplus that was not at risk at another institution and not subject to borrower expectations of retirement or revolvement. However, as we discuss below, in developing the new regulatory capital framework, the FCA is considering what regulatory mechanisms could be put into place to make allocated surplus and member stock more permanent and stable so as to qualify as Tier 1 capital.

The System's second argument is that other banking organizations can treat similar equities as Tier 1 capital. For example, a Federal Home Loan Bank (FHLB) is permitted to include as "permanent capital" certain stock issued to commercial banks that is redeemable in cash 5 years after a commercial bank provides written notice to its FHLB.[48] In addition, Subchapter S commercial bank corporation (Subchapter S corporation) investors have expectations of regular dividend distributions that are similar to those of System borrowers, and FFRAs permit Subchapter S corporations to treat their equities as Tier 1 capital.[49]

In response to the second argument, while the FHLBs are not directly comparable to System institutions, we are open to suggestions on how to apply a 5-year or other time horizon to allocated surplus and member stock retirements. We note, however, that the inclusion of such stock in a FHLB's capital is mandated by statute and was not a safety and soundness determination made by the FHLB's regulator.[50] As for Subchapter S corporation investors, while they may have expectations of equity distributions that may be similar to those of System borrowers, Subchapter S corporations do not depend on their investors to make up the customer base of the institution. Consequently, the borrowers' influence on the System institution's retention and distribution of its stock and surplus may be different from the investors' influence on Subchapter S corporation's retention and distribution of its stock and surplus.

The System's third argument is that no distinction should be made between allocated surplus and URE based on cooperative principles. The System believes that cooperatives should be funded to the extent possible by current patrons on the basis of patronage. The System asserts that, if we require the majority of Tier 1 capital to be URE, the burden of capitalizing the institution is borne disproportionately by patrons who have repaid their loans and have ceased to use the credit services of the institution. The result is that current patrons enjoy the benefit the URE affords without bearing a substantial part of the burden of accumulating it. The System also contends that, from a tax perspective, retention of earnings as allocated surplus is a more efficient and less costly method of capital accumulation than URE. The single tax treatment under Subchapter T enables the cooperative to capitalize its operations from retention of patronage-sourced earnings and allows such earnings to be returned to its members without additional taxation. The result is that more of the earnings derived from the patron can be utilized to capitalize the cooperative's business at a lesser cost over time to the member. The System also states its belief that limits and/or exclusions of allocated surplus from Tier 1 capital would arbitrarily discourage System institutions from operating on a cooperative basis, unduly devalue allocated surplus, and prevent System institutions from maximizing non-cash patronage distributions as a component of capital management. The investment that borrowers hold in the institution would tend to remain relatively small, and without a material ownership stake in the institution, members are more likely to become disengaged from the processes of corporate governance and their crucial role in holding boards of directors accountable for poor performance. The System believes that the FCA should include all allocated surplus as Tier 1 capital.

In response to this third argument, we agree with the System that it is important to consider cooperative principles in developing the new regulatory capital framework. However, as noted above, allocated surplus that is regularly revolved is less stable and permanent than URE because of the borrower's reasonable expectation of equity distributions. In the current regulatory capital framework, we have striven to balance cooperative principles with FCA's safety and soundness objectives by treating only certain longer-term allocated equities as core surplus and requiring that at least 1.5 percent of core surplus be composed of elements other than allocated surplus. We continue to believe that certain regulatory mechanisms are needed to ensure that allocated equities subject to revolvement qualify as Tier 1 capital. We are willing to consider approaches other than time element restrictions. Association capital retention and distribution practices have changed over time and will continue to evolve. Our regulations should be flexible enough to encompass the myriad of institutions' revolvement plans without unduly hindering patronage distribution practices.

Five System associations also submitted individual comments recommending the FCA treat all association allocated surplus as Tier 1 capital. The five commenters assert that borrower expectations of patronage distributions have little or no effect on the stability and permanency of allocated surplus. In summary, they state that extensions of established revolvement cycles or reductions or suspensions of patronage distributions have not had a negative effect on marketing efforts, growth, or income at their associations. The associations state that they price their loans to market and provide high quality service, and they say there is little or no pressure from borrowers when scheduled patronage distributions are suspended or withheld.

While borrower expectations of patronage distributions do not appear to have had a material effect on the stability and permanency of allocated surplus under current conditions, we

[47] 62 FR 4429 (January 30, 1997).

[48] The System indicates in its comment that it views FHLB "permanent capital" as the equivalent of Tier 1 capital.

[49] The System also noted that the FASB has recognized cooperative capital as equity even if a portion of it is redeemable. While this is true, it does not support the argument that allocated surplus and member stock should be treated as Tier 1 capital rather than Tier 2 capital.

[50] *See* 12 U.S.C. 1426.

are not certain that this would be the case under other scenarios. Since 1997, from the time core surplus and total surplus requirements were established, the System has, for the most part, enjoyed strong growth and earnings as a result of favorable agricultural and wider macroeconomic conditions. Only recently have System institutions had to extend or suspend revolvement periods for allocations and reduce cash payments in response to the current economic downturn. Prior to this downturn, System institutions have not had recent experience with the trough of a credit cycle where very adverse credit conditions require boards to make hard decisions. Consequently, it is difficult to evaluate the efficacy of our capital requirements in times of severe stress.

Currently, the predominant form of System association capital is URE. Most associations distribute the majority of their patronage in cash. Consequently, most borrowers do not have a significant amount of direct ownership in the form of allocated surplus in their respective associations. However, it is possible that the associations could at some future point be primarily capitalized by their current patrons, and the majority of the association's capital base could be allocated surplus that is subject to regular revolvement. The borrower's direct capital investment would probably have to be significantly higher, and distributions that come from scheduled revolvement plans could be large and could possibly be material to a borrower's cash flows. Under this scenario, associations could have more difficulty suspending or withholding patronage distributions during periods of adversity, especially if the borrowers are stressed and are depending on scheduled patronage distributions to meet maturing financial obligations or to remain solvent. This possible scenario is the reason why the FCA's existing regulations require associations to hold a minimum amount of URE and other high quality equity that is not allocated equity. URE provides a capital cushion that enables the association to continue making routine borrower stock retirements as well as orderly planned distributions, which are especially important in situations where borrowers need those distributions to meet their own financial obligations.

The System Comment Letter asserts that association borrower stock should be treated as Tier 1 capital, pointing out that, while association borrower stock is commonly retired in conjunction with loan pay-offs, such retirement is always at risk and subject to association board discretion. Moreover, association boards commonly delegate to management and/or approve ongoing retirement programs only as long as such actions do not compromise the associations' capital adequacy. Finally, the System notes that borrower stock is of nominal amounts.

The FCA believes that, under the current regulatory framework, there is an important difference between borrower stock issued by associations and common stock issued by commercial banks. The investors who purchase an association's borrower stock are also customers of the association, whereas investors who purchase commercial bank common stock generally are not customers of the commercial bank. This customer/investor relationship of System borrowers to their associations makes borrower stock intrinsically different from commercial bank common stock. Since associations routinely retire borrower stock, suspension of stock retirements can have negative effects on the association's relationships with its customers, prospective customers, and its investors. The effect of a suspension of stock retirements may not be material today because borrower stock is presently nominal in amount, but stock retirements can become an issue when borrower stock makes up a larger portion of association capital. For instance, if associations increased their stock purchase requirement to 5 percent or 10 percent of the loan amount (as was the case up until the end of the 1980s) and then suspended the retirements, the borrowers would be more likely to be materially affected. In addition, the suspension of such stock retirements could undermine an association's efforts to attract new borrowers.

Second, borrower stock is routinely retired when the borrower pays off his or her loan. Commercial bank common stock is rarely retired once it is issued and generally requires notice to or the prior approval of the regulator.[51] The stock may trade among investors, but an individual shareholder would have little or no success in demanding that the commercial bank retire its stock in the absence of a retirement or exchange affecting the entire class of stock. In addition, commercial bank stock buy-backs are not analogous to stock retirements in connection with the paying off of loans and are not "routine" in the way association borrower stock retirements are routine.

Third, System borrowers generally do not pay cash for association stock. Rather, the par value of the stock is added to the principal amount of a borrower's obligation, and the association retains a first lien on the stock. From a practical standpoint, the borrower could simply pay down a loan to the par value of the stock and cease making any further payments. In such cases, it is usually easier and less costly for the association simply to offset the amount of the stock against the remaining loan balance than it is to take other legal measures (such as foreclosure) against a borrower. By contrast, commercial bank investors pay cash for their stock. Since their stock must be paid in full, the stockholder has no easy opportunity to use the stock to offset a debt obligation.

The System has also commented that association allocated surplus and borrower stock are equivalent in permanency and stability and should be treated the same way under the new regulatory framework. The System states that both types of equities are at risk and can be redeemed only at the discretion of the association's board and also claims that no distinction is made from the borrower's perspective. As we have explained throughout this ANPRM, we believe a distinction can be made from a safety and soundness perspective. The very fact that association borrower stock is routinely retired when a borrower pays off a loan makes borrower stock less permanent and stable than any form of surplus.

iii. FCA's Consideration of a Proposal To Treat Allocated Surplus and Member Stock as Tier 1 Capital

After evaluating the comments above, the FCA has begun to formulate a regulatory mechanism that would permit: (1) System associations to treat their allocated equities subject to revolvement and borrower stock as Tier 1 capital, (2) System banks to treat their associations' required minimum investment as Tier 1 capital, and (3) CoBank to treat its retail customers' stock and surplus as Tier 1 capital. This program would give us the ability to monitor, and if necessary, take actions that would restrict, suspend or prohibit capital distributions before a System institution reaches its regulatory capital minimums. An objective of the program would be to ensure that the FCA has some control over a System institution's capital distributions when it begins to experience financial stress. In this way, we believe that allocated surplus and

[51] U.S. commercial banks and savings associations must, in many cases, notify or seek the prior approval of their primary FFRA before making a capital distribution (stock retirements or dividends in the form of cash). The notification requirements and/or restrictions enhance the permanence and stability of Tier 1 capital elements for such entities. For national banks, *see* 12 U.S.C. 59, 60; 12 CFR 5.46, 5.60–5.67. For state banks, *see* 12 CFR 208.5; 12 U.S.C. 1828(i), 12 CFR 303.203, 303.241. For savings associations, *see* 12 U.S.C. 1467a(f); 12 CFR 563.140–563.146.

member stock could qualify as Tier 1 capital.

The regulatory mechanism we may propose would operate differently from the FFRAs' Prompt Corrective Action framework.[52] The Prompt Corrective Action framework was designed, in part, to protect the Federal deposit insurance fund by requiring the FFRAs to take specific corrective actions against depository institutions as soon as they fall below minimum capital standards. In contrast, the purpose of our program would be to ensure the quality, permanence and stability of allocated surplus and member stock.

Because the Prompt Corrective Action framework relies almost exclusively on regulatory capital ratios, most corrective actions are not triggered until a depository institution falls below regulatory minimum capital requirements. The program we are considering proposing would have trigger points well above regulatory capital minimum requirements that, when breached, would require System institutions to take certain actions. We also expect to include other financial measures along with the capital ratios in the program to provide earlier indicators to a System institution's financial condition and performance.

The regulatory mechanism we may propose would conceivably incorporate many of the Treasury's principles for reforming regulatory capital frameworks.[53] For example, the Treasury has noted that the capital ratios in the Prompt Corrective Action framework have often acted as lagging indicators of financial distress and "ha[ve] resulted in far too many banking firms going from well-capitalized status directly to failure." The Treasury has recommended that the FFRAs consider improving their Prompt Corrective Action frameworks by adding supplemental triggers such as measures of non-performing loans or liquidity measures.

We also note that the Prompt Corrective Action framework is mandated for all depository institutions regulated by the FFRAs. The capital regulatory mechanism we are developing would apply only to those System institutions that elect to treat their allocated surplus and/or member stock as Tier 1 capital. System institutions that choose not to participate in the regulatory program would treat their allocated surplus and/or member stock as Tier 2 capital. The following chart sets forth the broad parameters of the program we are considering:

SYSTEM INSTITUTION CAPITAL DISTRIBUTION RESTRICTIONS AND REPORTING REQUIREMENTS

System Institution Category	Risk Metrics * (*e.g.* capital, asset, and liquidity metrics)	Regulatory Requirements (*e.g.,* periodic reporting, prior approval on distributions, etc.)
Category 1	Capital Ratios = high Asset Quality = strong. Asset Growth = low. Liquidity = high.	• No additional requirements.
Category 2	Capital Ratios = adequate Asset Quality = fair. Asset Growth = high. Liquidity = adequate.	• Notification to FCA of any capital distributions at least 30 days before declaration of distribution. • Institution must report all capital ratios to the FCA on a monthly basis and explain how asset quality, asset growth and liquidity have impacted the ratios.
Category 3	Capital Ratios = low Asset Quality = poor. Liquidity = low	• FCA prior approval of any capital distributions. • Possible restrictions on capital distributions.** • Reporting requirements of Category 2, and the FCA may increase the scope and intensity of a specific institution-related issue on more than a monthly basis.

The Capital Ratio thresholds for Category 3 would be the Regulatory Capital Minimums.

If a System institution does not meet one or more of the regulatory minimum capital requirements, the FCA could take one or more supervisory actions under its existing authorities, such as conditions imposed in writing on transactions that require FCA approval; requiring a capital restoration plan; issuing supervisory letters, cease and desist orders, or capital directives; or placing the institution in conservatorship or receivership when there are grounds for doing so.

* After the proposed capital distribution.

** This includes potential restrictions on patronage distributions, dividends, stock retirements, callable debt, and interest payments on third-party capital instruments.

The table above outlining the program we are considering displays categories we might use to determine whether or when to restrict or prohibit a System institution's capital distributions. Each participating System institution that has capital levels at or above the regulatory minimums would be assigned to one of three categories (*e.g.,* the best performing System institutions would be assigned to Category 1 and so forth). FCA would place institutions in categories based on a variety of measures of capital adequacy, asset quality, asset growth and liquidity. These measures would have specific thresholds that would act as trigger points to require additional reporting or other action by the institution. Taken as a whole, the regulatory mechanism we are considering would assist the FCA in determining whether or when to intervene to limit or prevent a System institution's capital distributions in order to ensure the permanence and loss absorption capacity of allocated surplus and member stock.

The capital ratios we expect to use would include a Tier 1 risk-based capital ratio, a total (Tier 1 + Tier 2)

[52] Congress established the Prompt Corrective Action framework in the Federal Deposit Insurance Corporation Improvement Act (FDICIA) of 1991 with the objective to prevent a reoccurrence of the large-scale failures of bank and thrift institutions that depleted the Federal deposit insurance funds in the 1980s. For information about the use and effectiveness of the Prompt Corrective Action framework *see* GAO, *Bank and Thrift Regulation: Implementation of FDICIA's Prompt Regulatory Action Provisions,* GAO/GGD–97–18 (Washington, DC: Nov. 21, 1996), and GAO, *Deposit Insurance: Assessment of Regulators Use of Prompt Corrective Action Provisions and FDIC's New Deposit Insurance System,* GAO–07–242 (Washington DC: February 2007).

