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

WHEN: Tuesday, September 14, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2010–0037]

South American Cactus Moth Regulations; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the South American cactus moth regulations by adding the State of Louisiana to the list of areas quarantined because of South American cactus moth. As a result of this action, the interstate movement of regulated articles from Louisiana is restricted. This action is necessary to prevent the artificial spread of the South American cactus moth from infested areas in the State of Louisiana into noninfested areas of the United States.

DATES: This interim rule is effective July 15, 2010. We will consider all comments that we receive on or before September 13, 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=DocketDetial&d=APHIS-2010-0037*) 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–2010–0037, 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–2010–0037.

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: Dr. Robyn Rose, South American Cactus Moth National Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1236; (301) 734–7121.

SUPPLEMENTARY INFORMATION:

Background

The South American cactus moth (*Cactoblastis cactorum*) is a grayish-brown moth with a wingspan of 22 to 35 millimeters (approximately 0.86 to 1.4 inches) that is indigenous to Argentina, southern Brazil, Paraguay, and Uruguay. It is a serious quarantine pest of *Opuntia* spp., and an occasional pest of *Nopalea* spp., *Cylindropuntia* spp., and *Consolea* spp., four closely related genera of the family *Cactaceae*. After an incubation period following mating, the female South American cactus moth deposits an egg stick resembling a cactus spine on the host plant. The egg stick, which consists of 70 to 90 eggs, hatches in 25 to 30 days and the larvae bore into the cactus pad to feed, eventually hollowing it out and killing the plant. Within a short period of time, the South American cactus moth can destroy whole stands of cactus.

The South American cactus regulations in 7 CFR 301.55 through 301.55–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of South American cactus moth to noninfested areas of the United States. The States of Alabama, Florida, Georgia, Mississippi, and South Carolina have already been designated as quarantined areas.

The regulations in § 301.55–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, where South American cactus moth has been found by an inspector, where the Administrator has reason to believe that South American cactus moth is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine enforcement purposes from localities where South American cactus moth has been found.

In addition, the regulations in § 301.55–3(b) provide that the Administrator or inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria in § 301.55–3(a) and will provide written notice to the owner, person in possession, or person responsible for the management of the land to be designated. As soon as practicable, the area will be added to the list of quarantined areas in § 301.55–3(c) or the designation will be terminated by the Administrator or by an inspector.

In accordance with these criteria and the recent South American cactus moth findings, we are amending § 301.55–3(c) to add the State of Louisiana to the list of quarantined areas.

Emergency Action

This rulemaking is necessary on an emergency basis to help prevent the spread of South American cactus moth to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule is subject to Executive Order 12866. However, for this action, the Office of Management

and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

South American cactus moth is a pest that attacks primarily prickly pear cacti in arid and coastal areas. In the continental United States, the South American cactus moth has been found in Florida, Georgia, South Carolina, Alabama, and Mississippi. It has also been found in Hawaii, Puerto Rico, and the U.S. Virgin Islands, as well as more than 30 foreign countries. The pest attacks various cactus genera. The species that are most threatened in the United States belong to the genus *Opuntia*, also known as the prickly pear cactus.

Opuntia cactus is valued as an ornamental plant material for landscaping projects and as a food crop. Other uses are as emergency forage for cattle during periods of drought and as wildlife feed for game animals. This rule amends the regulations by adding the State of Louisiana to the list of quarantined areas. The regulations restrict the interstate movement of host material from quarantined areas to non-quarantined areas to prevent the artificial spread of this pest. However, there are currently no nurseries in Louisiana known to propagate *Opuntia* or other host genera of *C. cactorum* for retail sale or interstate shipment. Therefore, there are no small-entity nurseries in Louisiana that will be affected by this interim rule.

Inclusion of Louisiana in the *C. cactorum* quarantine is important in preventing the further expansion of this pest to Texas and other Western States and to Mexico, where *Opuntia* species are environmentally and economically significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.55–3 [Amended]

■ 2. In § 301.55–3, paragraph (c) is amended by adding the word "Louisiana," after the word "Georgia,".

Done in Washington, DC, this 9th day of July 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–17276 Filed 7–14–10; 10:29 am]

BILLING CODE: 3410–34–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1105; Airspace Docket No. 09–ANM–23]

Amendment of Class D and E Airspace; Everett, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class D and E airspace at Snohomish County Airport (Paine Field), Everett, WA, by updating the geographic coordinates of the airport, and removes the operating hours established by a Notice to Airmen (NOTAM) for the Class E surface area airspace. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at Snohomish County Airport (Paine Field).

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 February 4, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class D and E airspace at Everett, WA (75 FR 5702). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, the FAA found that the operating hours for the Class D airspace had not changed and, therefore, will continue the operating hours to be effective during the specific dates and times established in advance by NOTAM.

With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

Class D and Class 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 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 amending Class D airspace, updating the geographic coordinates for Snohomish County Airport (Paine Field), Everett, WA, and continues the operating hours to be effective during specific dates and times established in advance by NOTAM. The Class E surface area airspace at Snohomish County Airport (Paine Field) will be continuous 24 hours, and no longer effective during specific dates and times established in

advance by NOTAM. The geographic coordinates of the airport also will be updated. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 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 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 Snohomish County Airport (Paine Field), Everett, WA.

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 5000 Class D Airspace.

* * * * *

ANM WA D Everett, WA [Amended]

Everett, Snohomish County Airport (Paine Field), WA
(Lat. 47°54′25″ N., long. 122°16′54″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.5-mile radius of the Snohomish County Airport (Paine Field). This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter by continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace Designated as Surface Areas.

* * * * *

ANM WA E2 Everett, WA [Amended]

Everett, Snohomish County Airport (Paine Field), WA
(Lat. 47°54′25″ N., long. 122°16′54″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.5-mile radius of the Snohomish County Airport (Paine Field).

Issued in Seattle, Washington, on June 30, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–17130 Filed 7–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1220; Airspace Docket No. 09–ANM–30]

Amendment of Class E Airspace; Bozeman, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend Class E airspace at Bozeman, MT, to accommodate aircraft using a new VHF Omni-Directional Radio Range (VOR) Standard Instrument Approach Procedures (SIAPs) at Gallatin Field 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 April 19, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Bozeman, MT (75 FR 20321). 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 6004 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 adding additional Class E surface airspace, and additional Class E airspace extending upward from 700 feet above the surface, at Gallatin Field Airport, Bozeman, MT, to accommodate IFR aircraft executing a new VOR 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 amends controlled airspace at Gallatin Field Airport, Bozeman, MT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ANM MT E4 Bozeman, MT [Modified]

Bozeman, Gallatin Field Airport, MT

(Lat. 45°46′39″ N., long. 111°09′07″ W.)

That airspace extending upward from the surface within 3 miles each side of the 316° bearing of Gallatin Field Airport, extending from the 4.4-mile radius of the airport to 14 miles northwest of Gallatin Field Airport; and that airspace 2.4 miles each side of the 212° bearing of the Gallatin Field Airport, extending from the 4.4-mile radius of the airport to 7 miles northwest of Gallatin Field Airport.

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

* * * * *

ANM MT E5 Bozeman, MT [Modified]

Bozeman, Gallatin Field Airport, MT

(Lat. 45°46′39″ N., long. 111°09′07″ W.)

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

Issued in Seattle, Washington, on June 30, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–17131 Filed 7–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1030; Airspace Docket No. 09–AWP–8]

Establishment of Class E Airspace; Monterey, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Monterey, CA, to accommodate aircraft using a new Area Navigation (RNAV) Required Navigation Performance (RNP) Standard Instrument Approach Procedures (SIAPs) at Monterey Peninsula Airport. This action 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 notice of proposed rulemaking to establish controlled airspace at Monterey, CA (74 FR 59491). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, the FAA's National Aeronautical Charting Office found that the legal description was vague and needed to be clarified to avoid confusion on the part of pilots flying in the area. Therefore, the legal description for Monterey Peninsula Airport has been reworded. This change does not affect the boundaries of the airspace area.

Class E airspace designations are published in paragraph 6002 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 E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action will amend Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E surface airspace at Monterey Peninsula Airport, Monterey, CA, to accommodate IFR aircraft executing new RNAV (RNP) SIAPs at the airport. This action is necessary for the safety and management of IFR operations. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

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 Monterey Peninsula Airport, Monterey, CA.

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 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AWP CA, E2 Monterey, CA [New]

Monterey Peninsula Airport, CA
(Lat. 36°35′13″ N., long. 121°50′35″ W.)

Within a 5-mile radius of the Monterey Peninsula Airport, and within 3 miles each side of the 113° bearing of the airport extending from the 5-mile radius of Monterey Peninsula Airport to 15.7 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on July 1, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–17248 Filed 7–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0633; Airspace Docket No. 10–AWP–12]

Revision of Class E Airspace; Monterey, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Monterey Peninsula Airport, Monterey, CA. The FAA is taking this action in response to a request from the National Aeronautical Charting Office (NACO) to better clarify the legal description of controlled airspace designated as an extension to Class C surface 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

The FAA received a request from NACO to clarify the legal description of the existing Class E surface airspace area designated as an extension to Class C airspace area, stating it was vague and confusing and needed to be clarified. This action is in response to that request.

Class E airspace designations are published in paragraph 6003 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 E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action will amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising the legal description of Class E airspace designated as an extension to Class C airspace area for Monterey Peninsula Airport, Monterey, CA. The legal description has been clarified to avoid confusion on the part of pilots flying in the Monterey, CA, area. This action will be in concert with a change in the legal description for Class E surface area airspace being rewritten under separate rulemaking. This is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

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 revises controlled airspace at Monterey Peninsula Airport, Monterey, CA.

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 6003 Class E Airspace Designated as an Extension to Class C Surface Areas.

* * * * *

AWP CA, E3 Monterey, CA [Amended]

Monterey Peninsula Airport, CA
(Lat. 36°35′13″ N., long. 121°50′35″ W.)

That airspace extending upward from the surface within 3 miles each side of the 113° bearing of the airport extending from the 5-mile radius of Monterey Peninsula Airport to 15.7 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on July 1, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–17249 Filed 7–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 742 and 774

[Docket No. 080721866–0167–02]

RIN 0694–AE42

Revisions to the Commerce Control List To Update and Clarify Crime Control License Requirements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final Rule.

SUMMARY: This rule updates and clarifies export and reexport license requirements on striking weapons, restraint devices, shotguns and parts, optical sighting devices, and electric shock devices. It also adds equipment designed for the execution of humans to the Commerce Control List. This rule makes no changes to the longstanding policy of denial of applications to export or reexport specially designed implements of torture. The rule provides additional illustrative examples of such items and adopts a definition of torture used in a U.S. statute that implements the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. BIS is publishing this rule as part of an ongoing review of crime control license requirements and policy.

DATES: This rule is effective July 15, 2010.

ADDRESSES: Comments on this rule may be submitted by e-mail directly to BIS at *publiccomments@bis.doc.gov* (refer to Regulatory Identification Number (RIN) 0694–AE42 in the subject line), or on paper to the Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW. Washington, DC 20230. Refer to RIN 0694–AE42 in all comments.

FOR FURTHER INFORMATION CONTACT: Ron Rolfe, Office of Non-proliferation and Treaty Compliance, Bureau of Industry and Security, telephone: 202 482–4563; fax: 202 482–4145; e-mail: *rrolfe@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Export Administration Regulations (EAR) (15 CFR parts 730–774) impose license requirements for certain exports from the United States and reexports from other countries for, among other reasons, "crime control." The crime control license requirements are intended for the "support of U.S. foreign policy to promote human rights throughout the world" (15 CFR 742.7(a)). Publication of this rule is part of BIS's ongoing effort to review and, where appropriate, revise the crime control license requirements in the EAR. As part of that effort, BIS published a notice of inquiry seeking public comments on whether the scope of items and destinations that are subject to crime control license requirements should be changed (73 FR 14769, March 19, 2008). After reviewing those comments, and conducting its own internal deliberations, BIS decided to proceed in stages. This final rule is the culmination of the first stage, which began with the publication of a proposed rule (74 FR 40117, August 11, 2009). This first stage addresses relatively simple extensions, modifications or removals of items currently on the Commerce Control List or additions to that List of items that have an easily identified crime control or law enforcement nexus.

BIS plans to publish a subsequent proposed rule that will identify potential expansion of certain Export Control Classification Numbers as suggested in the comments to this proposed rule; whether, and, if so, the extent to which biometric measuring devices, integrated data systems, simulators, and communications equipment should be added to the Commerce Control List; the degree to which software and technology related to commodities on the Commerce Control List should be listed and how such software and technology should be described; and general policy issues such as whether the range of destinations to which crime control license requirements apply should be modified.

Summary of the Comments on the Proposed Rule and BIS's Response to Those Comments

BIS received comments from two commenters, on individual and one non-profit organization, on the proposed rule. The comments and BIS's responses are summarized below.

Comment

One commenter welcomed the strong and unambiguous statement in § 742.7(d) that the United States considers international norms regarding human rights and the practices of other countries that control exports to promote human right when developing U.S. crime control export controls. That commenter noted that awareness of the centrality of human rights in export control policy helps international efforts to reform export control policy and serves as an example to other countries.

Response

This final rule retains the proposed rule language in § 742.7(d). The centrality of human rights in connection with crime control license requirements has been noted in the EAR for many years.

Comment

One commenter welcomed the use of the word "including" in § 742.11, which sets license requirements and policy for specially designed implements of torture.

Response

Addition of the word "including" to § 742.11 and its related Export Control Classification Number 0A983 is, as this commenter noted, intended to clarify the point that the operative factor in determining whether an item is subject to ECCN 0A983 and § 742.11 is whether that item is a specially designed implement of torture. The listed items are examples of such instruments.

Comment

One commenter welcomed the addition of the term "shock sleeves" to

the illustrative list of items ECCN 0A983 (Specially Designed Implements of Torture) but noted that shock belts are not included in the 0A983 illustrative list and that "stun cuffs" are included in the illustrative list for ECCN 0A982 (Law Enforcement Restraint Devices). This commenter stated that shock belts, shock sleeves and stun cuffs pose the same concerns about potential use in repressing human rights and suggested that all three should be covered by ECCN 0A983 under the collective term "body worn electronic restraint/electric shock devices."

Response

In deciding whether to classify an item as a specially designed implement of torture or as a law enforcement restraint device, BIS considers whether the item has legitimate law enforcement uses. In some instances, law enforcement authorities must restrain violent persons and some level of force will be needed to do so. Many items have potential to be used in abusing human rights; however not all of those items are specially designed implements of torture. Because legitimate law enforcement activities sometimes include the need to restrain violent persons without resorting to lethal force, BIS believes that some use of electric shock devices in law enforcement may be necessary. BIS has reassessed its earlier thinking and concluded that stun cuffs, shock sleeves and shock belts are, in some situations, necessary to protect law enforcement officers and the public from violent persons. At the same time, these commodities have sufficient potential to be used in the abuse of human rights that they should be subject to crime control license requirements. Accordingly, all three of those commodities should be treated as restraint devices rather than as implements of torture. Accordingly, this final rule adds "shock belts," "stun cuffs" and "shock sleeves" to the illustrative list of restraint devices included in ECCN 0A982 . This final rule does not add "shock sleeves" to the illustrative list of specially designed implements of torture included in ECCN 0A983 and to the heading of § 742.11 of the EAR as was proposed in the proposed rule. This final rule does not add stun cuffs to ECCN 0A985 as was proposed in the proposed rule. BIS believes that the EAR will be clearer if all law enforcement restraint devices, regardless of whether they operate by physical or electrical means, are listed under a single ECCN.

Comment

One commenter recommended that BIS add Canada to the list of destinations requiring a license under ECCN 0A982, stating that the lack of a license requirement for Canada poses a diversion risk. Another comment stated the same concern regarding ECCN 0A985.

Response

BIS did not propose any changes to the destinations to which a license would be required for items described in these ECCNs. In addition, BIS's longstanding practice is not to require licenses for export or reexport to Canada for most items. Currently, BIS does not believe that Canada poses a diversion risk that would justify a departure from this longstanding practice for these ECCNs.

Comment

One commenter welcomed the use of the word "including" in ECCN 0A978.

Response

As noted by this commenter, that word makes the list illustrative. The operative term for classifying something under ECCN 0A978 will be the term "law enforcement striking weapons." Previously this ECCN covered only saps.

Comment

One commenter expressed concern that addition of the term "law enforcement" in ECCNs 0A978 and in 0A982 could lead to abuse. This commenter offered as an example a situation in which a party might assert that a set of handcuffs were not subject to ECCN 0A982 because in a particular transaction, the handcuffs were being exported for a purpose other than law enforcement.

Response

The language in these two ECCNs describes the items that are subject to these ECCNs, not the end use to which the items are put. Some type of modifier to the term "restraint devices" in 0A982 is needed because BIS does not intend to cover all types of restraint devices, just those used in law enforcement. Similarly, some type of modifier is needed to the term striking weapons in ECCN 0A978. In general, ECCNs describe an item without reference to end-use to which an item will be put. In a few instances ECCNs are tied to a specific use by express language referring to the use (*See e.g,* ECCN 1C298, which applies to certain graphite "that is intended for use other than in a nuclear reactor"). ECCNs 0A978 and 0A982 do not employ similar language to describe use or intended use. The phrase "law enforcement" is intended as part of the descriptions of the items that those two ECCNs cover. The phrase does not mean that a particular export or reexport must be for a law enforcement purpose or to a law enforcement organization in order for one of those ECCNs to apply. BIS believes that no change to the wording of these two ECCNs is needed to make this point, because absence of any statement of use or intended use, when read consistently with the general pattern of language used in other ECCNs indicates that neither ECCN 0A978 nor 0A982 is tied to a particular end use.

Comment

One commenter welcomed new ECCN 0A981, which applies to equipment designed for the execution of human beings, but recommended that the wording of the ECCN be made illustrative to be consisted with ECCN's 0A983 and 0A978. Two commenters noted the absence of the phrase "and parts and accessories n.e.s" in this ECCN. One commenter expressed a belief that such absence weakened the ECCN "because execution technologies have a defined set of parts and accessories and because of their obvious potential in repressing human rights." The other commenter stated that parts and accessories should be covered by this ECCN because doing so would strengthen the ECCN by making it difficult to repair such equipment that exists outside the United States.

Response

BIS believes that adding the word "parts" to ECCN 0A981 is not necessary at this time, but will consider proposing covering parts to this ECCN in a future rule. ECCN 0A981 covers equipment designed for the execution of human beings. BIS is not aware of export trade in parts for these commodities. Because the proposed rule did not propose adding parts to any of this ECCN, public comments have not been sought on this idea. Identifying parts that may be appropriate for an export license requirement without imposing an export license requirement on general parts that, although usable in equipment designed for the execution of human beings, have many other uses as well would require both research by BIS and public comment. Therefore, BIS will consider addressing the parts issue for these ECCNs in a future proposed rule.

Comment

One commenter stated that in ECCN 0E984, the wording "buckshot shotgun shells." is too restrictive given the

increasing range of less-lethal shotgun shells on the market, their wide use in crime control and the potential for repressing human rights. That commenter urged BIS to expand ECCN 0E984 to encompass technology for the development or production of all shotgun shells.

Response

In the proposed rule, BIS proposed replacing three different reasons for control (CC 1, CC 2 and CC 3) for technology for the development and production of shotguns with a single reason (CC 1). The reasons for control varied according to the barrel length of the shotgun. BIS proposed the change because most of the technology for the development or production of a shotgun would not vary based on barrel length. No commenters objected to this proposed change. The reference to "buckshot shotgun shells" in ECCN 0E984 was pre-existing language that BIS did not propose to change. This commenter suggests that BIS go further than the proposal and make ECCN 0E984 applicable to technology for the development and production of all shotgun shells. BIS believes that before expanding the scope of this ECCN, the proposal should be set forth in a proposed rule with an opportunity for public comment. Accordingly, BIS is not adopting this commenter's proposal at this time, but may propose it in a future rule.

Comment

One commenter expressed concern because ECCN 3A981 aggregates different types of equipment which serve different functions, namely analysis technologies, biometric technologies and penal technologies. This commenter recommended that BIS disaggregate such technologies into additional ECCN's wherever possible. The commenter stated that such disaggregating would promote best practices and clarity, and facilitate reporting and analysis of licensable exports.

Response

Disaggregating commodities currently covered by ECCN 3A981 might provide the clarity that this commenter suggests. However, doing so might also impose costs on or engender confusion among parties accustomed to the current Commerce Control List structure. BIS believes that such a restructuring should not be undertaken without notice and an opportunity for public comment. Accordingly BIS may propose disaggregating the contents of ECCN 3A981 in a future proposed rule.

Summary of the Changes Made by This Rule

Revisions to § 742.7—Crime control—This rule revises the section heading to read "Crime control and detection" to reflect the contents of the section. It also revises paragraph (a) to set forth an all destination license requirement for a new ECCN 0A981 that would apply to equipment designed for the execution of human beings. Finally, this rule revises paragraph (d) to state that in maintaining these controls, the United States considers international norms and the practices of other countries that control exports to promote the observance of human rights; however, the controls are not based on the decisions of any multilateral export control regime and may differ from controls imposed by other countries. This rule removes certain language from paragraph (d) that could have been read as erroneously implying that the United States is the only country that imposes export controls on crime control and detection items.

*Revisions to § 742.11—Specially designed implements of torture * * **—This rule revises the heading to match the revised language that this rule applies to ECCN 0A983, i.e. "Specially designed implements of torture, including thumbscrews, thumbcuffs, fingercuffs, spiked batons and parts and accessories, n.e.s." This rule also revises paragraph (d) to state that in maintaining these controls, the United States considers international norms and the practices of other countries that control exports to promote the observance of human rights; however, the controls are not based on the decisions of any multilateral export control regime and may differ from controls imposed by other countries. This rule removes certain language from paragraph (d) that could have been read as erroneously implying that the United States is the only country that imposes export controls on specially designed implements of torture. This rule makes no changes to the policy of denial of applications to export items subject to § 742.11 or to the prohibition (stated in § 740.2(a)(10) of the EAR) on use of license exceptions to export commodities subject to § 742.11 of the EAR.

Revisions to ECCN 0A978—Saps—The items covered by this ECCN are expanded from "saps" to "law enforcement striking weapons." Saps, police batons, side handle batons, tonfas, sjamboks, and whips are listed as examples of law enforcement striking weapons. BIS believes that this change will provide consistent license requirements for several items that have substantially similar crime control functions.

Creation of ECCN 0A981—Equipment for the Execution of Human Beings—This rule creates a new ECCN 0A981 that applies to equipment designed for the execution of human beings. Such equipment will require a license to all destinations. BIS is adding this ECCN because equipment designed for the execution of human beings has a clear nexus to crime control and an obvious potential use in repressing human rights.

Revisions to ECCN 0A982—Restraint Devices—Several changes are being made to this ECCN to (a) make clear that it applies to law enforcement restraint devices, rather than safety or medical equipment, (b) update the illustrative list of commodities to which this ECCN applies, and (c) cross reference other ECCNs that apply to similar devices. These changes are intended to focus the ECCN on items of crime control significance and to reduce the possibility of misinterpretations. The rule adds the phrase "Law enforcement" to the ECCN heading. This rule adds "multipoint restraint devices including restraint chairs" to the illustrative list of restraint devices because use of these devices has increased in recent years and because they have potential for use in human rights abuse. This rule adds stun cuffs, shock sleeves, and shock belts to ECCN 0A982. The proposed rule would have added shock sleeves to ECCN 0A983 and stun cuffs to ECCN 0A985. As pointed out in the public comments, the proposed rule did not address shock belts at all. Upon reflection, BIS has concluded that each of these three devices has a legitimate law enforcement use in restraining violent persons. Each can be distinguished from the specially designed implements of torture in ECCN 0A983, which have no legitimate law enforcement uses and from the shock devices in ECCN 0A985, which can be used to apply non-lethal force to protect law enforcement personnel and others from violent persons. Placing these three devices in the law enforcement restraint device ECCN will add clarity to the EAR. The rule also revises the related controls paragraph of this ECCN to note two related export license requirements: finger cuffs are classified under ECCN 0A983—specially designed implements of torture, and electronic devices that monitor and report a person's location to enforce restrictions on movement for law enforcement or penal reasons are controlled under ECCN 3A981.

Finally, this rule adds a note stating that ECCN 0A982 does not apply to medical devices that are equipped to restrain patient movement during medical procedures, devices that confine memory-impaired patients to appropriate medical facilities, or safety equipment such as safety belts or child automobile safety seats.

BIS believes that this revised language clarifies the scope of ECCN 0A982 and is not a substantive change.

Revisions to ECCN 0A983—Specially Designed Implements of Torture—This rule makes no changes to the EAR's stated policies of denial of license applications for the export or reexport of specially designed implements of torture and prohibition of use of any license exception to export or reexport specially designed implements of torture.

The heading of ECCN 0A983 is being revised to add the word "including" immediately following the phrase "specially designed implements of torture" to make clear that the items listed are examples of specially designed implements of torture rather than an exclusive list of such implements. The heading is also being revised to add fingercuffs, and spiked batons to the ECCN as additional examples of specially designed implements of torture. A new note provides that "torture" in this ECCN has the same meaning as set forth in 18 U.S.C. 2340(1), which is the definition employed by the United States criminal statute that implements the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. BIS believes that these changes will more clearly distinguish specially designed implements of torture from crime control and detection items.

Revisions to ECCN 0A984—Shotguns—This rule removes the phrase "parts n.e.s." and adds the following specific parts for the shotguns controlled by this ECCN: Barrels of 18 inches (45.72 cm) or longer but not longer than 24 inches (60.96 cm), receivers, breech mechanisms, complete trigger mechanisms, and magazines or magazine extension tubes. The parts are subject to CC column 1 license requirements. BIS believes that the purposes of the control can be met by retaining the license requirement on the shotguns themselves and on the critical parts set forth in this rule. BIS believes that continuing to require licenses for other parts would pose a burden on legitimate trade in shotgun repair parts that is not needed to achieve the purpose of these controls or of the controls related to the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials.

Revisions to ECCN 0A985—Discharge Type Arms—ECCN 0A985 applies to discharge type arms and to some electroshock devices that are not discharge type arms. To provide greater clarity and to include a representative description of devices currently available, this proposed rule adds the phrase "devices to administer electric shock" to the heading and adds shock shields to the illustrative list of items classified under this ECCN. This rule also adds references to the "Related Controls" paragraph informing readers that electronic devices that monitor and report a person's location to enforce restrictions on movement for law enforcement or penal reasons are controlled under ECCN 3A981 and that law enforcement restraint devices that administer an electric shock are controlled under ECCN 0A982.