[53] "Principles for Reforming the U.S. and International Regulatory Capital Framework for Banking Firms" (September 3, 2009). This document is available at *http://www.ustreas.gov/.*

risk-based capital ratio, and a Tier 1 non-risk-based leverage ratio. We are also considering a Tier 1 risk-based capital ratio or Tier 1 non-risked-based leverage ratio that includes the effects of other comprehensive income.[54] Minimum category 1 capital ratio thresholds would significantly exceed the new regulatory minimum capital requirements. Minimum category 2 capital ratio thresholds would exceed the new regulatory minimum capital requirements. Minimum category 3 capital ratio thresholds would be equal to the regulatory minimum capital requirements. For a System institution that does not meet at least one of the regulatory minimum capital requirements, the FCA could take one or more supervisory actions under our existing supervisory and enforcement authorities. As noted above, we also expect to use other financial ratios in conjunction with the regulatory capital ratios to provide earlier indicators of a System institution's financial condition and performance. We ask commenters to help us determine these other ratios and develop the thresholds.

The financial measures of the regulatory mechanism would need to reflect accurately a System institution's financial position and have appropriate thresholds to trigger a regulatory requirement so that the FCA can monitor and/or intervene to restrict capital distributions in a timely manner. For example, if a System institution dropped to Category 2, it would have to submit additional information to the FCA each month and give us prior notification of any capital distributions (as described in the table above). We are also considering requiring Category 2 institutions to submit a capital restoration plan. If a System institution drops to Category 3, it would need the FCA's prior approval of any capital distributions.[55]

Finally, the FCA would reserve the right to place a System institution in a different category if warranted by the particular circumstances of the institution and the current economic environment. We would monitor this program primarily through our examination function.

Question 7: We seek comments to help us develop a capital regulatory mechanism that would allow System institutions to include allocated surplus and member stock in Tier 1 capital. Using the table titled "System Institutions Capital Distributions Restrictions and Reporting Requirements" as an example, what risk metrics would be appropriate to classify a System institution as Category 1, Category 2, or Category 3? What percentage ranges of specific financial ratios would be appropriate for each risk metric under each category? We also seek comments on the increased restrictions and/or reporting requirements listed in Category 2 and Category 3.

2. Tier 2 Capital Components

As aforementioned, the Basel Committee is proposing changes, and we ask commenters to consider the changes to Tier 2 capital when responding to questions 8 through 12 below. At a minimum, the Basel Committee is proposing that Tier 2 capital be subordinated to depositors and general creditors and have a maturity of at least 5 years; recognition in regulatory capital will be amortized on a straight line basis during the final 5 years of maturity.[56]

a. The Association's Investment in the Bank

As explained above, each System association must maintain a minimum investment in its affiliated bank. The required investment is generally a percentage of the association's direct loan from the bank and may consist of both purchased stock and allocated surplus. If an association falls short of the required investment, it is generally required to purchase additional stock in the bank. Many associations have investments in their banks that are in excess of the bank's requirements.

Under our current capital regulations, an association's investment in its bank may be counted in whole or in part in either the bank's total surplus and permanent capital, or in the association's total surplus and permanent capital, but it may not count in both institutions' regulatory capital. This avoids the "double-duty" dollar situation of using the same dollar of capital to support risk-bearing capacity at both institutions. A capital allotment agreement between a System bank and a System association specifies which of the institutions will include the investment in its regulatory capital.[57] Even though the association is permitted to include part or all of its investment in the bank in its permanent capital and total surplus, the association's investment is retained at the bank, at risk at the bank, included on the bank's balance sheet, and retired only at the discretion of the bank board. Moreover, if the bank were to fail or to be required to make payments under its statutory joint and several liability,[58] the association might lose part or all of its investment.

One System institution commenter recommended that the FCA treat an association's investment in the bank in excess of the minimum required investment, whether counted at the bank or the association, as Tier 1 capital. The commenter stated that the capital allotment agreement reflects a shared understanding between the System bank and System association that the excess amount allotted to the association is "owned" by the association and should not be leveraged by the bank. While the commenter provides many arguments as to why the excess investment is regulatory capital, in our view the excess investment does not have the attributes of Tier 1 capital at the association level. As the commenter points out, the association cannot legally compel the bank to retire the stock or otherwise liquidate it to pay down the association's debt at a moment's notice, and the bank board retains the sole discretion as to when the stock can be retired.

b. Allowance for Loan Losses

Section 621.5(a) of our regulations requires System institutions to maintain ALL in accordance with GAAP. ALL must be adequate to absorb all probable and estimable losses that may reasonably be expected to exist in a System institution's loan portfolio. ALL is expressly excluded from the statutory definition of permanent capital in the Act[59] and will continue to be excluded

[54] Other comprehensive income (OCI) is the difference between net income and comprehensive income and represents certain gains and losses of an enterprise. OCI generally refers to revenues, expenses, gains, and losses that under U.S. GAAP are included in comprehensive income but excluded from net income. For System institutions, the most common items in OCI have recently been pension liability adjustments, unrealized gains or losses on available-for-sale securities, and other-than-temporary impairment on investments available-for-sale. The accumulated balances of those items are required by those respective standards to be reported in a separate component of equity in a company's balance sheet. The principal source of guidance on comprehensive income and OCI under U.S. GAAP is at ASC Topic 220, *Comprehensive Income.*

[55] We note that the Basel Consultative Proposal has a similar concept to limit capital distributions, including limits on dividend payments and share buybacks, to ensure that banking organizations hold higher amounts of high quality capital during good economic situations so as to be drawn down during periods of stress. *See* paragraphs 39 and 40 of the Basel Consultative Proposal.

[56] The Basel Committee will determine the amount of allowance for loan losses to be included in Tier 2 capital after conducting its mid-year 2010 impact assessment.

[57] *See* 12 CFR 615.5207–5208.

[58] *See* section 4.4(a)(2)(A) of the Act (12 U.S.C. 2155(a)(2)(A)).

[59] Section 4.3A(a)(1)(C) of the Act (12 U.S.C. 2154a(a)(1)(C).

from the permanent capital standard. The FCA does not currently treat any portion of ALL as either core surplus or total surplus.

Basel I defines ALL (referred to as general loan loss reserves) as reserves created against the possibility of losses not yet identified. The FFRAs, in general, define ALL as reserves to absorb future losses on loans and lease receivables. Currently, ALL can be included in Tier 2 capital up to 1.25 percent [60] of a banking organization's risk-adjusted asset base provided the institution is subject to capital rules that are based on either Basel I or the Basel II standardized approach.[61] Provisions or reserves that have been created against identified losses are not included in Tier 2 capital. Any excess amount of ALL may be deducted from the net sum of risk-weighted assets in computing the denominator of the risk-based capital ratio.

In the System Comment Letter, the System recommended that the FCA include ALL, including reserves for losses on unfunded commitments, as Tier 2 capital under the new regulatory capital framework consistent with the Basel I standards and FFRA guidelines. The FCA acknowledges that ALL is a front line defense for absorbing credit losses before capital but also believes that it may not be as loss absorbing as other components of capital because it is tied only to credit-related losses.

Question 8: We seek comments on whether the FCA should count a portion of the allowance for loan losses (ALL) as regulatory capital. We also seek information on how losses for unfunded commitments equate to ALL and why they should be included as regulatory capital. We ask commenters to take into consideration the Basel Consultative Proposal and any recent changes to FFRA regulations in relation to the amount or percentage of ALL includible in Tier 2 capital.

c. Cumulative Perpetual and Long-Term Preferred Stock

Cumulative perpetual preferred stock is preferred stock that accumulates dividends from one dividend period to the next but has no maturity date and cannot be redeemed at the option of the holder. Basel I and the FFRAs currently treat cumulative perpetual preferred stock as Tier 2 capital without limit (other than the general limitation that Tier 2 capital cannot exceed 100 percent of Tier 1 capital). The FCA expects to consider cumulative perpetual preferred stock as Tier 2 capital, provided the instrument does not have a significant step-up (as defined in Basel I) that has the practical effect of a maturity date.[62]

FCA regulations do not currently distinguish between long-term and intermediate-term preferred stock.[63] The FFRAs define long-term preferred stock as preferred stock with an original maturity of 20 years or more. Long-term preferred stock is Tier 2 capital subject to the same aggregate limits as cumulative perpetual preferred stock. In addition, the amount of long-term preferred stock that is eligible to be included as Tier 2 capital is reduced by 20 percent of the original amount of the instrument (net of redemptions) at the beginning of each of the last 5 years of the life of the instrument. The FCA is considering adopting the FFRAs' definition of long-term preferred stock and treating it as Tier 2 capital with similar conditions.

Question 9: We seek comments on the treatment of cumulative perpetual and term-preferred stock as Tier 2 capital subject to the same conditions imposed by the FFRAs.

d. Unrealized Holding Gains on Available-For-Sale (AFS) Equity Securities

The FCA does not currently treat any portion of a System institution's unrealized holding gains on AFS equity securities as regulatory capital. The FFRAs began treating unrealized holding gains on AFS equity securities as regulatory capital after the implementation of SFAS No. 115, which requires institutions to fair-value their AFS equity securities and reflect any changes in accumulated other comprehensive income as a separate component of equity capital.[64] This is comparable to Basel I treatment, which includes "revaluation reserves" in Tier 2 capital provided the reserves are revalued at their current value rather than at historic cost.

Basel I specifies that a bank must discount any unrealized gains by 55 percent to reflect the potential volatility of this form of unrealized capital, as well as the tax liability charges that would generally be incurred if the unrealized gains were realized. Consequently, the FFRAs treat up to 45 percent of the pretax net unrealized holding gains on AFS equity securities with readily determinable fair values as Tier 2 capital. Unrealized gains on other types of assets, such as bank premises and AFS debt securities, are not included in Tier 2 capital, though the FFRAs may take these unrealized gains into consideration when assessing a bank's overall capital adequacy. In addition, the FFRAs' guidelines reserve the right to exclude all or a portion of unrealized gains from Tier 2 capital if they determine that the equity securities are not prudently valued.[65]

It is important to note that Basel I and the FFRAs' guidelines require all unrealized losses on AFS equity securities to be deducted from Tier 1 capital.

Question 10: We seek comments on authorizing System institutions to include a portion of unrealized holding gains on AFS equity securities as regulatory capital. We ask commenters to provide specific examples of how this component of Tier 2 capital would be applicable to System institutions.

e. Intermediate-Term Preferred Stock and Subordinated Debt

The FFRAs define intermediate-term preferred stock as preferred stock with an original maturity of at least 5 years but less than 20 years. Subordinated debt is generally defined as debt that is lower in priority than other debt to claims on assets or earnings. The FCA currently treats subordinated debt as regulatory capital provided it meets certain criteria.[66]

[60] The Basel Committee may remove or modify this percentage after conducting its mid-year 2010 impact assessment.

[61] The more advanced approaches of Basel II have a different formula for determining the amount of general loan loss reserves that can be included in Tier 2 capital. Basel II is discussed briefly in Section IV of this document.

[62] For descriptions of cumulative perpetual preferred stock and long-term stock, see the OCC's guidelines at 12 CFR part 3, App. A, 1(c)(26) and 2(b)(2). *See* the FRB's guidelines at 12 CFR part 225, App. A, II.A.2.b and 12 CFR part 208, App. A, II.A.2.b. *See* the FDIC's guidelines at 12 CFR part 325, App. A, I.A.2.ii and I.A.2.b. *See* the OTS's guidelines (for cumulative perpetual preferred stock) at 12 CFR 567.5(b)(1).

[63] FCA defines "term preferred stock" in § 615.5201 as stock with an original maturity date of at least 5 years and on which, if cumulative, the board of directors has the option to defer dividends, provided that, at the beginning of each of the last 5 years of the term of the stock, the amount that is eligible to be counted as permanent capital is reduced by 20 percent of the original amount of the stock (net of redemptions).

[64] Pre-codification reference: SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities,* was issued in May 1993 and effective for fiscal years beginning after December 15, 1993. This statement is now incorporated into ASC Topic 320, *Investments—Debt and Equity Securities. See* 63 FR 46518 (September 1, 1998).

[65] *See* the OCC's guidelines at 12 CFR part 3, App. A, 2.b.5. *See* the FRB's guidelines at 12 CFR part 225, App. A, II.A.2(v) and II.A.e; and 12 CFR part 208, App. A, II.A.2(v) and II.A.e. *See* the FDIC's guidelines at 12 CFR part 325, App. A, I.A.2(iv) and I.A.2.f. *See* the OTS's guidelines at 12 CFR 567.5(b)(5).

[66] *See* the OCC's guidelines at 12 CFR part 3, App. A, 2.b.5. *See* the FRB's guidelines at 12 CFR part 225, App. A, II.A.2(iv) and II.A.2.d; and 12 CFR part 208, App. A, II.A.2(iv) and II.A.2.d. *See* the FDIC's guidelines at 12 CFR part 325, App. A, I.A.2(v) and I.A.2.d. *See* the OTS's guidelines at 12 CFR 567.5(b)(1)(vi) and (b)(2)(ii).

Intermediate-term preferred stock and subordinated debt are currently considered to be "lower Tier 2" capital by the FFRAs and are limited to an amount not to exceed 50 percent of Tier 1 capital after deductions. In addition, the amount of intermediate-term preferred stock and subordinated debt that is eligible to be included as Tier 2 capital is reduced by 20 percent of the original amount of the instrument (net of redemptions) at the beginning of each of the last 5 years of the life of the instrument. The Basel Consultative Proposal indicates that the Basel Committee may remove the limits on how much of these components may count as Tier 2 capital, but the phase-out period will be retained. The FCA is considering treating intermediate-term preferred stock and subordinated debt as Tier 2 capital with an aggregate limit of 50 percent of Tier 1 capital after deductions consistent with FFRA regulations.

Question 11: We seek comments on the treatment of intermediate-term preferred stock and subordinated debt as Tier 2 capital and conditions for their inclusion in Tier 2 capital.

f. Association-Issued Continuously Redeemable Cumulative Perpetual Preferred Stock

Some associations have issued continuously redeemable cumulative perpetual preferred stock (designated as H Stock by most associations) to existing borrowers to invest and participate in their cooperative beyond the minimum borrower stock purchases. H Stock is an "at-risk" investment and can be redeemed only at the discretion of the association's board. H Stock has some similarity to a deposit or money market account in operation, but holders of H Stock do not have an enforceable right to demand payment. The FCA has previously determined that H Stock qualifies as permanent capital because it is at risk and is redeemable solely at the discretion of the association's board. However, the H Stock is not includible in core surplus or total surplus because of the association's announced intention to redeem the stock upon the request of the holder, provided minimum regulatory capital ratios are met.