Revisions to ECCN 0A987—Optical Sighting Devices for Firearms—This rule replaces the general description in the heading of ECCN 0A987 with a list of items controlled. With this change, the ECCN clearly states that it applies to specific sighting devices, their associated optical elements, and adjustment mechanisms.

Revisions to ECCN 0E984—Technology for shotguns—This rule revises ECCN 0E984 to apply CC Column 1 as a reason for control of technology for the development and production of all shotguns and shotgun shells controlled by ECCN 0A984. Currently, ECCN 0E984 applies reasons for control that are parallel to the reasons for control in ECCN 0A984, i.e., CC Column 1, 2, or 3 is applied depending on whether the barrel length exceeds 24 inches and whether the end-user is a law enforcement agency. BIS is making the change described in this paragraph because it believes that the technology for the development and production of shotguns is substantially the same for all shotguns with barrel length exceeding 18 inches and does not vary based on the end user of the shotgun.

Revisions to ECCN 3A981—Polygraphs and other electronic devices—This rule adds a cross reference to the restraint devices controlled by ECCN 0A982. This rule also adds a note expressly stating that the electronic monitoring restraint devices in ECCN 3A981 are devices that monitor or report the location of confined persons for law enforcement or penal reasons. The note excludes devices used to confine memory impaired patients to appropriate medical facilities. BIS views these changes as clarifications rather than substantive changes.

Consistent with the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), a foreign policy report was submitted to Congress on July 12, 2010, notifying Congress of the imposition of foreign policy-based licensing requirements reflected in this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 13, 2009 (74 FR 41325 (August 14, 2009)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This rule is significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves a collection of information that has been approved by OMB under control number 0694–0088, which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS believes that the changes proposed will increase the number of submissions subject to this collection by approximately 1,200 annually. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, Room 2705, 14th Street and Pennsylvania Ave., NW., Washington, DC 20230.

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

4. The provision of the Administrative Procedure Act (5 U.S.C. 553) requiring a delay in effective date, is inapplicable

because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Delay in implementation could thwart the United States' commitment to promote the observance of human rights around the world. Any delay in the effective date of this rule could result in efforts to export restraint devices, equipment for the execution of human beings or technology for certain shotgun production to regimes or parties that abuse human rights or that would use the items to inflict torture before the license requirements become effective. In addition, immediate implementation of the changes that focus license requirements for shotgun parts and optical sighting devices parts impose no new burden on the public and will allow BIS to focus its licensing and enforcement resources on the critical parts, such as barrels, receivers, trigger mechanisms and optical elements, that give these items their essential capabilities for harm rather than dissipating such resources by evaluating license applications for and enforcing export controls on such relatively innocuous and easily fabricated items as springs, screws, washers and mounting brackets. In addition, the provisions of this rule that provide clarifications or additional cross references are not substantive changes. Because those provisions are not substantive changes, the provision of the 5 U.S.C. 553 requiring a delay in effective date is inapplicable. BIS provided a notice of proposed rulemaking and an opportunity for public comment for this rule (74 FR 40117, August 11, 2009). Nevertheless, because such notice of proposed rulemaking and an opportunity for public comment were not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, BIS amends the Export Administration Regulations (15 CFR Parts 730–774) as follows:

PART 742—[AMENDED]

■ 1. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009); Notice of November 6, 2009, 74 FR 58187 (November 10, 2009).

■ 2. In § 742.7, revise the heading, redesignate existing paragraph (a)(5) as paragraph (a)(6), add a new paragraph (a)(5) and revise paragraph (d) to read as follows:

§ 742.7 Crime control and detection.

(a) * * *

(5) Items designed for the execution of human beings as identified in ECCN 0A981 require a license to all destinations including Canada.

* * * * *

(d) *U.S. controls.* In maintaining its controls on crime control and detection items, the United States considers international norms regarding human rights and the practices of other countries that control exports to promote the observance of human rights. However, these controls are not based on the decisions of any multinational export control regime and may differ from controls imposed by other countries.

■ 3. In § 742.11, revise the heading and paragraph (d) to read as follows:

§ 742.11 Specially designed implements of torture, including thumbscrews, thumbcuffs, fingercuffs, spiked batons, and parts and accessories, n.e.s.

* * * * *

(d) *U.S. controls.* In maintaining its controls on specially designed instruments of torture the United States considers international norms regarding human rights and the practices of other countries that control exports to promote the observance of human rights. However, these controls are not based on the decisions of any multinational export control regime and may differ from controls imposed by other countries.

PART 774—[AMENDED]

■ 4. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 5. In Supplement No. 1 to part 774, Category 0, revise the heading of Export Control Classification (ECCN) 0A978 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A978 Law enforcement striking weapons, including saps, police batons, side handle batons, tonfas, sjamboks, and whips.

* * * * *

■ 6. In Supplement No. 1 to part 774, Category 0, add a new ECCN 0A981 immediately following ECCN 0A980 and immediately preceding ECCN 0A982 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A981 Equipment designed for the execution of human beings (See list of items controlled).

License Requirements

Reason for Control: CC.

Control(s): CC applies to entire entry. A license is required for ALL destinations regardless of end-use. Accordingly, a column specific to this control does not appear on the Commerce Country Chart. (See § 742.7 of the EAR for additional information.)

License Exceptions

LVS: N/A.
GBS: N/A.
CIV: N/A.

List of Items Controlled

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items: a. Gallows and guillotines.
b. Electric chairs for the purpose of executing human beings.
c. Air tight vaults designed for the execution of human beings by the administration of a lethal gas or substance.
d. Automatic drug injection systems designed for the execution of human beings by administration of a lethal substance.

■ 7. In Supplement No. 1 to part 774, Category 0, ECCN 0A982, revise the heading, revise the "Related Controls" paragraph in the "List of Items Controlled" section and add a note at the end of ECCN 0A982 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A982 Law enforcement restraint devices, including leg irons, shackles, and handcuffs; straight jackets; stun cuffs; shock belts; shock sleeves; multipoint restraint devices such as restraint chairs; and parts and accessories, n.e.s.

* * * * *

List of Items Controlled

Unit: $ * * *

Related Controls: Thumbcuffs and fingercuffs are classified under ECCN 0A983, specially designed implements of torture. Restraint devices that electronically monitor or report the location of confined persons for law enforcement or penal reasons are controlled under ECCN 3A981.

* * * * *

Note to ECCN 0A982. This ECCN applies to restraint devices used in law enforcement activities. It does not apply to medical devices that are equipped to restrain patient movement during medical procedures. It does not apply to devices that confine memory impaired patients to appropriate medical facilities. It does not apply to safety equipment such as safety belts or child automobile safety seats.

■ 8. In Supplement No. 1 to part 774, Category 0, ECCN 0A983, revise the heading, and add a note at the end of ECCN 0A983 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A983 Specially designed implements of torture, including thumbscrews, thumbcuffs, fingercuffs, spiked batons, and parts and accessories, n.e.s.

* * * * *

Note to ECCN 0A983. In this ECCN, "torture" has the meaning set forth in Section 2340(1) of Title 18, United States Code.

■ 9. In Supplement No. 1 to part 774, Category 0, ECCN 0A984, revise the heading and the license requirements section of ECCN 0A984 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A984 Shotguns with barrel length 18 inches (45.72 cm) or over; receivers; barrels of 18 inches (45.72 cm) or longer but not longer than 24 inches (60.96 cm); complete trigger mechanisms; magazines and magazine extension tubes; complete breech mechanisms; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use.

License Requirements

Reason for Control: CC, FC, UN.

Control(s)	Country chart
FC applies to entire entry	FC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 18 in. (45.72 cm), but less than 24 in. (60.96 cm), shotgun parts controlled by this entry, and buckshot shotgun shells controlled by this entry, regardless of end-user.	CC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm), regardless of end-user.	CC Column 2.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3.
UN applies to entire entry	Iraq, North Korea, and Rwanda.

* * * * *

■ 10. In Supplement No. 1 to part 774, Category 0, ECCN 0A985, revise the heading and the "Related Controls" paragraph of the "List of Items Controlled" section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A985 Discharge type arms and devices to administer electric shock, for example, stun guns, shock batons, shock shields, electric cattle prods, immobilization guns and projectiles; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: Law enforcement restraint devices that administer an electric shock are controlled under ECCN 0A982. Electronic devices that monitor and report a person's location to enforce restrictions on movement for law enforcement or penal reasons are controlled under ECCN 3A981.

* * * * *

■ 11. In Supplement No. 1 to part 774, Category 0, ECCN 0A987, revise the heading and the "Items" paragraph of the "List of Items Controlled" section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A987 Optical sighting devices for firearms (including shotguns controlled by 0A984); and parts (See list of items controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items: a. Telescopic sights.

b. Holographic sights.

c. Reflex or "red dot" sights.

d. Reticle sights.

e. Other sighting devices that contain optical elements.

f. Laser pointing devices designed for use on firearms.

g. Lenses, other optical elements and adjustment mechanisms for articles in paragraphs a, b, c, d or e.

■ 12. In Supplement No. 1 to part 774, Category 0, ECCN 0E984, revise the license requirements section of ECCN 0E984 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0E984 "Technology" for the "development" or "production" of shotguns controlled by 0A984 and buckshot shotgun shells.

License Requirements

Reasons for Control: CC, UN

Control(s)	Country chart
CC applies to "technology" for shotguns with a barrel length over 18 in. (45.72 cm), and for shotgun shells controlled by ECCN 0A984..	CC Column 1.
UN applies to entire entry	Iraq, North Korea, and Rwanda.

* * * * *

■ 13. In Supplement No. 1 to part 774, Category 3, revise the "Related Controls" paragraph of the "List of Items Controlled" section and add a note to the end of ECCN 3A981 to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

3A981 Polygraphs (except biomedical recorders designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; and specially designed parts and accessories, n.e.s.

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: See ECCN 0A982 for other types of restraint devices.

Related Definitions: * * *

Items: * * *

Note to ECCN 3A981. In this ECCN, electronic monitoring restraint devices are devices used to record or report the location of confined persons for law enforcement or penal reasons. The term does not include devices that confine memory impaired patents to appropriate medical facilities.

Dated: July 12, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–17338 Filed 7–14–10; 8:45 am]

BILLING CODE 3510–33–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

[Docket No. SSA–2009–0078]

RIN 0960–AH06

Amendments to Regulations Regarding Major Life-Changing Events Affecting Income-Related Monthly Adjustment Amounts to Medicare Part B Premiums

AGENCY: Social Security Administration.

ACTION: Interim rule with request for comments.

SUMMARY: We are modifying our regulations to clarify and revise what we consider major life-changing events for the Medicare Part B income-related monthly adjustment amount (IRMAA) and what evidence we require to support a claim of a major life-changing event. Recent changes in the economy and other unforeseen events have had a significant effect on many Medicare Part B beneficiaries. The changes we are making in this interim final rule will allow us to respond appropriately to circumstances brought about by the current economic climate and other unforeseen events, as described below.

DATES:

Effective Date: This interim rule will be effective July 15, 2010.

Comment Date: To ensure that your comments are considered, we must receive them no later than September 13, 2010.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2009–0078 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2009–0078. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Craig Streett, Office of Income Security Programs, Social Security Administration, 2–R–24 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9793. 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*.

Background

Medicare Part B is a voluntary medical insurance program that provides coverage for services such as physician's care, diagnostic services, and medical supplies. A beneficiary enrolled in Medicare Part B pays monthly premiums, deductibles, and co-insurance associated with covered services. The Centers for Medicare & Medicaid Services (CMS) promulgates rules and regulations about the Medicare program, including the standard monthly premium. We determine and deduct the amount of certain Medicare Part B premiums from beneficiaries' Social Security benefits and make rules and regulations necessary to carry out these functions.

The Federal Government subsidizes the cost of Medicare Part B medical coverage. However, beneficiaries with modified adjusted gross incomes (MAGI) above a specified threshold must pay a higher percentage of their cost than those with MAGIs below the threshold.[1] We refer to this subsidy reduction as an IRMAA. CMS determines and publishes the annual MAGI thresholds and ranges.

The Internal Revenue Service (IRS) provides us with MAGI information. We use MAGI and Federal income tax filing status for the tax year 2 years before the effective year to determine whether a beneficiary must pay an IRMAA, and if so, how much.[2] If information is not yet available for the tax year 2 years before the effective year, we will use information from the tax year 3 years before the effective year until the later information becomes available.

A beneficiary who experiences a major life-changing event may request that we use a more recent tax year to make a new IRMAA determination. If a beneficiary provides evidence that the qualifying major life-changing event reduces his or her MAGI below the threshold amount, we will determine the IRMAA based on data from a more recent tax year.[3] We define a significant reduction in MAGI as any change that results in a reduction or elimination of IRMAA.[4] The Social Security Act provides that major life-changing events include marriage, divorce, death of

[1] MAGI is defined in 42 U.S.C. 1395r(i)(4). The threshold amount is defined in 42 U.S.C. 1395r(i)(2).

[2] MAGI ranges are established in 42 U.S.C. 1395r(i)(3), (5). The MAGI dollar amounts listed in 1395r(i)(3) may increase annually based on changes in the Consumer Price Index under 42 U.S.C. 1395r(i)(5).

[3] 20 CFR 418.1201.

[4] 20 CFR 418.1215.

spouse, or other events specified in our regulations.[5]

Our current regulations identify the following additional events as major life-changing events: (1) The annulment of a marriage, (2) a work stoppage, (3) reduced hours of work, (4) reductions in income due to certain losses of income-producing property, (5) a scheduled cessation of a pension, and (6) a reduction in or loss of income from an insured pension plan due to termination or reorganization of the plan.[6] Our current regulations also provide that we do not consider events other than those described in 20 CFR 418.1205 to be major life-changing events. In addition, under our current regulations we do not consider events that affect expenses but not income, or that result in the loss of dividend income, to be major life-changing events.[7]

Recent changes in the economy and other unforeseen events have significantly affected many Medicare Part B beneficiaries. These unforeseen events have caused reductions in the MAGI of beneficiaries for the tax years following the tax year reported to us by the IRS, which results in IRMAAs that may be higher than a beneficiary's ability to pay. Several major employers in the United States have closed or reorganized in recent years. As a result, some companies have provided settlement payments to current and retired employees in lieu of periodic pension payments, extended health insurance coverage, or both. These settlement payments have caused an unexpected one-time increase in a beneficiary's income for a tax-reporting year, which in turn may result in the imposition of an IRMAA or a higher IRMAA.

In order to address these recent changes in the economy, we are adding a new paragraph (g) to 20 CFR 418.1205 to include the receipt of a settlement payment from an employer or former employer in the list of major life-changing events. To qualify as a major life-changing event, a settlement payment received by a beneficiary or the spouse of a beneficiary must be the result of an employer's or former employer's closure, bankruptcy, or reorganization. This change will allow a beneficiary to request that we base the IRMAA on the MAGI from a more recent tax year.

Section 418.1205(e) of our current regulations provides that a reduction in the income of a beneficiary or the spouse of a beneficiary due to a loss of income-producing property is a major life-changing event. In order to qualify as a major life-changing event, the loss of income-producing property must not be at the direction of the beneficiary, such as through the sale or transfer of the property. Section 418.1205(e) provides some examples of qualifying property losses. Most examples in the current regulation result from natural disasters, but we also include the loss of income from real property due to the criminal act of arson as an example of a life-changing event. Some beneficiaries also have experienced a loss of income-producing property as the result of another type of criminal act: Fraud or theft. To address this situation, we are revising 20 CFR 418.1205(e) to include the loss of investment property as a result of fraud or theft due to a criminal act by a third party.

We are also making several other changes to this section of our regulations. First, we are specifically providing that the beneficiary's spouse cannot direct the loss of income-producing property. While our current regulations state that the loss cannot be at the direction of the beneficiary, it was our intent to include both the beneficiary and spouse. Second, we are revising section 418.1205(e) to clarify that the loss of income-producing property due to the ordinary risk of investment is not a major life-changing event. In some cases, beneficiaries and adjudicators have misinterpreted our current regulations in this regard. We are making a similar change to 20 CFR 418.1210(b) to clarify that we do not consider events that result in the loss of dividend income as the result of the ordinary risk of investment to be major life-changing events.

Our current regulations provide that "a reduction in or loss of income from an insured pension plan due to termination or reorganization of the pension plan or a scheduled cessation of pension" qualifies as a major life-changing event.[8] Recently, a number of uninsured pension plans have been terminated or reorganized. The termination or reorganization of an uninsured pension plan does not qualify as a major life-changing event under our current regulations. To ensure that Medicare Part B beneficiaries who experience a loss of income under these circumstances can request new initial determinations using a more recent tax year, we are replacing "insured pension plan" with "employer's pension plan" in 20 CFR 418.1205(f). This language change will qualify both insured and uninsured pension plans.

We are further revising sections 418.1205(e) and (f) and 418.1255(e) and (f) to remove the wording that requires a reduction in or loss of income from these life-changing events. This language has confused beneficiaries and adjudicators and is redundant in light of the first sentence of current section 418.1201(b), which we are not revising. That sentence says that in order to use information from a more recent tax year because of a major life-changing event, the event must "result in a significant reduction in your modified adjusted gross income for the year which you request we use and the next year, if applicable." The change we are making will make the wording of the revised subsections consistent with that of the subsections explaining other life-changing events found in 20 CFR 418.1205 and 20 CFR 418.1255.

Required Evidence

We are also revising 20 CFR 418.1255 to clarify the type of evidence we require when a beneficiary asks us to use a more recent tax year to calculate an IRMAA based on certain changes in circumstance. If a beneficiary or his or her spouse experiences a loss of income-producing property due to criminal fraud or theft by a third party, we will require proof of the conviction and evidence of loss. If a beneficiary or his or her spouse experiences a scheduled cessation, termination, or reorganization of an employer's pension plan, we will require evidence documenting the change in or loss of the pension. If a beneficiary or his or her spouse receives a settlement from an employer or a former employer because of the employer's closure, bankruptcy, or reorganization, we will require evidence documenting the settlement and the reason(s) for the settlement. These changes will make it easier for a beneficiary to meet the burden of proof for establishing a major life-changing event.

Technical Revisions

We are revising paragraph (d) of 20 CFR 418.1230 and paragraphs (c)(2) and (3) of 20 CFR 418.1265 to reflect the addition of new paragraph 418.1205(g), which concerns the addition of receipt of certain settlements as life-changing events, as discussed above.

When will we start to use this rule?

We will start to use this rule on the date shown under **DATES** earlier in this preamble.

We are also inviting public comment on the changes made by this rule. We

[5] 42 U.S.C. 1395r(i)(4)(C)(ii)(II).

[6] 20 CFR 418.1205.

[7] 20 CFR 418.1210.

[8] 20 CFR 418.1205(f).

will consider any relevant comments we receive. We will publish a final rule to respond to those comments and to make any appropriate changes.

Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to its notice and public comment procedures when an agency finds good cause for dispensing with such procedures as impracticable, unnecessary, or contrary to the public interest.[9]

We find that good cause exists for proceeding without prior public notice and comment because any delay in revising our regulations could negatively affect the financial welfare of our beneficiaries. This interim rule addresses, among other things, the unintended consequences of higher Medicare Part B premium burdens for beneficiaries who have lost their pensions or suffered other deleterious effects due to the economic recession. Accordingly, we find that prior public comment would be contrary to the public interest. However, we are inviting public comment on the interim rule, and we will consider any responsive comments we receive within 60 days of the publication of the interim rule.

We also find good cause for proceeding without prior public notice and comment regarding the technical revisions we are making in 20 CFR 418.1205(e) and (f) and 20 CFR 418.1255(e) and (f). These revisions simply make the language defining each life-changing event consistent and will have no substantive effect on the IRMAA program. Therefore, we find that public comment is unnecessary regarding those changes.

In addition, for the reasons cited above, we also find good cause for dispensing with the 30-day delay in the effective date of this interim rule.[10] Because unintended and extraordinary hardships to affected Medicare Part B beneficiaries and their families could occur if we delay the effective date of this interim rule, we find that it is contrary to the public interest to delay the effective date of our rule changes. Additionally, because the technical revisions to 20 CFR 418.1205(e) and (f) and 20 CFR 418.1255(e) and (f) have no substantive effect on how we determine what is a major life-changing event, we find that it is unnecessary to delay the effective date of those changes. Accordingly, we are making this interim rule effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that this interim rule does meet the criteria for a significant regulatory action under Executive Order 12866. It was subject to OMB formal review.

Regulatory Flexibility Act

We certify that this interim rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

The Office of Management and Budget (OMB) previously approved the new public reporting requirements posed by these rules under a separate Information Collection Request (OMB No. 0960–0735). We are therefore not seeking OMB approval for these requirements here under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 93.774 Medicare Supplementary Medical Insurance; 96.002 Social Security—Retirement Insurance.)

List of Subjects in 20 CFR Part 418

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

Dated: April 20, 2010.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we amend 20 CFR chapter III, part 418, subpart B as set forth below:

PART 418—MEDICARE SUBSIDIES

Subpart B—[Amended]

■ 1. The authority citation for subpart B of part 418 continues to read as follows:

Authority: Secs. 702(a)(5) and 1839(i) of the Social Security Act (42 U.S.C. 902(a)(5) and 1395r(i)).

■ 2. Amend § 418.1205 to revise paragraphs (e) and (f) and add paragraph (g) to read as follows:

§ 418.1205 What is a major life-changing event?

* * * * *

(e) You or your spouse experiences a loss of income-producing property, provided the loss is not at the direction of you or your spouse (*e.g.,* due to the sale or transfer of the property) and is not a result of the ordinary risk of investment. Examples of the type of property loss include, but are not limited to: Loss of real property within a Presidentially or Gubernatorially-declared disaster area, destruction of livestock or crops by natural disaster or disease, loss from real property due to arson, or loss of investment property as a result of fraud or theft due to a criminal act by a third party;

(f) You or your spouse experiences a scheduled cessation, termination, or reorganization of an employer's pension plan;

(g) You or your spouse receives a settlement from an employer or former employer because of the employer's closure, bankruptcy, or reorganization.

■ 3. Amend § 418.1210 to revise paragraph (b) to read as follows:

§ 418.1210 What is not a major life-changing event?

* * * * *

(b) Events that result in the loss of dividend income because of the ordinary risk of investment.

■ 4. Amend § 418.1230 to revise paragraph (d) to read as follows:

§ 418.1230 What is the effective date of an income-related monthly adjustment amount initial determination that is based on a more recent tax year?

* * * * *

(d) Our initial determination will be effective January 1 of the year following the year you make your request, when your modified adjusted gross income will not be significantly reduced as a result of one or more of the events described in § 418.1205(a) through (g) until the year following the year you make your request.

■ 5. Amend § 418.1255 to revise paragraphs (e) and (f) and add paragraph (g) to read as follows:

§ 418.1255 What kind of evidence of a major life-changing event will you need to support your request for us to use a more recent tax year?

* * * * *

(e) If you or your spouse experiences a loss of income-producing property, we will require evidence documenting the loss. Examples of acceptable evidence include, but are not limited to, insurance claims or an insurance

[9] 5 U.S.C. 553(b)(B).

[10] *See* 5 U.S.C. 553(d)(3).

adjuster's statement. If the claim of loss is due to criminal fraud or theft by a third party, we will also require proof of conviction for the fraud or theft, such as a court document.

(f) If you or your spouse experiences a scheduled cessation, termination, or reorganization of an employer's pension plan, we will require evidence documenting the change in or loss of the pension. An example of acceptable evidence includes, but is not limited to, a statement from your pension fund administrator explaining the reduction or termination of your benefits.

(g) If you or your spouse receives a settlement from an employer or former employer because of the employer's closure, bankruptcy, or reorganization, we will require evidence documenting the settlement and the reason(s) for the settlement. An example of acceptable evidence includes, but is not limited to, a letter from the former employer stating the settlement terms and how they affect you or your spouse.

■ 6. Amend § 418.1265 to revise paragraphs (c)(2) and (c)(3) to read as follows:

§ 418.1265 What kind of evidence of a significant modified adjusted gross income reduction will you need to support your request?

* * * * *

(c) * * *

(2) If you experience one or more of the events described in § 418.1205(d), (e), (f), or (g), you must provide evidence of how the event(s) significantly reduced your modified adjusted gross income, such as a statement explaining any modified adjusted gross income changes for the tax year we used and a copy of your filed Federal income tax return (if you have filed one).

(3) If your spouse experiences one or more of the events described in § 418.1205(d), (e), (f), or (g), you must provide evidence of the resulting significant reduction in your modified adjusted gross income. The evidence requirements are described in paragraph (c)(2) of this section.

* * * * *

[FR Doc. 2010–17198 Filed 7–14–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 84, and 85

[Docket No. FR–5350–I–01]

RIN 2501–AD50

Conforming Changes to Applicant Submission Requirements; Implementing Federal Financial Report and Central Contractor Registration Requirements

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule revises HUD regulations to reference the new governmentwide Federal Financial Report (FFR), approved by the Office of Management and Budget (OMB). The purpose of the FFR is to consolidate requirements from the OMB issued Standard Forms SF–269, SF–269A SF–272, and the SF–272A, into a single governmentwide form. The consolidation provides recipients of HUD grants and cooperative agreements a standard format for reporting the financial status of their grants and cooperative agreements and will assist in efforts to move to electronic grants management by reducing the variation and number of forms required for reporting. In including the new FFR in its regulations, HUD revises its regulations to remove references to SF–270 and SF–271, since they are no longer in use.

This interim rule also codifies the requirement that applicants for HUD assistance possess an active Central Contractor Registration (CCR). Registration with CCR assists HUD in collecting, validating, and storing information in support of its grant programs and assists in ensuring the accuracy of data placed on the USASpending.gov website.