The System Comment Letter recommends treating H stock as Tier 2 capital because of its temporary nature. The System states that disclaimers inform H Stock stockholders that retirement is subordinate to debt instruments and subject to board discretion. However, the holders have a high expectation that such stock will be retired. Also, the members' investment horizons are relatively short; so the capital would be viewed as temporary.

We agree with the System that H Stock is temporary in nature. In essence, the FCA views the H Stock that is currently outstanding as similar to a 1-day term instrument because of the associations' express willingness to retire it at the request of the holder. Consequently, the FCA believes that, without some enhancement that would improve the stock's stability and permanency, H Stock could not qualify as Tier 2 capital.

Question 12: We seek comments on how to develop a regulatory mechanism to make H Stock more permanent and stable so that the stock may qualify as Tier 2 capital.

C. Regulatory Adjustments

The FCA expects to apply many of the regulatory adjustments currently in our regulations to Tier 1 and total capital. For example, we expect to require System institutions to: (1) Eliminate the double-duty dollars associated with reciprocal holdings with other System institutions, (2) deduct the amount of investments in associations that capitalize loan participations, (3) deduct amounts equal to all goodwill, whenever acquired, (4) deduct investments in the Leasing Corporation, (5) make necessary adjustments for loss-sharing agreements and deferred-tax assets and (6) exclude the net effect of all transactions covered by the definition of other comprehensive income contained in the FASB Codification. We expect to require System associations to deduct their net investments in their affiliated banks from both the numerator and denominator when computing their Tier 1 risk-based capital ratio and non-risk-based leverage ratio. We believe this is consistent with the current Basel I's requirement for unconsolidated financial entities to deduct their investments from regulatory capital to prevent the multiple use of the same capital resource and to gauge the capital adequacy of individual institutions on a stand-alone basis. However, for the purposes of computing the total risk-based capital ratio, a System association could count some or all of its investment in its affiliated bank in accordance with the terms and conditions of bank-association capital allotment agreements. We also may require System institutions to make other deductions from Tier 1 capital or total capital consistent with FFRA guidelines.[67] Finally, we expect to revise § 615.5210(c)(3) prescribing how positions in securitizations that do not qualify for the ratings-based approach affect the numerator of the new regulatory capital ratios.

We are also considering proposing some of the significant new regulatory adjustments that are discussed in the Basel Consultative Proposal. For example, financial institutions may be required to adjust the capital ratios for unrealized losses on debt and equity instruments, loans and receivables, equities, own-use properties and investment properties in our new regulatory capital ratios. The Basel Committee also proposes to deduct pension fund assets as well as fully recognize liabilities that arise from these funds. We expect to consider these regulatory adjustments in our future proposed rulemaking.

Question 13: We seek comments on the regulatory adjustments in our current regulations that we expect to incorporate into the new regulatory capital framework. We also seek comments on the regulatory capital treatment for positions in securitizations that are downgraded and are no longer eligible for the ratings-based approach under a new regulatory capital framework.

IV. Additional Background

A. The October 2007 ANPRM

In our October 2007 ANPRM, we solicited comments on the development of a proposed rule to amend our capital regulations.[68] Most of the questions posed in the October 2007 ANPRM related to the method for calculating the risk-adjusted asset base that serves as the denominator for FCA's risk-based capital ratios. The questions were designed to help us develop a risk-weighting framework consistent with the standardized approach for credit risk[69] as described in the "International

[67] *See* the OCC's guidelines at 12 CFR part 3, App. A, 2.c. *See* the FRB's guidelines at 12 CFR part 225, App. A, II.B. and 12 CFR part 208, App. A, II.B. *See* the FDIC's guidelines at 12 CFR part 325, App. A, I.B. *See* the OTS's guidelines at 12 CFR 567.5(a)(2).

[68] *See* 72 FR 61568 (October 31, 2007). The original comment period of 150 days was later extended to December 31, 2008. We note that, in the October 2007 ANPRM, FCA withdrew a previous ANPRM published in June 2007 (72 FR 34191, June 21, 2007) in which we had sought comments to questions based on a proposed regulatory capital rulemaking (referred to as Basel IA) published by the FFRAs in December 2006. The FFRAs later withdrew the Basel IA proposal. For that reason, we withdrew the June 2007 ANPRM and published the October 2007 ANPRM. The FFRAs replaced the Basel 1A rulemaking with the July 2008 proposal based on the Basel II standardized approach.

[69] We also asked for comments on what approach we should consider in determining a risk-based capital charge for operational risk.

Convergence of Capital Measurement and Capital Standards: A Revised Framework"[70] (Basel II).[71] We intend to propose new risk-weighting regulations in a future rulemaking.[72]

Other questions posed in our October 2007 ANPRM related to other aspects of our risk-based regulatory capital framework. For example, we sought comments on a non-risk-based leverage ratio that would apply to all FCS institutions. We also sought comments on an early intervention framework with financial thresholds, such as capital ratios or other risk measures that, when breached, would trigger an FCA capital directive or enforcement action. Of the issues we raised in the October 2007 ANPRM, we reference only the potential addition of a non-risk-based leverage ratio in this ANPRM.

The System Comment Letter submitted in December 2008 recommended, among other things, that we replace our core surplus and total surplus standards with a "Tier 1/Tier 2 structure" consistent with Basel I and FFRA regulations.[73] The letter asserted the System's belief that such revisions would enable the System to operate on a level playing field with commercial banks in accessing the capital markets.[74] The System recommended that the FCA adopt a regulatory capital framework with a 4-percent Tier 1 risk-based capital ratio and an 8-percent total (Tier 1 + Tier 2) risk-based capital ratio. The System also recommended that the FCA replace its net collateral ratio (NCR), which is applicable only to System banks, with a Tier 1 non-risk-based leverage ratio that would be applicable to all System institutions.[75] The System Comment Letter stated that, "because the System's growth has required the use of external equity capital, the System is in regular contact with the financial community, including rating agencies and investors. Obtaining capital at competitive terms, conditions, and rates requires these parties [to] understand the System's and individual institution's financial position, making consistency with approaches used by other regulators, rating agencies, and investment firms a requirement to enhance the capacity of the System to achieve its mission * * *. For the System to achieve its mission, the System must be able to compete with other lenders. Therefore, FCA's capital regulations must result in a regulatory framework that provides for a level playing field, in addition to safe and sound operations."

The FCA believes that adoption of a Tier 1/Tier 2 capital structure (including minimum risk-based and leverage ratios), tailored to the System's structure, could improve the transparency of System capital, could reduce the costs of accessing the capital markets, could reduce the negative effects that can result from differences in regulatory capital standards, and could enhance the safety and soundness of the System.

B. Description of FCA's Current Capital Requirements

In 1985, Congress amended the Act to require the FCA to "cause System institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such System institutions and by using such other methods as the [FCA] deems appropriate."[76] Congress also authorized the FCA to impose capital directives on System institutions.[77] In the Agricultural Credit Act of 1987 (1987 Act), Congress added a definition of "permanent capital" to the Act and required FCA to adopt minimum risk-based permanent capital adequacy standards for System institutions.[78] In 1988, FCA adopted a new regulatory capital framework[79] that established a minimum permanent capital standard for System institutions that, among other things, prohibited the double counting of capital invested by associations in their affiliated banks (*i.e.,* shared System capital).[80]

Section 4.3A of the Act[81] defines permanent capital to include stock (other than stock issued to System borrowers that is not considered to be at risk),[82] allocated surplus,[83] URE, and other types of debt or equity instruments that the FCA determines are appropriate to be considered permanent capital. The Act explicitly excludes ALL from permanent capital. Our regulations require each System institution to maintain a ratio of at least 7 percent of permanent capital to its risk-adjusted asset base.[84] The method for calculating

[70] *See http://www.bis.org/publ/bcbsca.htm* for the 2004 Basel II Accord as well as updates in 2005 and 2006.

[71] The Basel Committee on Banking Supervision was established in 1974 by central banks with bank supervisory authorities in major industrialized countries. The Basel Committee formulates standards and guidelines related to banking and recommends them for adoption by member countries and others. All Basel Committee documents are available at *http://www.bis.org.*

[72] The FFRAs are in the process of implementing multiple sets of capital rules for the financial institutions they regulate. In December 2007, the FFRAs adopted a regulatory capital framework consistent with the advanced approaches of Basel II that is applicable to only a few internationally active banking organizations. *See* 72 FR 69288 (December 7, 2007). In July 2008, the FFRAs proposed a regulatory capital framework consistent with the standardized approach for credit risk and basic indicator approach for operational risk under Basel II to help minimize the potential differences in the regulatory minimum capital requirements of those banks applying the advanced approaches and those banks applying the more simplified approaches. *See* 73 FR 43982 (July 29, 2008). The FFRAs have not yet acted on this proposal.

[73] *See* footnote 4 above.

[74] The FCA also received six comment letters from individual System institutions pertaining to the treatment of certain capital components as Tier 1 capital. We address these comments below.

[75] The System also recommended many changes to our risk-weighting regulations, which we will address in a future rulemaking.

[76] Section 4.3(a) of the Act (12 U.S.C. 2154(a)).

[77] Section 4.3(b) of the Act (12 U.S.C. 2154(b)). This provision is nearly identical to legislation enacted in 1983 with respect to the other FFRAs. *See* 12 U.S.C. 3097.

[78] Section 4.3A of the Act; section 301(a) of Public Law 100–233, as amended by the Agricultural Credit Technical Corrections Act of 1988, Public Law 100–399, title III, section 301(a), August 17, 1988, 102 Stat. 93.

[79] *See* 53 FR 39229 (October 6, 1988). The FCA's objective at this time was to develop a permanent capital standard consistent with the statute. We determined not to adopt the two-tiered capital structure of Basel I because of significant differences between statutory permanent capital and Tier 2 capital.

[80] The 1988 regulation required an association to deduct the full amount of its investment in its affiliated bank before computing its PCR. This requirement had a phase-in period that was to begin in 1993. In 1992, Congress amended the statutory definition of permanent capital to permit System banks and associations to specify by mutual agreement the amount of allocated equities that would be considered bank or association equity for the purpose of calculating the PCR. In July 1994, the FCA amended the regulations to implement this statutory change. *See* 59 FR 37400 (July 22, 1994).

[81] Section 4.3A(a)(1) of the Act (12 U.S.C. 2154a(a)(1)).

[82] Borrower stock is common shareholder equity that is purchased as a condition of obtaining a loan with a System institution. We include in this category participation certificates, which are a form of equity issued to persons or entities that are ineligible to own borrower voting stock, such as rural home borrowers. To be counted as permanent capital, stock must be at risk and retireable only at the discretion of an institution's board of directors. Any stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder, or stock that is protected under section 4.9A of the Act or is otherwise not at risk, is excluded from permanent capital. Stock protected by section 4.9A of the Act was issued prior to October 1988, and nearly all such stock has been retired.

[83] Allocated surplus is earnings allocated but not paid in cash to a System institution borrower. Allocated surplus is counted as permanent capital provided the bylaws of a System institution clearly specify that there is no express or implied right for such capital to be retired at the end of the revolvement cycle or at any other time. In addition, the institution must clearly state in the notice of allocation that such capital may be retired only at the sole discretion of the board of directors in accordance with statutory and regulatory requirements and that no express or implied right to have such capital retired at the end of the revolvement cycle or at any other time is thereby granted.

[84] *See* § 615.5205. Before making this computation, each System institution is required to make certain adjustments and/or deductions to permanent capital and/or the risk-adjusted asset base.

risk-adjusted assets (which includes both on- and off-balance sheet exposures) is based largely on Basel I and is generally consistent with the FFRAs' Basel I-based risk-weighting categories.[85] From 1988 to 1997, the only regulatory capital requirement imposed on all System banks and associations was the permanent capital standard.

In the mid-1990s, the FCA engaged in a rulemaking to ensure that System institutions held adequate capital in light of the risks undertaken. A feature of the cooperative structure of the System is retail borrowers' expectations of patronage distributions, as well as the expectation that borrower stock will generally be retired when a loan is paid down or paid off. These expectations can influence the permanency and stability of borrower stock and allocated surplus. The FCA was concerned that System associations did not have enough high quality surplus both to maintain and grow operations and at the same time to meet these borrower expectations of stock retirement. The FCA was also concerned that System associations did not have a sufficient level of surplus to buffer borrower stock from unexpected losses and to insulate such institutions from the volatility associated with recurring borrower stock retirements. It was possible for a System association to meet its permanent capital requirements solely with borrower stock. For example, it could establish a stock purchase requirement of 7 percent or more of the borrower's loan amount to meet the minimum permanent capital requirement with little or no surplus to absorb association losses.[86] Furthermore, as noted above, since borrower stock in a cooperative is generally retired in the ordinary course of business upon repayment of a borrower's loan, if the majority of association capital consists of borrower stock, then its capital base is not sufficiently permanent if stock is commonly retired when loans are repaid. The FCA concluded that a minimum surplus requirement was necessary to provide a cushion to protect the borrower's investment in the System association and also to ensure that the institution had a more stable capital base that was not subject to borrowers' expectations of retirement.[87]

The FCA was also concerned that System associations did not have a sufficient amount of what the Agency viewed as "local" surplus—that is, surplus that was completely under the control of the association and immediately available to absorb losses only at the association. Under the 1992 amendments to the Act,[88] a System bank and each of its affiliated associations can determine through a "capital allotment agreement" whether allocated surplus retained at the bank is counted as permanent capital at the bank or at the association for the purposes of computing the permanent capital ratio.[89] Over the years, many System associations had accumulated URE, in part, through non-cash surplus allocations from the bank that were retained by the bank, included in the bank's balance sheet capital, and retired only at the discretion of the bank board. The FCA was concerned that this allocated surplus under the bank's control and at risk at the bank would not always be accessible to the association if either the bank or the association (or both) were to incur losses.[90] The FCA determined that a minimum surplus requirement, which excluded a System association's investment in its affiliated bank, was necessary to: (1) Ensure that each association had a minimum amount of accessible surplus that was not at risk at the bank or at any other System institution, (2) immediately absorb losses and enable the association to continue as a going concern during periods of economic stress, and (3) improve the safety and soundness of the System as a whole.

In 1995, the FCA proposed minimum "surplus" standards to ensure that System institutions had an appropriate mixture of capital components other than borrower stock, such as URE, allocated equities and other types of stock,[91] to achieve a sound capital structure.[92] We initially proposed "unallocated surplus" and "total surplus" standards.[93] The unallocated surplus standard was designed to ensure that System institutions held a sufficient amount of URE that was not available to absorb losses at another System institution. Total surplus was designed to ensure that System institutions held a sufficient amount of capital other than borrower stock so that institutions could fulfill borrower expectations of stock retirements while continuing to hold sufficient capital to operate and grow.[94] Most comments to the 1995 proposed rule centered on the proposed unallocated surplus standard. Respondents were concerned that a high quality minimum surplus requirement that excluded allocated surplus would: (1) Convey the wrong message that allocated surplus was of lower quality

[85] *See* §§ 615.5211–615.5212. Under the current framework, each on- and off-balance sheet credit exposure is assigned to one of five broad risk-weighting categories (0, 20, 50, 100, and 200 percent) or dollar-for-dollar deduction to determine the risk-adjusted asset base, which is the denominator for all of FCA's risk-based capital ratios.