DATES: *Effective Date:* August 16, 2010. *Comment Due Date:* September 13, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. HUD advises that comments submitted by mail are subject to irradiation security procedures which may result in a delay of up to 10 days before receipt by the HUD. As a result, HUD recommends that comments be submitted electronically, if feasible.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Office of Administration, Department of Housing and Urban Development, 451 7th Street, SW., Room 3156, Washington, DC 20410–0500, telephone number 202–708–0667. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free

Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. This Interim Rule

A. Federal Financial Report (FFR)

On April 8, 2003 (68 FR 17097), OMB announced its intent to establish a new FFR. Consistent with the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) and the goal of governmentwide grant streamlining efforts, the new FFR consolidates into a single report the current SF–269, Financial Status Report (Long Form); SF–269A, Financial Status Report (Short Form); SF–272, Federal Cash Transactions Report; and the SF–272A, Federal Cash Transactions Report. The use of the FFR provides a uniform, governmentwide format and reduces burden on grantees that are reporting using electronic systems by reducing the number of forms to report. The use of the FFR also provides for standard reporting period end dates and due dates for the submission of cash management and financial information. The FFR will simplify reporting procedures for grantees and facilitate uniformity in agencies' grantmaking processes.

On December 7, 2007 (72 FR 69248), OMB published a **Federal Register** notice announcing the promulgation of the new FFR. This notice also directed that Federal grant-making agencies begin using the FFR not later than September 30, 2008. Subsequently, on August 13, 2008 (73 FR 47246), OMB published a notice that requires Federal agencies to transition to the new form no later than October 1, 2009. In making this transition, OMB requested that agencies incorporate the requirement into agency grant agreements and program regulations as necessary.

HUD regulations at 24 CFR parts 84 and 85 reference the SF–269, SF–269A, SF–272, and the SF–272A. This rule removes these references and substitutes the FFR. This rule also amends §§ 84.52 and 85.41 to conform the reporting requirements to those provided for by the FFR.

B. Requirement for Central Contractor Registration

This interim rule also codifies the requirement that applicants for HUD assistance have an active registration in the Central Contractor Registration (CCR). CCR was established to facilitate the Federal government's compliance with the Prompt Payment Act (Pub. L. 97–177) (31 U.S.C. 3901 *et seq.*) as amended and is the primary registrant database for the Federal government. CCR collects, validates, stores and disseminates data in support of agency missions, including Federal agency contract and assistance awards, and the electronic payment process.

CCR registration is applicable to procurements awarded in accordance with the Federal Acquisitions Regulations (FAR). The use of CCR as a central grantee repository was instituted for competitive grant programs with the launch in 2005 of the Grants.gov system. Applicants for HUD competitive assistance should be familiar with the CCR registration requirement, since this requirement has been included in the notices of funding availability (NOFAs) published by HUD over the last several years (*see e.g.,* 73 FR 79548, published December 29, 2008; 72 FR 11434, published March 13, 2007).

This interim rule codifies the CCR registration requirement by adding a new § 5.1004. Accordingly, entities (private nonprofits, educational organizations, state and regional agencies, etc,) subject to § 5.1001 that receive HUD assistance are required to register with CCR and have an active CCR registration in order for HUD to obligate funds and for an awardee to receive funds from HUD. HUD believes that codifying the CCR registration requirement will facilitate applicant and awardee use of a single public website which consolidates data on awards made under various types of Federal Financial Assistance, pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act) (Pub. L. 109–282) (Transparency Act) and help ensure data quality for grantee information for the USASpending.gov website created in conformance with the requirements of the Transparency Act.

C. Removal of References to SF–270 and SF–271

HUD is also using this interim rule to remove references to the SF–270, Request for Advance or Reimbursement, and the SF–271, Outlay Report and Request for Reimbursement for Construction Programs. The HUD electronic financial system does away with the need for the SF–270 and the SF–271. Both of these forms were initially referenced by OMB more than 30 years ago, and technological innovations have made these forms obsolete for HUD's purposes. To acknowledge this, this interim rule removes references to SF–270 and SF–271.

II. Justification for Interim Rulemaking

HUD generally publishes regulatory changes for public comment before issuing them for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. HUD, however, does provide in § 10.1 for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest." The Department finds that a delay in the effectiveness of this interim rule in order to solicit prior public comment is unnecessary.

In accordance with the Paperwork Reduction Act of 1995, OMB published the FFR for comment on April 8, 2003 (68 FR 17097). The April 8, 2003 publication generated nearly 200 comments from a wide range of recipients of Federal financial assistance, including state and local government, non-profit entities, institutions of higher education, and associations. These comments were considered by OMB in developing the FFR. The FFR has also been approved by OMB, OMB has directed Federal agencies to commence using this form, and it is already being used by recipients of Federal assistance.

In addition, this interim rule would require applicants and awardees of HUD financial assistance to register with CCR and possess an active CCR registration. This is not a new requirement for applicants of HUD assistance. Rather, as noted the requirement has existed for several years through HUD's NOFAs. Therefore, applicants and awardees for the bulk of HUD's financial assistance are familiar with the requirement and already possess an active Central Contractor Registration.

Although HUD has determined that good cause exists to publish this rule for effect without prior solicitation of public comment, the Department recognizes the value and importance of public input in the rulemaking process. Accordingly, HUD is issuing these regulatory amendments on an interim basis and providing for a 60-day public comment period. All comments will be considered in the development of the final rule.

III. Findings and Certifications

Executive Order 12866, 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 it was not reviewed by the Office of Management and Budget. This rule is not significant because it would conform HUD regulations to refer to the FFR, remove

outdated references to forms that are obsolete, and codify a requirement that HUD has included for several years in its notices of funding availability.

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. The OMB control number for the FFR is 0348–0061.

Environmental Impact

This interim rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As noted earlier in this preamble, this interim rule conforms HUD regulations to requirements applicable to all grantees that are already in place, as a result of action previously taken by OMB, and small entities were provided the opportunity for comment in connection with OMB's publications. With respect to financial reporting, the interim rule streamlines the financial reporting requirement by replacing one form for the several that have been used prior to fiscal year 2010. As a result, the FFR will reduce the burden on all entities, including small entities, by simplifying the task of filing required financial reports. Similarly, CCR registration has been required of applicants and grantees for HUD's competitive programs to ensure the proper identity of applicants. This interim rule codifies the CCR registration requirement that HUD grantees are already meeting. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the RFA.

Notwithstanding HUD's view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the relevant requirements of section 6 of the Executive Order. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (12 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This interim rule would not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grants programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loans programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 84

Accounting, colleges and universities, Grant programs, hospitals, Non-profit organizations, Reporting and recordkeeping requirements.

24 CFR Part 85

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 5, 84, and 85 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

Subpart K—Application, Registration, and Submission Requirements

■ 2. Revise the heading of subpart K to read as set forth above.

■ 3. Add § 5.1004 to read as follows:

§ 5.1004 Central contractor registration.

Applicants for HUD financial assistance that are subject to this subpart are required to register with the Central Contractor Registration (CCR) and have an active registration in CCR in order for HUD to obligate funds and for an awardee to receive an award of funds from HUD.

PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

■ 4. The authority citation for 24 CFR part 84 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

■ 5. In § 84.22, revise the first sentence of paragraph (d) and remove paragraph (m) to read as follows:

§ 84.22 Payment.

* * * * *

(d) Requests for Treasury check advance payments shall be submitted through electronic means determined by the authorizing HUD program, or on forms as may be authorized by OMB. * * *

* * * * *

■ 6. Revise § 84.52 to read as follows:

§ 84.52 Financial reporting.

(a) The Federal financial report (FFR), or such other form as may be approved by OMB, is authorized for obtaining financial information from recipients. The applicability of the FFR form shall be determined by the appropriate HUD program, and the grantee will be notified of any program requirements in

reference to the FFR upon receipt of the award. A HUD program may, where appropriate, waive the use of the FFR for its grantees and require an alternative reporting system.

(b) HUD shall prescribe whether the FFR shall be on a cash or accrual basis. If HUD requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(c) HUD shall determine the frequency of the FFR for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. The reporting period end dates shall be March 31, June 30, September 30 or December 31. A final FFR shall be required at the completion of the award agreement and shall use the end date of the project or grant period as the reporting end date.

(d) HUD requires recipients to submit the FFR no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual reports. Final reports shall be submitted no later than 90 days after the project or grant period end date. Extensions of reporting due dates may be approved by HUD upon request of the recipient. HUD may require awardees to submit the FFR electronically. Electronic submission may be waived for cause in accordance with HUD's waiver policy in § 5.110 of this title.

(e) (1) When funds are advanced to recipients HUD shall use the FFR to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients. HUD may require forecasts of Federal cash requirements in the "Remarks" section of the FFR and may require recipients to report in the "Remarks" section the amount of cash advances received and retained in excess of three days and any interest earned on such cash advances. Recipients shall provide short narrative explanations of actions taken to reduce early drawdowns and excess balances.

(2) Recipients shall be required to submit not more than the original and two copies of the FFR or submit the report electronically. HUD may require a quarterly report from recipients receiving advances totaling $1 million or more per year.

(f) When HUD needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements or governmentwide requirements, HUD shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports or other means.

(2) When HUD determines that a recipient's accounting system does not meet the standards in § 84.21, additional pertinent information to further monitor awards may be obtained by written notice to the recipient until such time as the system is brought up to standard. HUD, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) HUD may elect to accept the identical information from the recipients through a system to system data interface as determined by HUD.

§ 84.82 [Amended]

■ 7. In § 84.82, remove paragraph (c)(3).

PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

■ 8. The authority citation for 24 CFR part 85 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

■ 9. In § 85.3, revise the definition of "*expenditure report*" to read as follows:

§ 85.3 Definitions.

* * * * *

Expenditure report means the Federal financial report (FFR) or such other financial reporting form as may be approved by the Office of Management and Budget.

* * * * *

■ 10. Revise § 85.23(b) to read as follows:

§ 85.23 Period of availability of funds.

* * * * *

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the FFR. HUD may extend this deadline at the request of the grantee.

■ 11. In § 85.41, revise the first sentence of paragraph (a)(3), revise paragraphs (b) and (c), and remove paragraphs (d) and (e), to read as follows:

§ 85.41 Financial reporting.

(a) * * *

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) and (c) of this section. * * *

* * * * *

(b) *Financial Status Report*—(1) *Form:* Grantees will use the FFR to report the status of funds for all non-construction grants, for construction grants or grants which include both construction and non-construction activities as determined by HUD.

(2) Accounting basis. HUD shall prescribe whether the FFR shall be on a cash or accrual basis. If HUD requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

(3) HUD shall determine the frequency of the FFR for each project or program, considering the size and complexity of the particular project or program. However, the report will not be required more frequently than quarterly or less frequently than annually. The reporting period end dates shall be March 31, June 30, September 30 or December 31. A final FFR shall be required at the completion of the award agreement and shall use the end date of the project or grant period as the reporting end date.

(4) HUD requires recipients to submit the FFR (original and two copies), not later than 30 days after the end of each specified reporting period for quarterly and semiannual reports and 90 days for annual reports. Final reports shall be submitted no later than 90 days after the expiration or termination of grant support.

(c) (1) For grants paid by Treasury check advances or electronic transfer of funds, the grantee will submit the FFR, unless the terms of the award exempt the grantee from this requirement or proscribe an alternate method of financial reporting. HUD will use these reports to monitor cash advanced to grantees and to obtain disbursement or financial status information for each grant from grantees. The format of the FFR may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance. HUD may require

forecasts of Federal cash requirements in the "Remarks" section of the report.

(2) *Cash in hands of subgrantees.* When considered necessary and feasible HUD may require grantees to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

■ 12. In § 85.50, revise paragraph (b)(2), remove paragraph (b)(3), and redesignate paragraph (b)(4) as paragraph (b)(3) and paragraph (b)(5) as paragraph (b)(4) to read as follows:

§ 85.50 Closeout.

* * * * *

(b) * * *

(2) The Federal financial report form, as well as other forms prescribed by the program.

* * * * *

Dated: June 16, 2010.

Shaun Donovan,

Secretary.

[FR Doc. 2010–17328 Filed 7–14–10; 8:45 am]

BILLING CODE 4210–67–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans prescribes interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in August 2010. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective August 1, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: the regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) and the regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates only the assumptions under the benefit payments regulation.

Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during August 2010, and (2) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during August 2010.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.25 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for July 2010, these interest assumptions represent a decrease of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during August 2010, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 202, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*		*	
202	8–1–10	9–1–10	2.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 202, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*		*	
202	8–1–10	9–1–10	2.25	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 7th day of July 2010.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–17200 Filed 7–14–10; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN32

Stressor Determinations for Posttraumatic Stress Disorder

Correction

In rule document 2010–16885 beginning on page 39843 in the issue of Tuesday, July 13, 2010 make the following corrections:

1. On page 39843, in the first column, under the **DATES** section, in the second line, "July 12, 2010" should read "July 13, 2010".

2. On the same page, in the same column, under the **DATES** section, in the first bulleted paragraph, in the first and second lines, "July 12, 2010" should read "July 13, 2010".

3. On the same page, in the same column, under the **DATES** section, in the second bulleted paragraph, in the first and second lines, "July 12, 2010" should read "July 13, 2010".

4. On the same page, in the same column, under the **DATES** section, in the third bulleted paragraph, in the third line, "July 12, 2010" should read "July 13, 2010".

5. On the same page, in the same column, under the **DATES** section, in the fourth bulleted paragraph, in the second line, "July 12, 2010" should read "July 13, 2010".

6. On the same page, in the second column, under the **DATES** section, in the first bulleted paragraph in the column, in the second line, "July 12, 2010" should read "July 13, 2010".