[86] Before the 1987 Act took effect, the FLBAs had authority to set a borrower stock requirement of not less than 5 percent nor more than 10 percent of the amount of the loan, and the associations were required to retire the stock upon full repayment of the loan. The PCAs had a statutory minimum borrower stock requirement of 5 percent, and such stock could be canceled or retired on repayment of the loan as provided by the association's bylaws; in addition, an association could also require borrowers to purchase stock or provide an equity reserve in an amount up to another 5 percent of the loan. The 1987 Act changed these provisions by eliminating the mandatory stock retirements when long-term real estate loans were repaid and by allowing System institutions to choose their stock purchase requirement as long as it was not below the lesser of $1,000 or 2 percent of the loan.

[87] At the time, the System generally supported the FCA's position and recommended that we establish regulatory standards requiring all System institutions to build unallocated surplus and total surplus (*e.g.,* both allocated and unallocated surplus). To meet these new standards, the FCS suggested that each System institution retain a portion of its net earnings after taxes to achieve and maintain at least 3.5 percent in unallocated surplus and 7.0 percent in total surplus of the institution's risk-adjusted assets. The FCA chose instead to establish fixed minimums but permitted institutions with capital below the minimums to achieve compliance initially by submitting capital restoration plans.

[88] Farm Credit Banks and Associations Safety and Soundness Act of 1992, Public Law 102–552, 106 Stat. 4102 (October 28, 1992).

[89] *See* §§ 615.5207(b)(2) and 615.5208 for the provisions regarding the capital allotment agreements.

[90] It is important to distinguish the terms "allocated surplus" and "allotted surplus." From a bank perspective, allocated surplus is earnings allocated to an association and retained at the bank. It is counted in either the bank's regulatory capital or the association's regulatory capital. "Allotted surplus" is the term we use to describe how the allocated surplus is counted according to an allotment agreement when calculating regulatory capital ratios. We describe the System banks' retention and distribution of capital in Section III.A.1. and Section III.B.1.c.

[91] This is stock that is not required to be purchased as a condition of obtaining a loan and that is not routinely retired.

[92] We also proposed a minimum NCR requirement (a type of leverage ratio) for System banks above the statutory minimum collateral requirement to protect investors and allow sufficient time for corrective action to be implemented prior to a funding crisis at an individual bank (see below). *See* 60 FR 38521 (July 27, 1995).

[93] The proposed definition of unallocated surplus included URE and common and noncumulative perpetual preferred stock held by non-borrowers but excluded allocated surplus, borrower stock and ALL. System associations also had to deduct their net investments in their affiliated bank before computing the unallocated surplus ratio. The proposed definition of total surplus included both unallocated and allocated surplus, including allotted surplus, as well as various types of common and preferred stock, but excluded borrower stock and ALL.

[94] In the final rule, adopted in 1997, the total surplus requirement remained mostly unchanged from what was originally proposed. *See* 62 FR 4429 (January 30, 1997).

than unallocated surplus, (2) create a bias against cooperative principles, and (3) result in lower patronage distributions, which could create a competitive disadvantage with non-cooperative agricultural lenders. The FCA considered commenters' views and subsequently published a reproposed rule that replaced the URE standard with a "core surplus" requirement.[95]

As proposed, core surplus included the unallocated surplus (URE and certain perpetual preferred stock but not borrower stock) and NQNSR.[96] Since NQNSR has no financial impact on the borrower (*e.g.,* the borrower does not pay tax on the allocation) and the notice sent to the borrower clearly indicates no plan of redemption, the risk-bearing capacity of NQNSR is very similar to that of URE. Respondents to the 1996 proposed rule supported the addition of NQNSR to core surplus but asserted that the definition was still too restrictive. In addition to the reasons described above, they argued that, while System associations typically establish allocated equity revolvement cycles as a matter of capital planning, the retirements are not automatic and can be reduced or withheld at any time at the board's discretion. The FCA was persuaded that certain allocated equities that are subject to revolvement, while generally not perpetual in nature, do provide important capital protection for as long as they are held. In the final rule, adopted in 1997, the FCA included certain longer-term System association qualified allocated equities in core surplus on the ground that they would help an association build a high quality capital base without discouraging patronage distribution practices.[97]

Respondents also objected to the proposed requirement that an association deduct its net investment in its affiliated bank in its core surplus calculation. We did not change this requirement from what was originally proposed. We emphasized that a measurement of capital not subject to the borrower's expectation of retirement and not available to absorb losses at another System institution was needed to ensure an association could survive independently of its funding bank.

The FCA adopted minimum "core surplus" and "total surplus" standards in 1997.[98] Since that time, the FCA has made only minor changes to the regulatory definitions of core surplus, total surplus and permanent capital.[99] Under existing regulations, core surplus [100] is the highest quality of System capital and includes the following:

(1) URE,

(2) NQNSR,[101]

(3) Perpetual common [102] (excluding borrower stock) or noncumulative perpetual preferred stock,

(4) Other functional equivalents of core surplus,[103] and

(5) For associations, certain allocated equities that are subject to a plan or practice of revolvement or retirement, provided the equities are includible in total surplus and are not intended to be revolved or retired during the next 3 years.[104]

In calculating their core surplus ratio, System associations must deduct their net investment in their affiliated bank.[105] Each System institution must maintain a ratio of at least 3.5 percent of core surplus to its risk-adjusted asset base.[106] Furthermore, allocated equities, including NQNSR, may constitute up to 2 percentage points of the 3.5-percent CSR minimum. This means that at least 1.5 percent of core surplus to risk-adjusted assets must consist of components other than allocated equities.

Total surplus is the next highest form of System institution capital.[107] It includes the following:

(1) Core surplus,

(2) Allocated equities (including allocated surplus and stock), other than those equities subject to a plan or practice of revolvement of 5 years or less,

(3) Common and perpetual preferred stock that is not purchased or held as a condition of obtaining a loan, provided that the institution has no established plan or practice of retiring such stock,

(4) Term preferred stock with an original term of at least 5 years,[108] and

(5) Any other capital instrument, balance sheet entry, or account the FCA determines to be the functional equivalent of total surplus.[109]

Total surplus excludes ALL as well as stock purchased or held by borrowers as a condition of obtaining a loan. Each System institution must maintain a ratio of at least 7 percent of total surplus to its risk-adjusted asset base.[110] The FCA's purpose for adopting the total surplus requirement was to ensure that System institutions, particularly associations, do not rely heavily on borrower stock as a capital cushion.

[95] *See* 61 FR 42092 (August 13, 1996).

[96] NQNSR (nonqualified allocated equities not subject to revolvement) is equity retained by a cooperative institution from after-tax earnings. The System institution pays the tax on earnings and issues a notice of allocation to its members specifying the amount that has been earmarked for potential distribution. The "non-revolvement" feature indicates that no redemption is anticipated in the near future.

[97] *See* 62 FR 4429 (January 30, 1997). We determined at the time not to include System bank allocated equities in core surplus. This primarily affected CoBank, which operates a significant retail operation (the other System banks are primarily wholesale operations). However, since March 2008, we have temporarily permitted CoBank to include a portion of its allocated equities in core surplus consistent with our treatment of association allocated equities until this issue could be addressed through a rulemaking.

[98] *See* 62 FR 4429 (January 30, 1997).

[99] In 1998 we made minor wording changes to the total surplus and core surplus definitions to clarify certain terms and phrases. *See* 63 FR 39219 (July 22, 1998). In 2003, we changed the definition of permanent capital to reflect a 1992 statutory change to section 4.3A of the Act and added a restriction to the amount of term preferred stock includible in total surplus. *See* 68 FR 18532 (April 16, 2003).

[100] Core surplus is defined in § 615.5301(b).

[101] In the event that NQNSR are distributed, other than as required by section 4.14B of the Act (statutory restructuring of a loan), or in connection with a loan default or the death of an equityholder whose loan has been repaid (to the extent provided for in the institution's capital adequacy plan), any remaining NQNSR that were allocated in the same year will be excluded from core surplus.

[102] Certain classes of common stock issued by System institutions are typically never retired except in the event of liquidation or merger. However, there is only a small amount of these classes of stock currently outstanding. In the event that such stock is retired, other than as required by section 4.14B of the Act, or in connection with a loan default to the extent provided for in the institution's capital adequacy plan, any remaining common stock of the same class or series has to be excluded from core surplus.

[103] The FCA may permit an institution to include all or a portion of any instrument, entry, or account it deems to be the functional equivalent of core surplus, permanently or on a temporary basis.

[104] We explained in the 1997 final rule our belief that 3 years should be sufficient time for a System association experiencing adversity to adjust its allocation plans and take other protective measures while continuing to be able to make planned patronage distributions. The rule further provides that, in the event that such allocated equities included in core surplus are retired, other than in connection with a loan default or restructuring or the death of an equityholder whose loan has been repaid (to the extent provided for in the institution's capital adequacy plan), any remaining such allocated equities that were allocated in the same year must be excluded from core surplus.

[105] System banks cannot include their affiliated associations' investments in core surplus. The net investment is the total investment by an association in its affiliated bank, less reciprocal investments and investments resulting from a loan originating/service agency relationship, such as participation loans. *See* § 615.5301(e).

[106] Each System institution is also required to make certain other deductions and/or adjustments before computing its core surplus ratio. *See* 12 CFR 615.5301(e).

[107] Total surplus is defined in § 615.5301(i).

[108] Term preferred stock is limited to a maximum of 25 percent of the institution's permanent capital (as calculated after deductions required in the PCR computation). The amount of includible term stock must be reduced by 20 percent (net of redemptions) at the beginning of each of the last 5 years of the term of the instrument.

[109] The FCA may permit one or more institutions to include all or a portion of such instrument, entry, or account as total surplus, permanently or on a temporary basis.

[110] As with the other capital ratios, each System institution is also required to make certain other deductions and/or adjustments before computing its total surplus ratio.

Associations have continued their practice of retiring borrower stock when the borrower's loan is repaid.

Each System bank must maintain a 103-percent minimum NCR requirement that functions as a leverage ratio.[111] The NCR is, generally, available collateral as defined in § 615.5050, less an amount equal to the portion of affiliated associations' investments in the bank that is not counted in the bank's permanent capital, divided by total liabilities. Total liabilities are GAAP liabilities with certain specified adjustments.[112]

C. Overview of the Tier 1/Tier 2 Capital Framework

In 1988, the Basel Committee published Basel I, a two-tiered capital framework for measuring capital adequacy at internationally active banking organizations.[113] Tier 1 capital, or core capital, is composed primarily of equity capital and disclosed reserves (*i.e.,* retained earnings), the highest quality capital elements that are permanent and stable. Tier 2 capital, or supplementary capital, comprises less secure sources of capital and hybrid or debt instruments.[114] Basel I established two minimum risk-based capital ratios: a 4-percent Tier 1 risk-based capital ratio and an 8-percent total (Tier 1 + Tier 2) risk-based capital ratio. For discussion purposes, FCA's core surplus is more similar to Tier 1 capital, whereas total surplus is more similar to total capital. (FCA regulations do not include a ratio similar to Tier 2 capital.)

The Basel Consultative Proposal published in December 2009 proposes many significant changes to the current Tier 1/Tier 2 capital framework.[115] The changes are intended to strengthen global capital regulations with the goal of promoting a more resilient banking sector. The Basel Committee also announced a plan to conduct an impact assessment on the proposed changes in the first half of 2010 and develop a fully calibrated set of standards by the end of 2010. These changes will be phased in as financial conditions improve and the economic recovery is assured, with the aim of full implementation by the end of 2012. We describe the current Tier 1/Tier 2 capital framework and summarize the Basel Committee's proposed changes below.

1. *The Current Tier 1/Tier 2 Capital Framework*

Tier 1 capital in Basel I consists primarily of equity capital and disclosed reserves. Equity capital is issued and fully paid ordinary shares of common stock and noncumulative perpetual preferred stock. Disclosed reserves are primarily reserves created or increased by appropriations of retained earnings.[116] Disclosed reserves also include general funds that must meet the following criteria: (1) Allocations to the funds must be made out of post-tax retained earnings or out of pre-tax earnings adjusted for all potential liabilities; (2) the funds, including movements into or out of the funds, must be disclosed separately in the bank's published accounts; (3) the funds must be unrestricted and accessible and immediately available to absorb losses; and (4) losses cannot be charged directly to the funds but must be taken through the profit and loss account. In October 1998, the Basel Committee determined that up to 15 percent of Tier 1 capital could include "innovative instruments," provided such instruments met certain criteria.[117]

Tier 2 capital is undisclosed reserves,[118] revaluation reserves, general loan loss reserves, hybrid capital instruments and subordinated debt. Revaluation reserves are reserves that are revalued at their current value (or closer to the current value) rather than at historic cost. The bank must discount any unrealized gains by 55 percent to reflect the potential volatility of this form of unrealized capital, as well as the tax liability charges that would generally be incurred if the unrealized gains were realized. General loan loss reserves are reserves created against the possibility of losses not yet identified. General loan loss reserves can be included in Tier 2 capital up to 1.25 percentage points of risk-weighted assets.[119] Hybrid capital instruments are instruments that have certain characteristics of both equity and debt, such as cumulative preferred stock, and must meet certain criteria to be treated as Tier 2 capital. Subordinated debt and term preferred stock must also meet certain criteria to be treated as Tier 2 capital. This last category is also referred to as "lower Tier 2" capital since subordinated debt and term preferred stock are not normally available to participate in the losses of a bank and are therefore limited to an aggregate amount not to exceed 50 percent of Tier 1 capital (after deductions).

Goodwill and any increases in equity capital resulting from a securitization exposure must be deducted from Tier 1 capital prior to computing the Tier 1 risk-based capital ratio. Investments in unconsolidated financial entities must also be deducted from regulatory capital (as well as from assets): 50 percent from Tier 1 capital and 50 percent from Tier 2 capital. Such deductions prevent multiple uses of the same capital resources by entities that are not consolidated (based on national accounting and/or regulatory systems) and to gauge the capital adequacy of individual institutions on a stand-alone basis. The Basel Committee explained that such deductions are necessary to prevent the double gearing (or double-leveraging) of capital, which can have negative systemic effects for the banking system by making it more vulnerable to the rapid transmission of problems from one institution to another.

In 1989, the FFRAs adopted the Basel I Tier 1 and Tier 2 capital framework with some variations to correspond to the characteristics of the financial institutions they regulate. All FFRAs treat common stockholders' equity

[111] *See* § 615.5301(c) and (d) and § 615.5335.

[112] *See* § 615.5301(j).

[113] In 1996, the Basel Committee added a third capital tier to support market risk, commodities risk and foreign currency risk in relation to trading book activities. However, in the Basel Consultative Proposal, the Basel Committee has proposed to abolish Tier 3 to ensure that market risks are supported by the same quality of capital as credit and operational risk.

[114] Total capital is the sum of Tier 1 and Tier 2 capital. Currently, Tier 2 capital may not account for more than 50 percent of a commercial bank's total capital.

[115] *See* footnote 7 above.

[116] The Basel Committee has emphasized over the years that the predominant form of Tier 1 capital should be voting common stockholder's equity and disclosed reserves. Common shareholders' funds allow a bank to absorb losses on an ongoing basis and are permanently available for this purpose. It best allows banks to conserve resources when they are under stress because it provides a bank with full discretion as to the amount and timing of distributions. It is also the basis on which most market judgments of capital adequacy are made. The voting rights attached to common stock provide an important source of market discipline over a commercial bank's management.

[117] The Basel Committee determined that all Tier 1 capital elements, including these instruments, must have the following characteristics: (1) Issued and fully paid, (2) noncumulative, (3) able to absorb losses within a bank on a going-concern basis, (4) junior to depositors, general creditors, and subordinated debt of the bank, (5) permanent, (6) neither be secured nor covered by a guarantee of the issuer or related entity or other arrangement that legally or economically enhances the seniority of the claim vis-à-vis bank creditors and (7) callable at the initiative of the issuer only after a minimum of 5 years with supervisory approval and under the condition that it will be replaced with capital of the same or better quality unless the supervisor determines that the bank has capital that is more than adequate to its risks. *See* "Instruments eligible for inclusion in Tier 1 capital" (October 27, 1998). This document is available at *http://www.bis.org.*

[118] Although Basel I includes them in Tier 2 capital, the FCA would likely not recognize undisclosed reserves as Tier 2 capital under a new regulatory capital framework.

[119] This is applicable to capital rules that are based on either Basel I or the Basel II standardized approach. The advanced approaches of Basel II have a different formula for determining the amount of general loan loss reserves in Tier 2 capital.

(including retained earnings), noncumulative perpetual preferred stock and certain minority interests in equity accounts of subsidiaries [120] as Tier 1 capital.[121] The FRB and FDIC also emphasize in their guidelines that common stockholders' equity should be the predominant form of Tier 1 capital. Tier 2 capital includes a certain portion of qualifying ALL and unrealized holding gains of available-for-sale equity securities, cumulative perpetual and term preferred stock, subordinated debt and other kinds of hybrid capital instruments.[122] Tier 2 capital is limited to 100 percent of Tier 1 capital. Certain Tier 2 capital elements, such as intermediate-term preferred stock and subordinated debt, are limited to 50 percent of Tier 1 capital. The FFRAs' regulations include a 4-percent Tier 1 risk-based capital ratio, an 8-percent total risk-based capital ratio and a 3- or 4-percent minimum leverage ratio requirement.[123] The FFRAs also require certain deductions to be made prior to computing the risk-based capital ratios.

2. *Proposed Changes to the Current Tier 1/Tier 2 Framework*

In December 2009, the Basel Committee described a number of possible fundamental reforms to the Tier 1/Tier 2 capital framework in its Basel Consultative Proposal. The reforms proposed in the Basel Consultative Proposal would strengthen bank-level, or micro-prudential, regulation, which will help increase the resilience of individual banking institutions during periods of stress. The Basel Committee is also considering a macro-prudential overlay to address procyclicality and systemic risk. The objective of the reforms is to improve the banking sector's ability to absorb shocks arising from financial and economic stress and reduce the risk of spillover from the financial sector to the real economy. The Basel Committee also aims to improve risk management and governance as well as strengthen banks' transparency and disclosures.

The Basel Committee proposes to improve the quality and consistency of Tier 1 capital. The new standards would place greater emphasis on common equity as the predominant form of Tier 1 capital. Common equity means common shares plus retained earnings and other comprehensive income, net of the regulatory adjustments (which can be significant).[124] The Basel Committee has also identified a Tier 1 element it calls "additional going-concern capital," which would be all capital included in Tier 1 that is not common equity.[125] Certain instruments with innovative features that do not meet the criteria of common equity and additional going-concern capital would be phased out of Tier 1 capital over time.

The Basel Consultative Proposal defines Tier 2 capital as capital that provides loss absorption on a gone-concern basis.[126] The criteria that instruments must meet for inclusion in Tier 2 capital would be simplified from the Basel I criteria. All limits and subcategories related to Tier 2 capital would be removed.

The Basel Committee plans to revise the Tier 1 risk-based and total risk-based capital ratios. Since common equity would be the predominant form of Tier 1 capital, the Basel Committee would establish a common equity risk-based minimum to ensure that it equates to a greater portion of Tier 1 capital. The data collected in the impact assessment will be used to calibrate the new minimum required levels and ensure a consistent interpretation of the predominant standard. The regulatory adjustments that are applied to capital, including the new common equity component, would also change.[127]

The Basel Committee is also introducing a non-risk-based leverage ratio as a supplementary "backstop" measure based on gross exposure.[128] A Tier 1 and/or common equity leverage ratio will be considered as possible measures. The leverage ratio would be harmonized internationally, fully adjusting for material differences in accounting, and, unlike the current leverage ratios of the FFRAs, would appropriately integrate off-balance sheet items.

The Basel Committee has included a proposal for capital conservation standards that would reduce the discretion of banks to distribute earnings in certain situations.[129] A Tier 1 capital buffer range would be established above the regulatory minimum capital requirement. When the Tier 1 capital level falls within this range, a bank would be required to conserve a certain percentage of its earnings in the subsequent financial year. Regulators would have the discretion to impose time limits on banks operating within the buffer range on a case-by-case basis. The Basel Committee will use the impact assessment to calibrate the buffer and restrictions of this regulatory capital conservation framework.

Finally, the Basel Committee proposes to improve the transparency of capital. Banks would be required to: (1) Reconcile all regulatory capital elements back to the balance sheet in the audited financial statements; (2) separately disclose all regulatory adjustments; (3) describe all limits and minimums, identifying the positive and negative elements of capital to which the limits and minimums apply; (4) describe the main features of capital instruments issued; and (5) comprehensively explain how the capital ratios are calculated. In addition to the above, banks would be required to make available on their Web sites the full terms and conditions of all instruments included in regulatory capital.[130]

The FFRAs have not yet announced or proposed these recommended changes to their regulatory capital frameworks. However, we note that the FFRAs used higher capital standards consistent with

[120] Minority interests in equity accounts of subsidiaries represent stockholders' equity associated with common or noncumulative perpetual preferred equity instruments issued by an institution's consolidated subsidiary that are held by investors other than the institution. They typically are not available to absorb losses in the consolidated institution as a whole, but they are included in Tier 1 capital because they represent equity that is freely available to absorb losses in the issuing subsidiary. Some of the FFRAs restrict these minority interests to 25 percent of Tier 1 capital.

[121] The OTS and FRB have additional elements in Tier 1 capital. For example, the OTS permits some of its institutions to include nonwithdrawable accounts and pledged deposits in Tier 1 capital to the extent that such accounts have no fixed maturity date, cannot be withdrawn at the option of the accountholder and do not earn interest that carries over to subsequent periods. The FRB permits certain BHCs to treat certain "restricted core capital elements" (restricted elements) as Tier 1 capital. Restricted elements include qualifying cumulative perpetual preferred stock and cumulative trust preferred securities, which are limited to 25 percent of Tier 1 capital. The FRB has recently decreased this limit to 15 percent of Tier 1 capital for certain internationally active BHCs but has delayed the effective date to March 31, 2011. *See* 70 FR 11827 (March 10, 2005) and 74 FR 12076 (March 23, 2009).

[122] The FFRA's elements of Tier 2 capital are discussed in more detail below.

[123] The minimum leverage ratio requirement depends on the type of institution and a regulatory assessment of the strength of its management and controls. Banks holding the highest supervisory rating and not growing significantly have a minimum leverage ratio of 3 percent; all other banks must meet a leverage ratio of at least 4 percent.

[124] Common shares must meet a set of criteria to be included in Tier 1 capital. *See* paragraph 87 of the Basel Consultative Proposal.

[125] Additional going concern capital must meet a set of criteria to be included in Tier 1 capital. *See* paragraphs 88 and 89 of the Basel Consultative Proposal.

[126] Instruments must meet or exceed a set of criteria to be included in Tier 2 capital. *See* paragraph 90 of the Basel Consultative Proposal.

[127] A description of the regulatory adjustments can be found in paragraphs 93 through 108 of the Basel Consultative Proposal.

[128] *See* paragraphs 202 through 207 of the Basel Consultative Proposal.

[129] *See* paragraphs 247 through 259 of the Basel Consultative Proposal.

[130] *See* paragraphs 80 and 81 of the Basel Consultative Proposal.

the Basel Consultative Proposal in their "Supervisory Capital Assessment Program" (SCAP) conducted between February and April 2009 to assess the capital adequacy of 19 of the largest U.S. bank holding companies.[131] We also note that the U.S. Treasury's core principles for reforming the U.S. and international regulatory capital framework are consistent with the Basel Committee's recent proposal.[132] Finally, we note that the National Credit Union Administration (NCUA) issued a proposed rule to propose changes to its regulation that would improve the quality of capital at corporate credit unions.[133] Among the regulations the NCUA is proposing is a retained earnings minimum to ensure that a corporate credit union's capital base does not consist of entirely contributed capital. This should provide a cushion to protect against the downstreaming of corporate credit union losses to its natural person credit unions when those institutions could least afford those losses.[134]

The comment period for the Basel Consultative Proposal closed on April 16, 2010. As noted above, the Basel Committee has indicated it plans to issue a "fully calibrated, comprehensive set of proposals" covering all elements discussed in the consultative document. It is expected that Basel Committee member countries will phase in the new standards as their economies improve, with an aim of full implementation by the end of 2012.

Dated: June 30, 2010.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 2010–16457 Filed 7–7–10; 8:45 am]

BILLING CODE 6705–01–P

[131] A detailed white paper on the SCAP data and methodology was published in April 2009, and the results were published in May 2009. *See* "The Supervisory Capital Assessment Program: Design and Implementation" (April 24, 2009) and "The Supervisory Capital Assessment Program: Overview of Results" (May 7, 2009). These documents are available at *http://www.federalreserve.gov.*

[132] *See* "Principles for Reforming the U.S. and International Regulatory Capital Framework for Banking Firms," (September 3, 2009). This document is available at *http://www.ustreas.gov.*

[133] *See* 74 FR 65209 (December 9, 2009).

[134] *See* also Statement of Michael E. Fryzel, Chairman of NCUA, on "H.R. 2351: The Credit Union Share Insurance Stabilization Act" before the U.S. House of Representatives, Basel Committee on Financial Services, SubBasel Committee on Financial Institutions and Consumer Credit (May 20, 2009). This document is available at: *http://www.ncua.gov.*

Federal Register

Thursday,
July 8, 2010

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR–2010–0076, Sequence 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–44; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of an interim rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–44. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://regulations.gov/.*

DATES: For effective date, see separate document, which follows.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below in relation to the FAR case or subject area. Please cite FAC 2005–44 and the FAR case number. Interested parties may also visit our Web site at *http://acquisition.gov/far.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

RULE LISTED IN FAC 2005–44

Subject	FAR case	Analyst
Reporting Executive Compensation and First-Tier Subcontract Awards	2008–039	Woodson

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to FAR case 2008–039.

FAC 2005–44 amends the FAR as specified below:

Reporting Executive Compensation and First-Tier Subcontract Awards (FAR Case 2008–039)

This interim rule amends the Federal Acquisition Regulation to implement section 2 of Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110–252), which requires the Office of Management and Budget (OMB) to establish a free, public, website containing full disclosure of all Federal contract award information. This rule will require contractors to report executive compensation and first-tier subcontract awards on contracts and orders expected to be $25,000 or more (including all options), except classified contracts and contracts with individuals. This information will be available to the public. To minimize the burden implementing the Transparency Act will impose on both Federal agencies and contractors, the Councils intend to implement the reporting requirements in a phased approach:

1. Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was $20,000,000 or more.

2. From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $550,000 or more.

3. Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $25,000 or more.

The rule is applicable to all solicitations and contracts with a value of $25,000 or more. The clause is required in commercial item contracts, including commercially available off-the-shelf (COTS) item contracts, as well as actions under the simplified acquisition threshold, meeting the $25,000 threshold. The clause is not required in classified solicitations and contracts, and contracts with individuals.

Dated: July 2, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–44 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–44 is effective July 8, 2010.

Dated: July 2, 2010.

Linda W. Nielson,

Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).

Dated: June 30, 2010.

Edward Loeb,

Acting Deputy Associate Administrator for Acquisition Policy, Office of Acquisition Policy, U.S. General Services Administration.

Dated: June 29, 2010.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2010–16693 Filed 7–7–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 12, 42, and 52

[FAC 2005–44; FAR Case 2008–039; Docket 2010–0093, Sequence 1]

RIN 9000–AL66

Federal Acquisition Regulation; FAR Case 2008–039, Reporting Executive Compensation and First-Tier Subcontract Awards

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 2 of the Federal Funding Accountability and Transparency Act of 2006, as amended by section 6202 of the Government Funding Transparency Act of 2008, which requires the Office of Management and Budget (OMB) to establish a free, public, website containing full disclosure of all Federal contract award information. This rule will require contractors to report executive compensation and first-tier subcontractor awards on contracts expected to be $25,000 or more, except classified contracts, and contracts with individuals.

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

Applicability Date: Contracting officers shall include the FAR clause at 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards, in accordance with FAR 4.1403, in solicitations issued on or after the effective date of this rule, and resultant contracts. Contracting officers shall modify existing indefinite-delivery indefinite-quantity (IDIQ) contracts on a bilateral basis in accordance with FAR 1.108(d)(3) to include the clause for future orders. This includes modifying blanket purchase agreements under IDIQ contracts. IDIQ contracts include Federal Supply Schedule contracts and task- and delivery-order contracts such as Governmentwide acquisition contracts.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before September 7, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–44, FAR case 2008–039, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008–039" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2008–039". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2008–039" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–44, FAR case 2008–039, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. Please cite FAC 2005–44, FAR case 2008–039. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

On September 26, 2006, the Federal Funding Accountability and Transparency Act (Transparency Act), Public Law 109–282, 31 U.S.C. 6101 note, was enacted to reduce "wasteful and unnecessary spending," by requiring that OMB establish a free, public, website containing full disclosure of all Federal award information for awards of $25,000 or more. The Transparency Act required, by January 1, 2009, reporting on subcontract awards by Federal Government contractors and subcontractors. The Transparency Act's initial phase was conducted as a Pilot Program (Pilot), to test the collection and accessibility of the subcontract data. In order to implement the Pilot, a proposed rule was published in the **Federal Register**, March 21, 2007 (72 FR 13234).