7. On page 39851, in the second column, in the sixth line from the bottom, "July 12, 2010" should read "July 13, 2010".

8. On the same page, in the third column, in the 15th line from the top, "July 12, 2010" should read "July 13, 2010".

9. On page 39852, in the third column, in the file line, the file date "7–9–10" is corrected to read "7–12–10".

[FR Doc. C1–2010–16885 Filed 7–14–10; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–1146; MB Docket No. 09–180; RM–11569; RM–11570]

FM TABLE OF ALLOTMENTS, Kingsland, Texas

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: The Audio Division grants a Petition for Rule Making issued at the request of Katherine Pyeatt, proposing the allotment of Channel 284A at Kingsland, Texas, as its first local aural transmission service. The reference coordinates for Channel 284A at Kingsland are 30–40–03 NL and 98–28–29 WL, located 3.5 kilometers (2.2 miles) west of Kingsland. Kingsland is located within 320 kilometers (199 miles) of the U.S.–Mexican border. Although concurrence has been requested for Channel 284A at Kingsland, notification has not been received. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Mexican government, the construction permit will include the following condition: "Operation with the facilities specified for Kingsland herein is subject to modification, suspension or, termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA–Mexico FM Broadcast Agreement."

DATES: Effective August 12, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MB Docket No. 09–180, adopted June 25, 2010, and released June 28, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, <http://www.bcpiweb.com>.

The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e–mail to *fcc504@fcc.gov* or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice) , 202–418–0432 (tty).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Kingsland, Channel 284A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief,

Audio Division,

Media Bureau.

[FR Doc. 2010–17225 Filed 7–14–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–1148; MB Docket No. 09–130; RM–11538]

FM Table of Allotments, Maupin, Oregon

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: The Audio Division grants the Petition for Reconsideration filed on behalf of Maupin Broadcasting Company, requesting the deletion of Channel 244C2 at Maupin, Oregon. We are deleting Channel 244C2 at Maupin because there is no other expression of interest in the vacant channel. It is Commission policy to refrain from maintaining an allotment were there are no bona fide expressions of interest.

DATES: Effective August 12, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MB Docket No. 09–130, adopted June 25, 2010, and released June 28, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, <http://www.bcpiweb.com>.

The Commission will send a copy of this Memorandum Opinion and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e–mail to fcc504@fcc.gov or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice) , 202–418–0432 (tty).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Maupin, Channel 244C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–17226 Filed 7–14–10; 8:45 am]

BILLING CODE 6712–01–S

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 516 and 552

[GSAR Amendment 2010–03; GSAR Case 2006–G504 (Change 46) Docket 2008–0007; Sequence 12]

RIN 3090–AI58

General Services Administration Acquisition Regulation; Rewrite of GSAR Part 516, Types of Contracts

AGENCIES: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to update GSAR Part 516, Types of Contracts. GSAR part 516 has been revised to add and/or clarify policy pertaining to requirements for types of contracts.

DATES: *Effective Date*: August 16, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Warren J. Blankenship, Procurement Analyst, at (202) 501–1900. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB), Room 4041, 1800 F Street, NW., Washington, DC, 20405, (202) 501–4755. Please cite Amendment 2010–03, GSAR Case 2006–G504 (Change 46).

SUPPLEMENTARY INFORMATION:

A. Background

The GSAM Rewrite and Project and Process

This rule is part of the GSA Acquisition Manual (GSAM) Rewrite Project to revise the regulation in order to maintain consistency with the Federal Acquisition Regulation (FAR), update regulations, and implement streamlined and innovative acquisition procedures. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** at 71 FR 7910 on February 15, 2006, with a request for comments on the entire GSAM. As a result, six comments were received on GSAR part 516. In addition, applicable statutes, GSA Acquisition Letters, Federal Acquisition Service (FAS) (formerly the Federal Supply Service (FSS)) and Public Building Service (PBS) Acquisition Letters, and GSA delegations of authority were considered in developing the initial draft. Prior to publication of a proposed rule, there was extensive internal review and comment.

A proposed rule for GSAR part 516 was published in the **Federal Register** at 73 FR 39275 on July 9, 2008. The public comment period for GSAR part 516 closed on September 8, 2008. A total of 11 comments were received by the close of the public comment period.

The proposed rule aligned GSAR part 516 to the structure of FAR part 16; revised the prescriptions for clauses included in GSAR 516.203–4, Contract clauses; and GSAR 516.506, Solicitation Provisions and Contract Clauses; and made changes to the title and numbering of GSAR 516.603–3, Limitations. Additionally, the associated clauses located in GSAR 552.216 were amended to: relocate GSAR 552.216–70, Economic Price Adjustment—FSS Multiple Award Schedule Contracts, to GSAR 552.238; retain and revise GSAR 552.216–71, Economic Price Adjustment—Special Order Program Contracts, revise GSAR 552.216–72, Placement of Orders; make minor edits to GSAR 552.216–73, Ordering information; and include a new GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman.

The following subparts were retained:

Subpart Number	Subpart Title
516.2	Fixed–Price Contracts.
516.4	Incentive Contracts.
516.5	Indefinite-Delivery Contracts.
516.6	Time-and-Materials, Labor-Hour, and Letter Contracts.

In the final rule, these four subparts are retained. Additionally, other important changes include the addition of the verbiage "Additional" at the beginning of the title to GSAR 516.603–70, Limitations on the use of letter contracts for architect–engineer (A–E) services and the addition of the verbiage "under the PBS Design Excellence Program" added at the end of the title; revision of paragraph (a) in GSAR 516.603–70 to clarify that a complete price proposal is required prior to definitization of a contract in accordance with FAR 52.216–25; removal of GSAR 516.603–70 from regulatory to non–regulatory because it provides guidance to the contracting officer; and revisions to proposed GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman, to clarify the Ombudsman's role and responsibilities, as well as, to provide contact information.

Discussion of Comments

There were six public comments received in response to the ANPR published in the **Federal Register** at 71 FR 7910 on February 15, 2006. A proposed rule was published in the **Federal Register** at 74 FR 4596 on July 9, 2008. The comment period closed September 8, 2008, with 11 comments received.

Comment: One commenter noted that the rule is unnecessarily broad in scope. It would relax requirements for the use of sinking lines that are already in place and being used by many New England lobster fisherman. Moreover, the proposed rule would leave no protections in place for whales during the delay, except for the requirement to use weak links. The National Marine Fisheries Service (NMFS) has determined that weak links alone are inadequate to prevent entanglements of whales.

Response: The team does not concur with the commenter. This comment had no relevance to the case therefore, no further action was necessary.

Comment: The next commenter noted that GSA needs to remind contracting officers under GSAR subpart 516.2 that, in order for a contract to be procured on a firm fixed–price basis, the solicitation must be based on reasonably definite functional or detailed specification when the contracting officer can establish fair and reasonable prices at the outset.

Response: The team does not concur with the commenter. The team reviewed FAR subpart 16.2 and found that this topic was adequately covered.

Comment: The next commenter noted that GSA should require contracting officers to include the fixed–price basis for the requirements (*e.g.*, performance period, man–hours), in a solicitation/request for quotation if it is to be awarded and reported as a fixed–price contract. In other words, the GSAM should forbid contracting officers from procuring or reporting the action as a fixed–price contract award.

Response: The team does not concur with the commenter. Though the team concurs with the intent of the comment, the comment has more to do with coding and reporting of contract types. Thus, this is not appropriate for this GSAR part. The use of time–and–management (T&M)/labor–hour vs. fixed–price contracts is adequately covered in FAR sections 16.601, 16.602, and 16.202–2, respectively.

Comment: The next commenter noted that the GSAM should prohibit GSA contracting officers from unilaterally reducing any hours or contract price on GSAR subpart 516.6 not–to–exceed contracts, or de–obligating awarded funds without a bilateral supplemental agreement. It may be more appropriate to address this in GSAR part 543, but the violations seem to occur only on not–to–exceed (T&M/labor–hour) contracts that are being awarded and reported by GSA contracting officers as fixed–price contracts.

Response: The team concurs with the commenter; however, proper placement of the referenced action should be made in GSAR Part 543, Contract Modifications.

Comment: The next commenter noted that GSA should consider adding the word "Additional" at the beginning of the GSAR 516.603–70, Limitations on the use of letter contracts for architect–engineer (A–E) services. This could serve as a simple reminder that there are other "limitations" that must be considered in accordance with FAR 16.603–3. In particular, the vast majority of contracting officers fail to obtain the written determination from the Head of the Contracting Activity (HCA), or designee, that "no other contract is suitable."

Response: The team concurs with the commenter. The text has been revised accordingly.

Comment: The next commenter noted that restriction placed on contractors to submit a "price proposal before award" of a letter contract, at FAR 16.603–3(c), requires contracting officers to include in the mandated clause at FAR 52.216–25 a "definitization schedule" including "(1) dates for submission of the contractor price proposal." Similarly, the FAR clause 52.216–25 itself

includes notes to the contracting officer to insert "dates for submission of proposal." Isn't this requirement inconsistent with the flexibilities demanded throughout the FAR, especially in FAR part 1, in addition to the FAR 16.6 regulations?

Response: The team does not concur with the commenter. A full proposal is required prior to definitization in accordance with FAR 52.216–25. Paragraph (a) of GSAR 516.603–70 has been revised for clarification of this point.

Comment: The next commenter noted a concern with the prohibition placed on contracting officers to "not authorize the A–E to begin the design effort before the letter contract is definitized." The commenter feels that this may defeat the whole purpose of a letter contract which, according to FAR 16.603–1, is to authorize "the contractor to begin immediately to perform the services. If this is so, then the determination should support any decision to not award a letter contract if contracting officers comply with FAR 16.603–3. Therefore, the commenter's recommendation is to delete GSAR 516.603–70 in its entirety from the GSAM/GSAR. Alternatively, GSA should consider incorporating oversight requirements into this section to review all determinations that authorize letter contracts to ensure decisions are being made appropriately. The GSA should also consider auditing all unilateral/administrative modifications that involve any change in funding/costs.

Response: The team does not concur with the commenter. The team will retain GSAR 516.603–70 because it speaks to those services that can be performed outside of the actual design effort. This section has been revised to clarify that only those services independent of the design effort can commence without definitization. Otherwise, the contracting officer shall not commence the design effort until definitization of the contract.

Comment: The next commenter noted that the proposed clause GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman, allows GSA to comply with FAR 16.505(b)(5), which requires each agency to designate such an Ombudsman. However, the clause, as written, is imprecise and could be confusing to contractors and GSA acquisition teams. The commenter suggests adding the following: "GSA has designated a Task–Order and Delivery–Order Ombudsman who will review complaints from contractors and ensure that they are afforded a fair opportunity for consideration in the award of task or delivery orders under Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, consistent with the procedures in the contract."

Response: The team concurs with the commenter. The text has been revised to incorporate the commenter's suggested language for clarification.

Comment: The next commenter noted that the proposed clause GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman, is not clear, as written, as to whether a contractor with a complaint should go through the contracting officer to reach the Ombudsman (with a copy to the contracting officer), or whether a contractor could do either. The commenter suggests adding the following: "Written complaints shall be submitted to the Ombudsman, with a copy to the Contracting Officer."

Response: The team concurs with the commenter. The text has been revised to incorporate the commenter's suggested language for clarification.

Comment: The next commenter noted that GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman, is not clear as to whether the Ombudsman, should he or she find that fair opportunity is not being provided to a contractor, is going to direct the contracting activity to provide fair opportunity in the future; is going to direct that an order be withdrawn from the firm that received it; or change the decision of the acquisition team (if such an order has not yet been placed). Although, this information does not need to go into the clause, the GSAR should spell out the actual role of the Ombudsman so that acquisition teams are aware.

Response: The team partially concurs with the commenter. The Ombudsman's jurisdiction covers all actions as they pertain to task– and delivery–order actions. As such, the team more appropriately revised GSAR Subpart 516.5, Indefinite–Delivery Contracts, to add a new section GSAR 516.505, Task–Order and Delivery–Order Ombudsman, to outline this in paragraph (b). Additionally, since this is being directed to contracting officers, it was added to the non–regulatory portion of this subpart.

Comment: The next two commenters noted that the proposed clause GSAR 552.216–74, Task–Order and Delivery–Order Ombudsman, as written, is too broad in nature when it states "The GSA Ombudsman will exercise jurisdiction on any matters pertaining to ID/IQ contracts awarded by GSA." The commenters recommend that the first sentence be deleted in its entirety and that the clause sets forth who actually is designated as Ombudsman.

Response: The team concurs with the commenter. As such, the team has revised the clause to conform to the commenter's concerns regarding the GSA Ombudsman's authority and to outline the exact designation of the GSA Ombudsman, inclusive of contact information.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. The revisions only update and reorganize existing coverage.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes do not impose additional information collection requirements to the paperwork burden previously approved under OMB Numbers 3090–0243 and 3090–0248.

List of Subjects in 48 CFR Parts 516 and 552

Government procurement.

Dated: May 6, 2010.

Rodney P. Lantier,

Acting Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 516 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 516 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 516—TYPES OF CONTRACTS

■ 2. Revise section 516.203–4 to read as follows:

516.203–4 Contract clauses.

(a) *Special Order Program Contracts.* In multiyear solicitations and contracts, after making the determination required by FAR 16.203–3, use 552.216–71, Economic Price Adjustment Special Order Program Contracts, or a clause prepared as authorized in paragraph (a)(3) of this subsection.

(1) If the contract includes one or more options to extend the term of the contract, use the clause with its Alternate I or a clause substantially the

same as 552.216–71 with its Alternate I suitably modified.