A final rule implementing the Pilot was published in the **Federal Register**, September 6, 2007 (72 FR 51306). Exempted from the Pilot were solicitations and contracts for commercial items issued under FAR part 12 and classified solicitations and contracts. To minimize the burden on Federal prime contractors and small businesses, the Pilot applied to contracts with a value greater than $500,000,000 and required the awardees to report all subcontract awards, exceeding $1,000,000 to the Transparency Act database at *http://www.esrs.gov.* The Pilot terminated January 1, 2009.

On June 30, 2008, Section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110–252) amended the Transparency Act to require the Director of OMB to include an additional reporting element, requiring contractors and subcontractors to disclose information on the names and total compensation of their five most highly compensated officers.

On March 31, 2009, the Councils published in the **Federal Register** at 74 FR 14639 FAR case 2009–009, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements, which required contractors receiving a Recovery Act funded contract award to provide detailed information on subcontracts, including the data elements required to comply with the Transparency Act. Although the Transparency Act reporting requirements flow down to all subcontracts, regardless of tier, the Recovery Act limited the reporting on subcontract awards to the contractor's first-tier subcontractors.

The Office of Management and Budget directed that the FAR be amended to initiate subcontract award reporting under the Transparency Act:

- Subcontract reporting would apply only to first-tier subcontracts;
- The rule would phase-in the reporting of subcontracts of $25,000 or more:
  - Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was $20,000,000 or more;
  - From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $550,000 or more; and
  - Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $25,000 or more.
- By the end of the month following the month of award of a contract, and annually thereafter, the contractor shall report the names and total compensation of each of the five most highly compensated executives for the contractor's preceding completed fiscal year;
- Unless otherwise directed by the contracting officer, by the end of the month following the month of award of a first-tier subcontract, and annually thereafter, the contractor shall report the names and total compensation of each of the five most highly compensated executives for the first-tier subcontractor's preceding completed fiscal year;
- There would be a $300,000 gross income exception for prime contractors and subcontractors; and
- Data quality requirements would apply to agencies and contractors.

Many of these directions minimize burden on contractors.

The rule will require contractors to report subcontracts of $25,000 or more, and any modifications made to those

subcontracts which change previously reported data.

The reporting requirements of the Transparency Act are sweeping in their breadth, and are intended to empower the American taxpayer with information that may be used to demand greater fiscal discipline from both executive and legislative branches of Government. The Transparency Act reporting requirements apply to all businesses (large, small, disadvantaged small, veteran-owned small, women-owned small, HUBZone small), regardless of business size or ownership.

This rule revises FAR subpart 4.14 and FAR 52.204–10 to implement the Transparency Act reporting requirements. Contracting officers must include the revised clause in solicitations and contracts of $25,000 or more. The clause is required in commercial item contracts, including commercially available off-the-shelf (COTS) item contracts, as well as actions under the simplified acquisition threshold, meeting the $25,000 threshold. The clause is not required in classified solicitations and contracts, and contracts with individuals.

Contractors will provide these subcontract reports to the Federal Funding Accountability and Transparency Act Sub-award Reporting System (FSRS) (*http://www.fsrs.gov*). FSRS is a module of the Electronic Subcontracting Reporting System (eSRS) designed specifically to collect the Transparency Act required data.

Contracting officers will be required to modify existing contracts to cover future orders—see the Applicability Date above.

B. Determinations

The Councils provide the following determinations with respect to the rule's applicability to contracts and subcontracts in amounts not greater than the simplified acquisition threshold, commercial items, and commercially available off-the-shelf (COTS) items.

1. *Applicability to contracts at or below the simplified acquisition threshold.* 41 U.S.C. 429 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. If a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council (FAR Council) makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the simplified acquisition threshold, the law will apply to them. Therefore, given that the Transparency Act was enacted to reduce "wasteful and unnecessary spending" by requiring that the Office of Management and Budget (OMB) establish a free, public, Web site containing full disclosure of all Federal contract award information, the FAR Council has determined that it is in the best interest of the Federal Government to apply this rule to solicitations and contracts at or below the simplified acquisition threshold, as defined at 2.101.

2. *Applicability to commercial item contracts.* 41 U.S.C. 430 governs the applicability of laws to commercial items and is intended to limit the applicability of laws to commercial items.

Section 430 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for commercial items. The same applies for subcontracts for commercial items. Therefore, given that the Transparency Act was enacted to reduce "wasteful and unnecessary spending" by requiring that OMB establish a free, public, Web site containing full disclosure of all Federal contract award information, the FAR Council has determined that it is in the best interest of the Federal Government to apply the rule to commercial items, as defined at FAR 2.101, both at the prime and subcontract levels.

3. *Applicability to commercially available off-the-shelf (COTS) item contracts.* 41 U.S.C. 431 governs the applicability of laws to the procurement of COTS items, and is intended to limit the applicability of laws to them. Even if a law has been determined to apply to commercial items in general, COTS items may be exempt. Section 431 provides that if a provision of law contains criminal or civil penalties, or if the Administrator for Federal Procurement Policy makes a written determination that it is not in the best interest of the Federal Government to exempt COTS item contracts, the provision of law will apply. The same applies for subcontracts for COTS items. Therefore, given that the Transparency Act was enacted to reduce "wasteful and unnecessary spending" by requiring that OMB establish a free, public, online Web site containing full disclosure of all Federal contract award information, the Administrator for Federal Procurement Policy has determined that it is in the best interest of the Federal Government to apply the rule to COTS item contracts and subcontracts, as defined at FAR 2.101.

This is a significant regulatory action and, therefore, was 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.

C. Regulatory Flexibility Act

This interim rule may 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 requires contractors to report information on first-tier subcontract awards of $25,000 or more, except classified contracts and contracts with individuals. The rule also requires contractors to report the names and total compensation of each of the contractor's and first–tier subcontractors' five most highly compensated executives for the contractor and its subcontractor's preceding completed fiscal year. The rule requires that first-tier subcontractors provide the total compensation information to the contractor for reporting purposes. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

1. Reasons for the action.

This action implements the Federal Funding Accountability and Transparency Act ("Transparency Act"), (Pub. L. 109–282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110–252), enacted to reduce "wasteful and unnecessary spending" by requiring that the Office of Management and Budget (OMB) establish a free, public, online database containing full disclosure of all Federal contract award information.

2. Objectives of, and legal basis for the rule.

The objective of the rule is to empower the American taxpayer with information that may be used to demand greater fiscal discipline from both executive and legislative branches of Government. The legal basis for the rule is the Transparency Act and the Government Funding Transparency Act of 2008. According to the sponsors of the Transparency Act, the new database will deter "wasteful and unnecessary" spending, since Government officials will be less likely to earmark funds for special projects if they know the public could identify how much money was awarded to which organizations, and for what purposes.

3. Description and estimate of the number of small entities to which the rule will apply.

The rule applies to all contracts and subcontracts, of $25,000 or more and any modifications to those subcontracts that change previously reported data. The clause is not required in classified solicitations and contracts, and contracts with individuals. The rule requires contractors to report first-

tier subcontract award information and annually report the contractor's and first-tier subcontractors' five most highly compensated executives for the contractor and subcontractor's preceding completed fiscal year. To arrive at an estimate of the number of small businesses to which the rule would apply, the Councils queried the Federal Procurement Data System (FDPS) for FY 09 contract award information. Based on the FPDS data collected there were 188,712 unique DUNS numbers for contractors Governmentwide. Within this group 146,905 were reported as small businesses based on the Contracting Officer's Determination of Business Size. The Government does not have a system in place that provides information on the actual number of first-tier subcontracts awarded by Government prime contractors, but believes the vast majority of first-tier subcontractors will be small businesses. Using a formula previously used in FAR Case 2009–009, American Recovery and Reinvestment Act of 2009 (Recovery Act)—Reporting Requirements, it is estimated that the number of small businesses that may be first-tier subcontracts and be subject to the rule will be three times the number of small businesses that received prime contract awards.

Given that understanding, the number of small businesses that may be awarded first-tier subcontracts and be subject to the rule's reporting requirements under FAR 52.204–10(c)(1)(i) through (xiv) is estimated to be 440,715 (146,905 x 3). This does not take into account a reduction for the exception for entities that had gross income, from all sources, under $300,000.

To calculate the number of small businesses that may be subject to the rule's requirement to report the contractor's and first-tier subcontractors' five most highly compensated executives, for the contractor and first-tier subcontractor's preceding completed fiscal year, the Councils estimate that number to be 29,381 or 20 percent of the number of unique DUNS numbers (146,905) Governmentwide in FPDS in FY 09. This estimate is based on the assumption that the vast majority of small businesses will be exempt from the compensation reporting requirement because they will meet the exemptions in section 2(e) and section 2(b)(1)(F) of the Transparency Act (see item 6 below).

Accordingly, the Councils believe 617,001 is a reasonable estimate of the total number of small businesses, both as prime and first-tier subcontractors to whom the rule will apply.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule requires prime contractors to report first-tier subcontract data on first-tier subcontract awards of $25,000 or more, in *http://www.fsrs.gov.* The rule also requires contractors to report, at *http://www.ccr.gov,* the names and total compensation of each of the contractor's five most highly compensated executives, for the contractor's preceding completed fiscal year in which the awards were made, and to make a similar report for subcontractors at *http://www.fsrs.gov.* The rule applies to all businesses (large, small, disadvantaged small, veteran-owned small, HUBZone small, women-owned small), regardless of business size or ownership. The professional skills necessary for the preparation of the report would probably be prepared by a company office or division manager or a company subcontract administrator.

Section 2(e) of the statute allows the Director, OMB, to exempt any entity that demonstrates its gross income, from all sources, did not exceed $300,000 in the entity's previous tax year, from reporting the first-tier subcontract award information, until the Director determines that the imposition of the reporting requirement will not cause undue burden on the entity. The Director has exempted them.

Also, contractors and first-tier subcontractors are not required to report the total compensation information required by the rule, unless—

a. In the contractor or subcontractor's preceding fiscal year, the contractor or subcontractor received—

1. 80 percent or more of its annual gross revenue in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

2. $25,000,000 or more in annual gross revenue from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

b. The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

Additionally, the rule minimizes the burden on small entities by phasing-in reporting requirements. Beginning on the date of publication of the rule, contractors report newly awarded subcontracts exceeding $20 million; starting October 1, 2010, contractors report newly awarded subcontracts of $550,000 or more; starting March 1, 2011 they report newly awarded subcontracts of $25,000 or more.

Many contractors received contract funds under the American Recovery and Reinvestment Act of 2009, and therefore are familiar with the basic idea of reporting this kind of information into a database.

5. Relevant Federal rules which may duplicate, overlap, or conflict with the rule.

The rule follows the September 6, 2007 Pilot Program final rule FAR Case 2006–029, which has expired. It also follows the Recovery Act reporting rule, FAR Case 2009–009, which also requires the public to report into a database on Recovery Act monies; because of this, there will be some duplication of reporting into databases.

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

The alternatives to the rule would have a heavier burden on small entities. For example, the reporting tier could go below the first-tier subcontract; the $300,000 exception would not be used; there would be no pre-population of some data elements; there would be no phase-in periods and the $25,000 threshold would apply immediately.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts 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 (FAC 2005–44, FAR Case 2008–039) in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the interim rule contains information collection requirements. Accordingly, the Regulatory Secretariat forwarded an emergency information collection request for approval of a new information collection requirement to the Office of Management and Budget under 44 U.S.C. Chapter 35, et seq. OMB approved the new information collection requirement as OMB Control No. 9000–0177. Comments to the interim rule as well as the information collection requirement will be considered in the revisions to both the rule and the collection.

The rule requires that all solicitations and contracts of $25,000 or more contain the clause at FAR 52.204–10. The clause flows down to first-tier subcontracts. Reporting is phased-in.

The rule also requires contractors, unless otherwise directed by a contracting officer, to report first-tier subcontracts in accordance with the data elements at FAR paragraphs 52.204–10(c)(1)(i) through (xiv) to *http://www.fsrs.gov* by the end of the month following the month in which the subcontract award is made. Additionally, FAR 52.204–10(c)(2) and (3) require certain contractors and first-tier subcontractors to publicly disclose the names and total compensation of

each of the contractor and subcontractor's five most highly compensated executives for the preceding completed fiscal year in which the award was made. The FAR clause requires this compensation disclosure for contractors as well because to exclude contractors while requiring disclosure for first-tier subcontractors would be unsupportable given the transparency goals of the Transparency Act. The clause imposes public reporting burdens on contractors and first-tier subcontractors performing under a Government contract.

Based on the FPDS data collected, there were 188,712 unique DUNS numbers for contractors Governmentwide. Of this amount 146,905 were small businesses and 41,707 were other than small businesses. The Councils believe that 6256 or 15 percent of the other than small businesses do not disclose the compensation information through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986, and therefore would be subject to the rule. Given the number of small businesses (29,381) that will be subject to the compensation reporting requirement, the Councils estimate that total number of prime contractors and first-tier subcontractors to whom the reporting requirement under FAR 52.204–10(c)(2) and (3) would apply is 35,637.

Based on the above and the calculations below, the Councils estimate the annual burden associated with reporting requirements of FAR 52.204–10 to be $22,608,776. The public reporting for this burden is estimated to average .5 hour per response for reporting under FAR 52.204–10(c)(1)(i) through (xiv), and .5 reporting hour under FAR 52.204–10(c)(2) and (3). The reporting burden includes the time for reviewing instructions, and reporting the data. It does not cover the time required to conduct research or the time to obtain the information for the data elements.

1. *Reporting Elements under FAR 52.204–10(c)(1)(i) through (xiv).* We estimate the total annual public cost burden for these elements to be $21,397,118 based on the following:

The annual reporting burden is estimated as follows:

Respondents: 629,327 (number of first-tier subcontractors (440,715) + prime small (146,905) and other than small businesses (41,707)).

Responses per Respondent: 1.

Total Annual Responses: 629,327.

Preparation Hours per Response: .5.

Total Response Burden Hours: 314,664.

Average Hourly Wages ($50.00 + 36.35% overhead): $68.00.

Estimated Cost to the Public: $21,397,118.

2. *Reporting Elements Under FAR 52.204–10(c)(2) and (3).* Given FPDS data for unique DUNS numbers for FY 09, the Councils estimate that 29,381 or 20 percent of small businesses with unique DUNS numbers in FPDS will be required to report the total compensation information due to the presumption that the majority of such businesses, both as prime and first-tier subcontractors will be exempt from the reporting requirement, because they meet the exceptions provided by the Transparency Act. The Councils believe that only 6256 or 15 percent of the other than small businesses (41,707) with unique DUNS in FPDS would be subject to the reporting requirement, because it presumes that 85 percent of the other than small businesses already provide the total compensation information through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

Therefore, the Councils believe that 35,637 first-tier subcontractors and prime contractors would be required to disclose the compensation information.

We estimate the total annual public cost burden for this element to be $1,211,658 based on the following:

Respondents: 35,637 subcontractors and prime contractors.

Responses per Respondent: 1.

Total Annual Responses: 35,637.

Preparation Hours per Response: .5.

Total Response Burden Hours: 17,819.

Average Hourly Wages: ($50.00 + 36.35% overhead): $68.00.

Estimated Cost to the Public: $1,211,658.

E. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than September 7, 2010 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0177, Federal Funding Accountability and Transparency Act (Transparency Act), in all correspondence.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (MVCB), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0177, Federal Funding Accountability and Transparency Act (Transparency Act), in all correspondence.

F. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Federal Funding Accountability and Transparency Act (Transparency Act) (Pub. L. 109–282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110–252), required the reporting of subcontract award data by January 1, 2009. This rule is a follow-up to the Pilot Program rule in FAR Case 2006–029, published March 21, 2007 (72 FR 13234) as a proposed rule, and September 6, 2007 (72 FR 51306) as a final rule; the preamble discussions notified the public to expect the final program thresholds to be at the greatly lowered thresholds in the statute, for example, requiring the reporting of subcontracts of $25,000 or more. Failure to implement the statute as required will undermine the Transparency Act's intent to empower the American taxpayer with information that may be used to demand greater fiscal discipline from both executive and legislative branches of Government. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), the Councils 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 4, 12, 42, and 52

Government procurement.

Dated: July 2, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 12, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4, 12, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Revise subpart 4.14 to read as follows:

Subpart 4.14—Reporting Executive Compensation and First-Tier Subcontract Awards

Sec.
4.1400 Scope of subpart.
4.1401 Applicability.
4.1402 Procedures.
4.1403 Contract clause.

Subpart 4.14—Reporting Executive Compensation and First-Tier Subcontract Awards

4.1400 Scope of subpart.

This subpart implements section 2 of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110–252), which requires contractors to report subcontract award data and the total compensation of the five most highly compensated executives of the contractor and subcontractor. The public may view first-tier subcontract award data at *http://usaspending.gov.*

4.1401 Applicability.

(a) This subpart applies to all contracts with a value of $25,000 or more, except classified contracts and contracts with individuals.

(b) The reporting requirements will be phased-in according to the schedule in 52.204–10(e).

(c) For all phases, reporting of subcontract information will be limited to the first-tier subcontractor.

4.1402 Procedures.

(a) Agencies shall ensure that contractors comply with the reporting requirements of 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards. Agencies shall review contractor reports on a quarterly basis to ensure the information is consistent with contract information. The agency is not required to address data for which the agency would not normally have supporting information, such as the compensation information required of contractors and first-tier subcontractors. However, the agency shall inform the contractor of any inconsistencies with the contract information and require that the contractor correct the report, or provide a reasonable explanation as to why it believes the information is correct. Agencies may review the reports at *http://www.fsrs.gov.*

(b) When contracting officers report the contract action to the Federal Procurement Data System (FPDS) in accordance with FAR subpart 4.6, certain data will then pre-populate from FPDS, to assist contractors in completing and submitting their reports. Contracts reported using the generic DUNS number allowed at FAR 4.605(b)(2) will interfere with the contractor's ability to comply with this reporting requirement, because the data will not pre-populate from FPDS.

(c) If the contractor fails to comply with the reporting requirements, the contracting officer shall exercise appropriate contractual remedies. In addition, the contracting officer shall make the contractor's failure to comply with the reporting requirements a part of the contractor's performance information under Subpart 42.15.

(d) There is a reporting exception in 52.204–10(d) for contractors and subcontractors who had gross income in the previous tax year under $300,000.

4.1403 Contract clause.

(a) Except as provided in paragraph (b) of this section, the contracting officer shall insert the clause at 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards, in all solicitations and contracts of $25,000 or more.

(b) The clause is not required in—

(1) Classified solicitations and contracts; or

(2) Solicitations and contracts with individuals.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.503 [Amended]

■ 3. Amend section 12.503 by removing and reserving paragraph (a)(6).

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

42.1501 [Amended]

■ 4. Amend section 42.1501 by adding the words "the contractor's reporting into databases (see subparts 4.14 and 4.15);" after the word "satisfaction;".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Revise section 52.204–10 to read as follows:

52.204–10 Reporting Executive Compensation and First-Tier Subcontract Awards.

As prescribed in 4.1403(a), insert the following clause:

Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010)

(a) *Definitions.* As used in this clause:

Executive means officers, managing partners, or any other employees in management positions.

First-tier subcontract means a subcontract awarded directly by a Contractor to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a Contractor's general and administrative expenses or indirect cost.

Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) Other compensation, if the aggregate value of all such other compensation (*e.g.,* severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110–252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c)(1) Unless otherwise directed by the contracting officer, by the end of the month following the month of award of a first-tier subcontract with a value of $25,000 or more, (and any modifications to these subcontracts that change previously reported data), the

Contractor shall report the following information at *http://www.fsrs.gov* for each first-tier subcontract. (The Contractor shall follow the instructions at *http://www.fsrs.gov* to report the data.)

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

(xiii) Treasury account symbol (TAS) as reported in FPDS.

(xiv) The applicable North American Industry Classification System code (NAICS).

(2) By the end of the month following the month of a contract award, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for the Contractor's preceding completed fiscal year at *http://www.ccr.gov,* if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

(3) Unless otherwise directed by the contracting officer, by the end of the month following the month of a first-tier subcontract with a value of $25,000 or more, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for each first-tier subcontractor for the subcontractor's preceding completed fiscal year at *http://www.fsrs.gov,* if—

(i) In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

(d)(1) If the Contractor in the previous tax year had gross income, from all sources, under $300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under $300,000, the Contractor does not need to report awards to that subcontractor.

(e) Phase-in of reporting of subcontracts of $25,000 or more.

(1) Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was $20,000,000 or more.

(2) From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $550,000 or more.

(3) Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $25,000 or more.

(End of clause)

■ 6. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (b)(4) through (b)(42) as (b)(5) through (b)(43), respectively; and adding a new paragraph (b)(4);

The revised and added text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (JUL 2010)

* * * * *

(b) * * *

—(4) 52.204–10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109–282) (31 U.S.C. 6101 note).

* * * * *

■ 7. Amend section 52.213–4 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (a)(2)(i) through (a)(2)(vii) as (a)(2)(ii) through (a)(2)(viii), respectively; and adding a new paragraph (a)(2)(i);

The revised text reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (JUL 2010)

(a) * * *

(2) * * *

(i) 52.204–10 Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2010) (Pub. L. 109–282) (31 U.S.C. 6101 note).

* * * * *

[FR Doc. 2010–16691 Filed 7–7–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0077, Sequence 6]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–44; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of the summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–44 which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2005–44 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–44 and the specific FAR case number. For information pertaining to status or publication schedules, contact the

Regulatory Secretariat at (202) 501–4755.

RULE LISTED IN FAC 2005–44

Subject	FAR case	Analyst
Reporting Executive Compensation and First-Tier Subcontract Awards	2008–039	Woodson

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to FAR case 2008–039.

FAC 2005–44 amends the FAR as specified below:

Reporting Executive Compensation and First-Tier Subcontract Awards (FAR Case 2008–039)

This interim rule amends the Federal Acquisition Regulation to implement section 2 of Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110–252), which requires the Office of Management and Budget (OMB) to establish a free, public, Web site containing full disclosure of all Federal contract award information. This rule will require contractors to report executive compensation and first-tier subcontract awards on contracts and orders expected to be $25,000 or more (including all options), except classified contracts and contracts with individuals. This information will be available to the public. To minimize the burden implementing the Transparency Act will impose on both Federal agencies and contractors, the Councils intend to implement the reporting requirements in a phased approach:

1. Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was $20,000,000 or more.

2. From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $550,000 or more.

3. Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was $25,000 or more.

The rule is applicable to all solicitations and contracts with a value of $25,000 or more. The clause is required in commercial item contracts, including commercially available off-the-shelf (COTS) item contracts, as well as actions under the simplified acquisition threshold, meeting the $25,000 threshold. The clause is not required in classified solicitations and contracts, and contracts with individuals.

Dated: July 2, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–16684 Filed 7–7–10; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Thursday,
July 8, 2010

Part VI

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Center on Employment Policy and Measurement; Overview Information and Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010 and Disability Rehabilitation Research Project (DRRP)—International Exchange of Knowledge and Experts in Disability and Rehabilitation Research: Overview Information and Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Center on Employment Policy and Measurement

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–4.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice announces a priority for an RRTC on Employment Policy and Measurement. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

RRTC Program

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on February 1, 2008 (73 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants must demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on May 13, 2010 (75 FR 26952). The NPP included a background statement that described our rationale for the priority proposed in that notice.

There are no differences between the NPP and this notice of final priority (NFP) as discussed in the following section.

Public Comment: In response to our invitation in the NPP, we did not receive any substantive comments on the proposed priority.

Final Priority: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Research and Training Center (RRTC) on Employment Policy and Measurement. The RRTC must conduct research, knowledge translation, training, dissemination, and technical assistance to advance the understanding of how government policies, and changes in policies, affect employment outcomes of individuals with disabilities and to expand the capacity of government agencies, other policy groups, and consumer organizations to produce consistent data related to the employment of individuals with disabilities. Under this priority, the RRTC must contribute to the following outcomes:

(a) Increased knowledge of government policies and programs that affect employment outcomes for individuals with disabilities. The RRTC must contribute to this outcome by—

(1) Conducting rigorous research on the ways in which policies, changes in policies, and the interaction of policies such as those reflected in the Workforce Investment Act, including the Vocational Rehabilitation (VR) State Grants program; the Social Security Disability Insurance and Supplemental Security Income programs; health care initiatives; and other Federal or State programs affect employment rates for individuals with disabilities. Examples of such policy topics include, but are not limited to, the interaction between income support programs, poverty, disability, and employment success; the

interaction between requirements for the VR State Grants and Ticket to Work programs; and the policy barriers to successful transition from youth to adulthood for young people with disabilities;

(2) Assessing existing research findings and other materials such as agency documents or data to produce timely policy briefs on emerging topics related to employment of individuals with disabilities; and

(3) Identifying statistical methods that can be used to interpret and compare data from different programs and data sets that provide information on the employment of individuals with disabilities.

(b) Improved capacity to measure the employment outcomes of individuals with disabilities. The RRTC must contribute to this outcome by—

(1) Identifying or developing a framework that includes common measures and metrics that capture the different types of employment outcomes for individuals with disabilities, including wages, benefits, employment retention and re-entry, and opportunities for advancement, and that can be used to analyze and compare data across different programs; and

(2) Validating the new measures and metrics by collecting new data or analyzing existing data to determine the properties of these measures and metrics and their sensitivity to factors that are hypothesized to affect employment among people with disabilities.

(c) Increased incorporation of research findings from the RRTC project into practice or policy. The RRTC must contribute to this outcome by—

(1) Collaborating with stakeholder groups to develop, evaluate, or implement strategies to increase utilization of research findings;

(2) Conducting training and dissemination activities to facilitate the utilization of research findings by employers, policymakers, and individuals with disabilities; and

(3) Collaborating and sharing information with other agencies across the Federal Government through mechanisms such as the Interagency Committee on Disability Research.

In addition, the RRTC must—

(1) Establish an Interagency Advisory Group that includes, but is not limited to, representatives from the Rehabilitation Services Administration (RSA), the Office of Disability Employment Policy, the Social Security Administration, the Centers for Medicare and Medicaid Services, and other agencies, as necessary, to ensure that the policy topics address the issues of most concern across key agencies and to guide development of the measures' framework;

(2) Collaborate with appropriate NIDRR-funded grantees, including knowledge translation grantees and grantees involved with employment research; and

(3) Collaborate with relevant RSA grantees and NIDRR-funded Disability and Business Technical Assistance Centers.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

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 this priority, 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 priority justify the costs.

Discussion of Costs and Benefits: The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This final priority will generate new knowledge through research and development.

Another benefit of this final priority is that the establishment of a new RRTC will improve the lives of individuals with disabilities. The new RRTC will disseminate and promote the use of new information that will improve the options for individuals with disabilities to obtain, retain, and advance in employment.

Accessible Format: Individuals with disabilities can obtain this document 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: July 2, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–16673 Filed 7–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Employment Policy and Measurement Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–4.

Dates:

Applications Available: July 8, 2010.

Date of Pre-Application Meeting: July 19, 2010.

Deadline for Transmittal of Applications: August 23, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities.

Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Priorities: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). The *Employment Policy and Measurement* priority is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register.**

For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

General Rehabilitation Research and Training Centers (RRTC) Requirements and *Employment Policy and Measurement.*

Note: The full text of each of these priorities is included in the notices of final priorities published in the **Federal Register** and in the application package.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). (d) The notice of final priority for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $850,000.

Maximum Award: We will reject any application that proposes a budget exceeding $850,000 for a single budget period of 12 months. 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: 1.

Note: The Department is not bound by any estimates in this notice.

Note: The maximum amount includes direct and indirect costs. A grantee may not collect more than 15 percent of the total grant award as indirect cost charges (34 CFR 350.23).

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian Tribes and Tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* 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 program or competition as follows: CFDA number 84.133B–4.

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. We recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended 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 recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: July 8, 2010.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 19, 2010. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Marlene Spencer, U.S. Department of Education, Potomac Center Plaza (PCP), room 5133, 550 12th Street, SW., Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

Deadline for Transmittal of Applications: August 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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 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 Rehabilitation Research and Training Centers (RRTCs)—CFDA Number 84.133B–4 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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133B–4), 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 84.133B–4), 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 34 CFR 350.54 and are listed in the application package.

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.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.
- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *Marlene.Spencer@ed.gov.*

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: July 2, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–16676 Filed 7–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—International Exchange of Knowledge and Experts in Disability and Rehabilitation Research

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–6.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice announces a priority for a DRRP entitled International Exchange of Knowledge and Experts in Disability and Rehabilitation Research. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective August 9, 2010.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Program Authority: 29 U.S.C. 762(g) and 764(b)(6).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on May 14, 2010 (75 FR 27324). The NPP included a background statement that described our rationale for the priority proposed in that notice.

There is one significant difference between the NPP and this notice of final priority (NFP) as discussed in the following section.

Public Comment: In response to our invitation in the NPP, three parties submitted comments on the proposed priority. An analysis of the comments and of any changes in the priority since publication of the NPP follows.

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 priority.

Analysis of Comments and Changes:

Comment: One commenter suggested that NIDRR consider how the activities to be carried out under this priority will be sustained over time.

Discussion: NIDRR agrees that the sustainability of activities carried out under this priority is an important goal. Paragraph (b) of the priority requires that the Center identify or develop, and then evaluate and implement, sustainable methods for carrying out the overall mission of this center; namely, domestic dissemination of research findings produced by disability and rehabilitation personnel from other countries. NIDRR does not wish to specify the methods an applicant must use in order to ensure that dissemination activities are sustainable. We believe the choice of methods to sustain the dissemination of research findings is best left to the applicant.