(2) In a contract requiring a minimum adjustment before the price adjustment mechanism is effectuated, use the basic clause with Alternate II or with Alternate I and Alternate II.

(3) If the Producer Price Index is not an appropriate indicator for price adjustment, modify the clause to use an alternate indicator for adjusting prices. Similarly, if other aspects of 552.216–71 are not appropriate, use an alternate clause following established procedures.

(b) *Adjustments based on cost indexes of labor or material.* (1) If the contracting officer decides to provide for adjustments based on cost indexes of labor or material, prepare a clause that defines each of the following elements:

(i) The type of labor and/or material subject to adjustment;

(ii) The labor rates, including any fringe benefits and/or unit prices of materials that may be increased or decreased;

(iii) The index(es) that will be used to measure changes in price levels and the base period or reference point from which changes will be measured; and

(iv) The period during which the price(s) will be subject to adjustment.

(2) The contracting director must approve use of this clause.

■ 3. Revise section 516.506 to read as follows:

516.506 Solicitation provisions and contract clauses.

(a) In solicitations and contracts for Special Order Program items, when the contract authorizes FAS and other activities to issue delivery or task orders, insert the clause at 552.216–72, Placement of Orders. If only FAS will issue delivery or task orders, insert the clause with its Alternate I.

(b) In solicitations and contracts for GSA awarded ID/IQ contracts, insert clause 552.216–74, Task–Order and Delivery–Order Ombudsman.

(c) If the clause at 552.216–72 is prescribed, insert the provision at 552.216–73, Ordering Information, in solicitations for Special Order Program items and in other FAS Program solicitations.

Subpart 516.6 [Removed]

■ 4. Remove subpart 516.6, consisting of sections 516.603 and 516.603-3.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. Amend section 552.216–71 by revising the section heading, the introductory text, the clause heading, the date of the clause, and the first sentence of paragraph (b); the date of Alternate I, the Alternate I introductory text, and the introductory text of Alternate I (b); the date of Alternate II, the Alternate II introductory text, and Alternate II paragraph (g) to read as follows:

552.216–71 Economic Price Adjustment—Special Order Program Contracts.

As prescribed in 516.203–4(a), insert the following clause:

ECONOMIC PRICE ADJUSTMENT—SPECIAL ORDER PROGRAM CONTRACTS (AUG 2010)

* * * * *

(b) During the term of the contract, the award price may be adjusted once during each 12–month period upward or downward. However, if an upward adjustment, a maximum of _____*_____ percent shall apply. * * *

* * * * *

Alternate I. (AUG 2010). As prescribed in 516.203–4(a)(1) and (2), substitute the following paragraphs (b), (e), and (f) for paragraphs (b), (e), and (f) of the basic clause:

(b) Once during each 12–month period, the contract price may be adjusted upward or downward a maximum of _____*_____ percent.

* * * * *

Alternate II. (AUG 2010). As prescribed in 516.203–4(a)(2), add the following paragraph (g) to the basic clause.

(g) No price adjustment will be made unless the percentage change in the PPI is at least _____*_____ percent.

The Contracting Officer should insert a lower percent than the maximum percentage stated in paragraph (b) of the clause.

■ 6. Amend section 552.216–72 by—

■ a. Revising the introductory text, the date of the clause, and paragraphs (c) and (g);

■ b. Revising the date of Alternate I, the Alternate I introductory text, and the first sentence of Alternate I paragraph (a);

■ c. Removing from Alternate I paragraphs (c) and (d) the word "FSS" and adding "FAS" in its place; and

■ d. Removing Alternates II, III, and IV.

■ The revised text reads as follows:

552.216–72 Placement of Orders.

As prescribed in 516.506(a), insert the following clause:

PLACEMENT OF ORDERS (AUG 2010)

* * * * *

(c) If the Contractor agrees, General Services Administration's Federal Acquisition Service (FAS) will place all orders by EDI using computer–to–computer EDI. If computer–to–computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other agencies may place orders by EDI.

* * * * *

(g) The basic content and format of the TPA will be provided by: General Services Administration, Office of the Chief Information Officer (QI), 2100 Crystal Drive, Arlington, VA 22202, Telephone: (703) 605–9444.

Alternate I. (AUG 2010). As prescribed in 516.506(a), substitute the following paragraphs (a), (b), (c), and (d) for paragraphs (a), (b), (c), and (d) of the basic clause:

(a) All delivery orders (orders) under this contract will be placed by the General Services Administration's Federal Acquisition Service (FAS). * * *

* * * * *

■ 7. Amend section 552.216–73 by—

■ a. Revising the introductory paragraph and the date of the clause;

■ b. Removing from paragraph (a) "Federal Supply Service (FSS)" and adding "Federal Acquisition Service (FAS)" in its place;

■ c. Adding paragraph (e);

■ d. Removing from Alternate I "516.506(e)" and adding "516.506(c)" in its place; and

■ e. Removing Alternate II.

■ The revised and added text reads as follows:

552.216–73 Ordering Information.

As prescribed in 516.506(c), insert the following provision:

ORDERING INFORMATION (AUG 2010)

* * * * *

(e) Offerors marketing through dealers are requested to indicate below whether those dealers will be participating in the proposed contract.

Yes ( ) No ( )

If "yes" is checked, ordering information to be inserted above shall reflect that in addition to offeror's name, address, and facsimile transmission telephone number, orders can be addressed to the offeror's name, c/o nearest local dealer. In this event, two copies of a list of participating dealers shall accompany this offer, and shall also be included in Contractor's Federal Supply Schedule pricelist.

* * * * *

■ 8. Add section 552.216–74 to read as follows:

552.216–74 Task–Order and Delivery–Order Ombudsman.

As prescribed in 516.506(b), insert the following clause:

TASK–ORDER AND DELIVERY–ORDER OMBUDSMAN (AUG 2010)

GSA has designated a Task–Order and Delivery–Order Ombudsman who will review complaints from contractors and ensure that they are afforded a fair opportunity for consideration in the award of task or delivery orders under Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts, consistent with the procedures in the contract. Written complaints shall be submitted to the Ombudsman, with a copy to the Contracting Officer.

In the case that the contractor is not satisfied with the resolution of the complaint by the GSA Task–Order and Delivery–Order Ombudsman, the contractor may follow the procedures outlined in subpart 33.1.

The GSA Ombudsman is the Director, Office of Acquisition Integrity located at: General Services Administration (GSA), Office of Governmentwide Policy (OGP), Office of Acquisition Policy (MV), Acquisition Integrity Division (MVA), 1800 F Street, NW., Room 4014, Washington, D.C. 20405, Telephone: (202) 219–3454, Fax: (202) 219–3615, E-mail:*joseph.neurauter@gsa.gov*.

[FR Doc. 2010–17140 Filed 7–14–10; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3002, 3007, 3009, 3016, 3034, 3035, and 3052

[Docket No. DHS–2009–0006]

RIN 1601–AA49

Homeland Security Acquisition Regulation; Lead System Integrators [HSAR Case 2009–003]

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of Homeland Security (DHS) is issuing an interim rule amending the Homeland Security Acquisition Regulation (HSAR) to implement section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. This section of the Act and these implementing regulations restrict contractors from acting as lead system integrators in the acquisition of DHS major systems if they have direct financial interests in the development or construction of any individual system or element of any system of systems they integrate subject to stated exceptions.

DATES: *Effective Date:* This rule is effective July 15, 2010.

Comments Due Date: Comments must reach the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, on or before August 16, 2010.

ADDRESSES: Please submit written comments, identified by agency name and docket number DHS–2009–0006, by one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* To submit comments, follow instructions on www.regulations.gov and use docket number DHS–2009–0006.

(2) By mail to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, ATTN: Timothy J. Frank, 245 Murray Drive SW., STOP 0415, Washington, DC 20528–0415.

FOR FURTHER INFORMATION CONTACT: Timothy J. Frank, Senior Procurement Analyst, at (202) 447–5252 for clarification of content. Please cite HSAR Case 2009–003.

SUPPLEMENTARY INFORMATION:

I. Request for Comments
II. Background
III. Discussion of Interim Rule
IV. Regulatory Analyses
A. Executive Order 12866 Assessment
B. Determination To Issue an Interim Rule
C. Regulatory Flexibility Act
D. Paperwork Reduction Act
E. National Environmental Policy Act

I. Request for Comments

Interested persons are invited to participate in this rulemaking by submitting written comments, views, or arguments on all or any aspect of this rule. Comments must be received by August 16, 2010. Comments should be organized by Homeland Security Acquisition Regulation (HSAR) Part, and address the specific section that is being commented on. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. *See* **ADDRESSES** above for information on how to submit comments. If you submit comments by mail, please submit them in an unbound format, on 8½-by-11-inch paper, suitable for copying and optical character recognition. If you would like DHS to acknowledge receipt of comments submitted by mail, please enclose a self- addressed stamped post card or envelope. DHS will consider all comments and material received during the comment period. Access to the docket, including background documents and comments received, can be obtained at *http://www.regulations.gov* which contains relevant instructions under the FAQs tab on the home page.

II. Background

The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28, section 6405, 121 Stat. 112, 176 (2007) (codified as 6 U.S.C. 396; hereinafter "Section 396"), limits firms that can serve as lead system integrators on DHS acquisitions of major systems. Such contractors may have no direct financial interest in the development or construction of any individual system or element of any system of systems they would integrate, unless one of the stated exceptions has been satisfied.

One exception applies when the contractor is selected by a subcontractor as a lower-tier subcontractor, through a process over which the contractor had no control, to develop or construct an individual system or element of any system of systems the contractor would integrate. The other exception applies where the lead system integrator was selected using competitive procedures, DHS takes appropriate steps to prevent any organizational conflicts of interest in the selection process, and the Secretary of Homeland Security certifies these facts to various committees in Congress.

Section 396 also requires DHS to update its acquisition regulations and to include a definition of "lead system integrators" modeled after that used by the Department of Defense and a specification of various types of contracts and fee structures that are appropriate for use with lead system integrators. This rule implements Section 396.

This rule is issued by DHS's Chief Procurement Officer, who is the Senior Procurement Executive (SPE), see 41 U.S.C. 414 and DHS Delegation Number 0700, under authority of 5 U.S.C. 301–302, the Office of Federal Procurement Policy Act, Public Law 93–400, 88 Stat. 796 (1974), including sections 22 and 25, 41 U.S.C. 418b and 421, and FAR 48 CFR part 1, subpart 1.3.

III. Discussion of Interim Rule

The interim rule revises (HSAR) 48 CFR 3002.101, 3007.106, 3009.5, 3016.1, 3034.004, 3035.008, 3052.209–74 and 3052.209–75 to implement Public Law 110–28, Title VI, Section 6405.

This rule changes the HSAR as follows:

- Amends the definition of "Major system" in (HSAR) 48 CFR 3002.101 and removes the reference to the obsolete Management Directive (MD) 1400, Investment Review Process. The

definition of "Major system" for DHS has been revised in accordance with OMB Circular A–109, Major System Acquisitions, and FAR 2.101.

• Removes the "Reserved" identification from (HSAR) 48 CFR 3007 and adds a reference to the newly-revised (HSAR) 48 CFR 3009.570 in new (HSAR) 48 CFR 3007.106–70 to address limitations on the use of certain contractors as lead system integrators.

• Amends (HSAR) 48 CFR 3009 to add new section 3009.570 which describes the limitations on the use of lead system integrators and provides prescriptions for a new provision and clause found at (HSAR) 48 CFR 3052.209–74 and 3052.209–75, respectively, for use in certain solicitations and contracts.

• Amends (HSAR) 48 CFR 3016 to add subpart 3016.1 to address selection of the most appropriate contract type and fee structure.

• Removes the (HSAR) 48 CFR 3034 "Reserved" identification and adds a reference in new section 3034.004 pointing to 3009.570 for the policy applicable to acquisition strategies in the use of lead system integrators.

• Amends (HSAR) 48 CFR 3035 to add section 3035.008, which refers to 3009.570 describing limitations on the use of certain contractors as lead system integrators.

• Adds the new provision at (HSAR) 48 CFR 3052.209–74, Limitations on Contractors Acting as Lead System Integrators.

• Adds the new clause at (HSAR) 48 CFR 3052.209–75, Prohibited Financial Interests for Lead System Integrators.

IV. Regulatory Analyses.

A. Executive Order 12866 Assessment

This is a not a significant regulatory action under Section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. The Office of Management and Budget has not reviewed it under that Order. This rule is not a major rule under 5 U.S.C. 804. This rule helps to avoid organizational conflicts of interest in the award and performance of contracts awarded by the Department of Homeland Security that involve the use of lead system integrators. Additionally, it encourages the use of a larger number of contractors by establishing limitations on the extent of work that can be performed by lead system integrators.

B. Determination To Issue an Interim Rule

DHS has determined that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because it implements 6 U.S.C. 396, which specifies that the section applies to contracts entered into after July 1, 2007, and that DHS shall update the HSAR prior to that date. Nevertheless, pursuant to 41 U.S.C. 418(b) and FAR 1.501, DHS will consider public comments received in response to this interim rule with request for comment in the formation of a final rule.