Changes: None.

Comment: One commenter expressed appreciation for the Center for International Rehabilitation Research Exchange (CIRRIE) database described in paragraph (a) of the priority. However, this commenter noted that, as more research is exchanged globally, it may be difficult to determine if a study from another country is applicable to one's own country. This commenter suggested that the Center produce "country profiles" to help those who are trying to interpret studies but lack knowledge of the health care practices and culture in which the study was produced.

Discussion: Applicants are free to propose the development of "country profiles" to support the success of required activities under this priority. However, NIDRR does not have a sufficient basis for requiring all applicants to include this approach.

Changes: None.

Comment: One commenter suggested that the requirement to propose and justify one substantive area of focus for activities under paragraph (b) of the priority is too restrictive for a number of reasons. This commenter noted that the restriction to one substantive area under paragraph (b) contradicts the broader requirements of the opening paragraph of the priority, which states that the Center must promote the following outcomes for individuals with disabilities: improved education, employment, health, and community living. In addition, this commenter noted that there is no basis in NIDRR's Long-Range Plan for limiting this priority's focus to one substantive area. This commenter also stated that substantive outcome areas are intertwined in the rehabilitation research and development literature and in the lives of individuals with disabilities. Therefore, this commenter recommended that the restrictive language requiring applicants to specialize in a specific substantive area be removed and that applicants be allowed to propose approaches that would be as specific or comprehensive as they deem appropriate.

Discussion: NIDRR agrees that substantive outcome areas such as education, employment, health, and community living are intertwined in the disability and rehabilitation research literature and in the lives of individuals with disabilities. NIDRR proposed the requirement that applicants specify one subject area recognizing that the Center might not have sufficient resources to support research in many different areas. After further review, however, we are removing this requirement because we believe it is too prescriptive and that it would be best to allow applicants to specify how they will define the body of research to be studied. We are therefore, revising the priority to provide that each applicant must describe and justify the inclusion and exclusion criteria it will use to define a body of research literature that can be evaluated and disseminated within the resource constraints of this Center.

Changes: NIDRR has revised paragraph (b) of the priority to state that applicants must describe the criteria and methods that they will use to define the body of research literature that they will evaluate and disseminate to U.S. stakeholders.

Comment: One commenter suggested that the requirement in paragraph (b) of the priority to propose and justify the countries or global regions to be targeted is overly restrictive. This commenter noted that disseminating knowledge from only a subset of countries or regions would deprive the disability and rehabilitation community in the U.S. of knowledge from many other sources outside the chosen geographic focus.

Discussion: Nothing in this priority precludes applicants from proposing to target all countries or global regions as sources of disability and rehabilitation research and development. The peer review process will evaluate the merits of each proposal.

Changes: None.

Final Priority:

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Disability and Rehabilitation Research Project (DRRP) to serve as a Center for International Exchange of Knowledge and Experts in Disability and Rehabilitation Research (Center). This Center must promote improved education, employment, health, and community living outcomes for individuals with disabilities by developing and implementing methods for the international exchange of knowledge generated by disability and rehabilitation research and development (R&D). Under this priority, the Center must contribute to the following outcomes:

(a) A well-maintained, publicly accessible, and searchable database containing citations of publications from disability and rehabilitation R&D that was conducted in other countries. The Center must contribute to this outcome by assuming the operation of an existing database presently operated by the Center for International Rehabilitation Research Exchange (CIRRIE). The Center must establish sound strategies and approaches to ensure that the database is comprehensive, easy to use, and up-to-date at all times.

(b) Improved methods for the identification and domestic dissemination of findings from R&D generated by disability and rehabilitation R&D personnel in other countries. The Center must contribute to this outcome by developing or identifying, evaluating, and applying methods for the identification of research findings to be disseminated in the U.S. The application of these methods must lead to information on the methodological rigor with which the R&D was conducted, as well as the

relevance of findings to U.S. stakeholders (*e.g.,* researchers, rehabilitation service providers, educators, clinicians, and individuals with disabilities and their families). The Center also must identify or develop, and then evaluate and implement, sustainable methods for domestic dissemination of relevant findings produced by disability and rehabilitation R&D personnel from other countries. Given the breadth of disability and rehabilitation R&D conducted in countries outside of the U.S. and the limited resources of this Center, applicants must propose and justify the criteria or methods they will use to define the body of research that they will evaluate. Applicants must also propose and justify the countries or global regions they will target as the sources of disability and rehabilitation R&D.

(c) Improved cross-cultural and cross-national awareness and expertise among personnel from NIDRR-funded grants. The Center must contribute to this outcome by administering an international exchange of R&D personnel from NIDRR-funded projects and disability and rehabilitation R&D personnel from other countries. The Center must establish criteria for reviewing and selecting personnel to participate in the exchange. These criteria must emphasize the extent to which proposed exchanges will promote cross-cultural and cross-national awareness and expertise among NIDRR grantees and contribute to the quality and relevance of disability and rehabilitation research conducted in the U.S.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Note: This notice does not solicit applications. In any year in which we choose to use this priority, 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 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 priority justify the costs.

Discussion of costs and benefits: The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This priority will generate new knowledge through research and development. Another benefit of this priority is that the establishment of a new DRRP will improve the lives of individuals with disabilities. The new DRRP will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Accessible Format: Individuals with disabilities can obtain this document 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: July 2, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–16689 Filed 7–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—International Exchange of Knowledge and Experts in Disability and Rehabilitation Research; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–6.

Dates: Applications Available: July 8, 2010.

Date of Pre-Application Meeting: July 19, 2010.

Deadline for Transmittal of Applications: August 23, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The General DRRP Requirements priority, which applies to all DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The International Exchange of Knowledge and Experts in Disability and Rehabilitation Research priority is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet these priorities.

These priorities are:

General Disability Rehabilitation Research Projects (DRRP) Requirements and *International Exchange of Knowledge and Experts in Disability and Rehabilitation Research.*

Note: The full text of each of these priorities is included in its notice of final priorities in the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(6).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priority for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $400,000.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. 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: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a) and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* 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 program or competition as follows: CFDA number 84.133A–6.

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. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended 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 recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: July 8, 2010.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 19, 2010. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Marlene Spencer, U.S. Department of Education, Potomac Center Plaza (PCP), room 5133, 550 12th Street, SW., Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *marlene.spencer@ed.gov.*

Deadline for Transmittal of Applications: August 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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 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 Disability Rehabilitation Research Project (DRRP)—CFDA Number 84.133A–6 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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133A–6), 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 84.133A–6), 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 34 CFR 350.54 and are listed in the application package.

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.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.

• The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

For Further Information Contact: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by e-mail: *marlene.spencer@ed.gov.*

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: July 2, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–16690 Filed 7–7–10; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday,
July 8, 2010

Part VII

The President

Executive Order 13546—Optimizing the Security of Biological Select Agents and Toxins in the United States

Federal Register
Vol. 75, No. 130
Thursday, July 8, 2010

Presidential Documents

Title 3—

The President

Executive Order 13546 of July 2, 2010

Optimizing the Security of Biological Select Agents and Toxins in the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States that:

(a) A robust and productive scientific enterprise that utilizes biological select agents and toxins (BSAT) is essential to national security;

(b) BSAT shall be secured in a manner appropriate to their risk of misuse, theft, loss, and accidental release; and

(c) Security measures shall be taken in a coordinated manner that balances their efficacy with the need to minimize the adverse impact on the legitimate use of BSAT.

Sec. 2. *Definitions.* (a) "Select Agent Program" (SAP) means the regulatory oversight and administrative activities conducted by the Secretaries of Health and Human Services and Agriculture and the Attorney General to implement the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 and the Agricultural Bioterrorism Protection Act of 2002.

(b) "Select Agent Regulations" (SAR) means the Federal regulations found in Part 73 of Title 42 of the Code of Federal Regulations, Part 331 of Title 7 of the Code of Federal Regulations, and Part 121 of Title 9 of the Code of Federal Regulations.

(c) "Biological Select Agents and Toxins" means biological agents and toxins with the potential to pose a severe threat to public health and safety, animal and plant health, or animal and plant products and whose possession, use, and transfer are regulated by the Department of Health and Human Services and the Department of Agriculture under the SAR.

Sec. 3. *Findings.* (a) The use of BSAT presents the risk that BSAT might be lost, stolen, or diverted for malicious purpose. The SAP exists to provide effective regulatory oversight of the possession, use, and transfer of BSAT that reduces the risk of their misuse or mishandling. The absence of clearly defined, risk-based security measures in the SAR/SAP has raised concern about the need for optimized security and for risk management.

(b) In addition, variations in, and limited coordination of, individual executive departments' and agencies' oversight, security practices, and inspections have raised concerns that the cost and complexity of compliance for those who are registered to work with BSAT could discourage research or other legitimate activities.

(c) Understanding that research and laboratory work on BSAT is essential to both public health and national security, it is in the interest of the United States to address these issues.

Sec. 4. *Risk-based Tiering of the Select Agent List.* To help ensure that BSAT are secured according to level of risk, the Secretaries of Health and Human Services and Agriculture shall, through their ongoing review of the biological Select Agents and Toxins List ("Select Agent List") contained in regulations, and no later than 18 months from the date of this order:

(a) designate a subset of the Select Agent List (Tier 1) that presents the greatest risk of deliberate misuse with most significant potential for mass casualties or devastating effects to the economy, critical infrastructure, or public confidence;

(b) explore options for graded protection of Tier 1 agents and toxins as described in subsection (a) of this section to permit tailored risk management practices based upon relevant contextual factors; and

(c) consider reducing the overall number of agents and toxins on the Select Agent List.

Sec. 5. *Revision of Regulations, Rules, and Guidance to Accommodate a Tiered Select Agent List.* Consistent with section 4 of this order, I request that:

(a) The Secretaries of Health and Human Services and Agriculture, no later than 15 months from the date of this order, propose amendments to their respective parts of the SAR that would establish security standards specific to Tier 1 agents and toxins.

(b) The Secretaries of Health and Human Services and Agriculture each, no later than 27 months from the date of this order, promulgate final rules and guidance that clearly articulate security actions for registrants who possess, use, or transfer Tier 1 agents and toxins.

Sec. 6. *Coordination of Federal Oversight for BSAT Security.* To ensure that the policies and practices used to secure BSAT are harmonized and that the related oversight activities of the Federal Government are coordinated, the heads of executive departments and agencies identified in section 7(a)(ii) of this order shall:

(a) no later than 6 months from the date of this order, develop and implement a plan for the coordination of BSAT security oversight that:

(i) articulates a mechanism for coordinated and reciprocal inspection of and harmonized administrative practices for facilities registered with the SAP;

(ii) ensures consistent and timely identification and resolution of BSAT security and compliance issues;

(iii) facilitates information sharing among departments and agencies regarding ongoing oversight and inspection activities; and

(iv) provides for comprehensive and effective Federal oversight of BSAT security; and

(b) no later than 6 months from the issuance of final rules and guidance as described in section 5 of this order, and annually thereafter, review for inconsistent requirements and revise or rescind, as appropriate, any regulations, directives, guidance, or policies regarding BSAT security within their department or agency that exceed those in the updated SAR and guidance as described in section 5 of this order.

Sec. 7. *Implementation.* (a) Establishment, Operation, and Functions of the Federal Experts Security Advisory Panel.

(i) There is hereby established, within the Department of Health and Human Services for administrative purposes only, the Federal Experts Security Advisory Panel (Panel), which shall make technical and substantive recommendations on BSAT security concerning the SAP.

(ii) The Panel shall consist of representatives from the following, who may consult with additional experts from their department or agency as required:

1. the Department of State;
2. the Department of Defense;
3. the Department of Justice;
4. the Department of Agriculture (Co-Chair);
5. the Department of Commerce;
6. the Department of Health and Human Services (Co-Chair);
7. the Department of Transportation;
8. the Department of Labor;

9. the Department of Energy;

10. the Department of Veterans Affairs;

11. the Department of Homeland Security;

12. the Environmental Protection Agency;

13. the Office of the Director of National Intelligence;

14. the Office of Science and Technology Policy;

15. the Joint Chiefs of Staff; and

16. any other department or agency designated by the Co-Chairs.

(iii) To assist the Secretaries of Health and Human Services and Agriculture and the Attorney General in implementing the policies set forth in sections 1, 4, 5, and 6 of this order, the Panel shall, no later than 4 months from the date of this order, provide consensus recommendations concerning the SAP on:

1. the designation of Tier 1 agents and toxins;

2. reduction in the number of agents on the Select Agent List;

3. the establishment of appropriate practices to ensure reliability of personnel with access to Tier 1 agents and toxins at registered facilities;

4. the establishment of appropriate practices for physical security and cyber security for facilities that possess Tier 1 agents. The Department of Homeland Security shall Chair a Working Group of the Panel that develops recommended laboratory critical infrastructure security standards in these areas; and

5. other emerging policy issues relevant to the security of BSAT.

Thereafter, the Panel shall continue to provide technical advice concerning the SAP on request.

(iv) If the Panel is unable to reach consensus on recommendations for an issue within its charge, the matter shall be resolved through the interagency policy committee process led by the National Security Staff.

(v) The Secretaries of Health and Human Services and Agriculture and the Attorney General shall report to the Assistant to the President for Homeland Security and Counterterrorism on the consideration and implementation of Panel recommendations concerning the SAP, including a rationale for failure to implement any recommendations.

(vi) The Panel shall be chartered for a period of 4 years subject to renewal through the interagency policy committee process led by the National Security Staff.

(b) To further assist the Secretaries of Health and Human Services and Agriculture and the Attorney General in implementing the policy set forth in sections 1, 4, 5, and 6 of this order, the National Science Advisory Board for Biosecurity shall provide technical advice and serve as a conduit for public consultation, as needed, on topics of relevance to the SAP.

Sec. 8. *Sharing of Select Agent Program Information.* (a) Consistent with applicable laws and regulations, the Secretaries of Health and Human Services and Agriculture and the Attorney General shall, no later than 6 months from the date of this order, develop a process and the criteria for making SAP information available to executive departments and agencies when such information is necessary for furthering a public health, safety, security, law enforcement, or national security mission.

(b) SAP information shall continue to be safeguarded properly and handled securely to minimize the risk of disclosing sensitive, personal, and other information protected by the Privacy Act, 5 U.S.C. 552a.

Sec. 9. *General Provisions.* (a) The National Security Staff shall, on a biennial basis, review the implementation and effectiveness of this order and refer to the interagency policy committee process any issues that require further deliberation or adjudication.

(b) Nothing in this order shall be construed to impair or otherwise affect the authority granted by law to a department or agency, or the head thereof, or functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

(d) This order 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.

THE WHITE HOUSE,
July 2, 2010.

[FR Doc. 2010–16864
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