C. Regulatory Flexibility Act

The Department of Homeland Security certifies that the interim rule amending (HSAR) 48 CFR 3002.101, 3007.106, 3009.5, 3016.1, 3034.004, 3035.008, 3052.209–74 and 3052.209–75, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The factual basis for certification is presented in the following analysis of the effects of this rule. Application of the rule is limited to offerors or contractors providing services as lead system integrators or considering the provision of such services. Lead system integrators are limited to contracts for the development or production of major systems, and often involve the contractor performing functions closely associated with inherently governmental functions.

Under this interim rule, an entity that receives a contract as a lead system integrator cannot have any direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security under this contract. Lead system integrator contracts usually extend several years, and we estimate that a limited number of such contracts are in effect within DHS at any one time. Very few contracts of this character are awarded in any given year.

The limitations on entities (both large and small) apply only to contractors who choose to perform work for the Department of Homeland Security as a lead system integrator. If an entity does believe that participating in the particular contract as lead system integrator would impose a significant economic impact on their operation, the entity would make a business decision whether the revenue generated by doing business with the Department of Homeland Security as a lead system integrator would provide a financial return sufficient to justify the restriction of not having a direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions. Presumably, entities which do not receive the desired return on revenue to justify participating as lead system integrator would choose not to propose on the particular contract. Such an entity could still choose to propose as a subcontractor under the prime contract, thereby mitigating the effect even further.

In addition, this rule is not discretionary; a statute requires that DHS address these matters in its acquisition regulation.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. National Environmental Policy Act

We have analyzed this rule under Department of Homeland Security Directive 023–01, which guides the Department 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 which do not individually or cumulatively have a significant effect on the human environment. This rule, which does not involve any extraordinary circumstances, is categorically excluded under paragraphs A3(b) and A3(d) in Table I of Appendix A of Directive 023–01 because it implements legislation by amending acquisition regulations without changing the regulation's environmental effect.

List of Subjects in 48 CFR Parts 3002, 3007, 3009, 3016, 3034, 3035, and 3052

Government procurement.

Dated: June 30, 2010.

Richard K. Gunderson,

Acting Chief Procurement Officer, Department of Homeland Security.

■ Accordingly, DHS amends 48 CFR parts 3002, 3007, 3009, 3016, 3034, 3035, and 3052 as follows:

■ 1. Revise the authority citation for 48 CFR parts 3002, 3007, 3009, 3016, 3034, 3035, and 3052 to read as follows:

Authority: 5 U.S.C. 301–302, 41 U.S.C. 418b(a) and (b), 41 U.S.C. 414, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0700.

PART 3002—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 3002.101 by revising the definition of "major system" to read as follows:

3002.101 Definitions.

Major system means, for DHS, that combination of elements that will function together to produce the capabilities required to fulfill a mission need, including hardware, equipment, software, or any combination thereof, but excluding construction or other improvements to real property. A DHS major system is one where the total lifecycle costs for the system are estimated to equal or exceed $300M (in constant 2009 dollars), or if the Deputy Secretary has designated a program or project as a major system. This corresponds to a DHS Level 1 or 2 capital investment acquisition.

* * * * *

■ 3. Add new part 3007 to read as follows:

PART 3007—ACQUISITION PLANNING

Subpart 3007.1—Acquisition Plans

Sec.
3007.106 Additional Requirements for Major Systems.
3007.106–70 Limitations on Lead System Integrators.

Subpart 3007.1—Acquisition Plans

3007.106 Additional Requirements for Major Systems.

3007.106–70 Limitations on Lead System Integrators.

See (HSAR) 48 CFR 3009.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

PART 3009—CONTRACTOR QUALIFICATIONS

■ 4. Add sections 3009.570 through 3009.570–4 to Subpart 3009.5 to read as follows:

Subpart 3009.5—Organizational and Consultant Conflicts of Interest

Sec.
3009.570 Limitations on contractors acting as lead system integrators.
3009.570–1 Definitions.
3009.570–2 Policy.
3009.570–3 Procedures.
3009.570–4 Solicitation provision and contract clause.

Subpart 3009.5—Organizational and Consultant Conflicts of Interest

3009.570 Limitations on contractors acting as lead system integrators.

3009.570–1 Definitions.

"Direct Financial Interest," as used in this section, is defined in the clause at HSAR 48 CFR 3052.209–75, Prohibited Financial Interests for Lead System Integrators.

"Lead system integrator," as used in this section, is defined in the clause at (HSAR) 48 CFR 3052.209–75, Prohibited Financial Interests for Lead System Integrators.

3009.570–2 Policy.

(a) Except as provided in paragraph (b) of this subsection, under 6 U.S.C. 396, no entity performing lead system integrator functions in the acquisition of a major system (See (HSAR) 48 CFR 3002.101) by DHS may have any direct financial interest in the development or construction of any individual system or element of any system of systems under the program in which the entity is performing lead system integrator functions.

(b) The prohibition in paragraph (a) of this subsection does not apply if—

(1) The Secretary of Homeland Security certifies to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Commerce, Science and Transportation of the Senate that—

(i) The entity was selected by DHS as a contractor to develop or construct the system or element concerned through the use of competitive procedures, and

(ii) DHS took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) The entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) CONSTRUCTION—Nothing in this section 3009.570 shall be construed to preclude an entity described in paragraph (a) of this subsection from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

3009.570–3 Procedures.

In making a responsibility determination before awarding a contract for the acquisition of a major system, the contracting officer shall—

(a) Determine whether the prospective contractor meets the definition of "lead system integrator";

(b) Consider all information regarding the prospective contractor's direct financial interests in view of the prohibition at (HSAR) 48 CFR 3009.570–2(a); and

(c) Apply the following procedures:

(1) After assessing the offeror's direct financial interests in the development or construction of any individual system or element of any system of systems, if the offeror—

(i) Has no direct financial interest in such systems, the contracting officer shall document the contract file to that effect and may then further consider the offeror for award of the contract;

(ii) Has a direct financial interest in such systems, but the exception in (HSAR) 3009.570–2(b)(2) applies, the contracting officer shall document the contract file to that effect and may then further consider the offeror for award of the contract;

(iii) Has a direct financial interest in such systems and the exception in (HSAR) 3009.570–2(b)(2) does not apply, but the conditions in (HSAR) 3009.570–2(b)(1)(i) and (ii) do apply, the contracting officer—

(A) Shall document the contract file to that effect;

(B) May, in coordination with program officials, request an exception for the offeror from the Secretary of Homeland Security, in accordance with Homeland Security Acquisition Manual section 3009.570; and

(C) Shall not award to the offeror unless the Secretary of Homeland Security grants the exception and provides the required certification to Congress; or

(iv) Has a direct financial interest in such systems and the exceptions in (HSAR) 3009.570–2(b)(1) and (2) do not apply, the contracting officer shall not award to the offeror.

3009.570–4 Solicitation provision and contract clause.

(a) Use the provision at (HSAR) 48 CFR 3052.209–74, Limitations on Contractors Acting as Lead System Integrators, in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator.

(b) Use the clause at (HSAR) 48 CFR 3052.209–75, Prohibited Financial Interests for Lead System Integrators—

(1) In solicitations that include the provision at (HSAR) 48 CFR 3052.209–74; and

(2) In contracts when the contractor will fill the role of a lead system

integrator for the acquisition of a major system.

PART 3016—TYPES OF CONTRACTS

■ 5. Add subpart 3016.1 to read as follows:

Subpart 3016.1—Selecting Contract Types

Sec.
3016.170 Contracts with Lead System Integrators.

Subpart 3016.1—Selecting Contract Types

3016.170 Contracts with Lead System Integrators.

The contracting officer should negotiate the most appropriate contract type and fee structure based on risks inherent in the work to be performed, in accordance with (FAR) 48 CFR 16.103(a). Contract type and fee structure should be commensurate with the work to be performed and the risks assumed. Worthwhile existing guidance on contract type selection, pricing, and fee structures, such as exists in Vol. I, Ch. 4 of the Contract Reference Pricing Guides [*http://www.acq.osd.mil/dpap/cpf/docs/contract_pricing_finance_guide/vol4_ch1.pdf*] can be consulted to determine the appropriate contract type and fee structure for use in varied contracts with lead system integrators in the production, fielding and sustainment of complex systems.

■ 6. Add part 3034 to read as follows:

PART 3034—MAJOR SYSTEM ACQUISITION

Subpart 3034.0—General

Sec.
3034.004 Acquisition strategy.

3034.0 General

3034.004 Acquisition strategy.

See (HSAR) 48 CFR 3009.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

PART 3035—RESEARCH AND DEVELOPMENT CONTRACTING

■ 7. Add section 3035.008 to read as follows:

3035.008 Evaluation for award.

See (HSAR) 48 CFR 3009.570 for limitations on the award of contracts to contractors acting as lead system integrators.

PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Sections 3052.209–74 and 3052.209–75 are added to read as follows:

3052.209–74 Limitations on Contractors Acting as Lead System Integrators.

As prescribed in (HSAR) 48 CFR 3009.570–4(a), use the following provision:

LIMITATIONS ON CONTRACTORS ACTING AS LEAD SYSTEM INTEGRATORS (JUL 2010)

(a) *Definitions.* "Direct financial interest," "lead system integrator," "lead system integrator with system responsibility," and "lead system integrator without system responsibility," as used in this provision, have the meanings given in the clause of this solicitation entitled "Prohibited Financial Interests for Lead System Integrators" ((HSAR) 48 CFR 3052.209–75).

(b) *General.* Unless an exception is granted, no contractor performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(c) *Representations.* (1) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator with system responsibility.

(2) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator without system responsibility.

(3) If the offeror answered in the affirmative in paragraph (c)(1) or (2) of this provision, the offeror represents that it does [ ] does not [ ] have any direct financial interest in the development or construction of any system(s), subsystem(s), system of systems, element of any system of systems, or services it proposes or intends to seek to satisfy this solicitation.

(d) If the offeror answered in the affirmative in paragraph (c)(3) of this provision, the offeror should contact the Contracting Officer for guidance on whether an exception may apply and what responsibilities the offeror may have in qualifying for an exception.

(e) If the offeror does have a direct financial interest, the offeror shall be prohibited from receiving an award under this solicitation, unless:

(1) The offeror submits to the Contracting Officer appropriate evidence that the offeror was selected by a subcontractor to serve as a lower-tier subcontractor through a process over which the offeror exercised no control; or

(2) the conditions described in (HSAR) 48 CFR 3009.570–2(b)(1)(i) and (ii) exist, after an opportunity is afforded to the offeror to provide information or commitments as may be necessary to meet (HSAR) 48 CFR 3009.570–2(b)(1)(ii), assuming any such information or commitment will allow DHS to meet that standard.

(f) This provision implements the requirements of 6 U.S.C. 396, as added by Section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, And Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28).

(End of provision)

3052.209–75 Prohibited Financial Interests for Lead System Integrators.

As prescribed in (HSAR) 48 CFR 3009.570–4(b), use the following clause:

PROHIBITED FINANCIAL INTERESTS FOR LEAD SYSTEM INTEGRATORS (JUL 2010)

(a) *Definitions.* As used in this clause—

(1) "Direct financial interest," for the purpose of this clause and contract, and subject to exceptions set forth 6 U.S.C. 396(b) as implemented, means:

(i) Developing or constructing any individual system or element of any system of systems for which the Contractor is the lead system integrator;

(ii) Owning or being in a position to exert corporate control over a subcontractor at any level under the prime contract;

(iii) Owning, or being in a position to exert corporate control over an entity that either—

(A) Is a subcontractor at any level under the prime contract, or

(B) Owns or is in a position to control another entity that is a subcontractor at any level under the prime contract; and

(iv) Participating or sharing in the profits of another firm's development or construction of any individual system or element of any system of systems for which the Contractor is the lead system integrator or agreeing to participate in the profits of the firm from such development or construction.

(2) "Lead system integrator" includes "lead system integrator with system responsibility" and "lead system integrator without system responsibility."

(3) "Lead system integrator with system responsibility" means a prime contractor for the development or production of a major system, if the prime contractor is not expected at the time of award to perform a substantial portion of the work on the system and the major subsystems.

(4) "Lead system integrator without system responsibility" means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with regard to the development or production of a major system.

(5) The phrase "substantial portion of the work," as used in the definition of "lead system integrator with system responsibility," may relate to the dollar value of the effort or to the criticality of the effort performed.

(b) *Limitations.* The Contracting Officer has determined that the Contractor meets the definition of lead system integrator with [ ] without [ ] system responsibility. Unless an exception is granted, the Contractor shall not

have any direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security under this contract.

(c) *Agreement.* The Contractor agrees that during performance of this contract it will not acquire any direct financial interest as described in paragraph (b) of this clause, or, if it does acquire or plan to acquire such interest, it will immediately notify the Contracting Officer. The Contractor further agrees to provide to the Contracting Officer all relevant information regarding the change in financial interests so that the Contracting Officer can determine whether an exception applies or whether the Contractor will be allowed to continue performance on this contract. If an organizational conflict of interest in the performance of this contract that is attributable to the Contractor's direct financial interest cannot be avoided, eliminated, or mitigated to the Contracting Officer's satisfaction, the Contracting Officer may terminate this contract for default or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(d) Notwithstanding any other clause of this contract, if the Contracting Officer determines that the Contractor misrepresented its financial interests at the time of award or has violated the agreement in paragraph (c) of this clause, the Government may terminate this contract for default or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(e) This clause implements the requirements of 6 U.S.C. 396, as added by Section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, And Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28).

(End of clause)

[FR Doc. 2010–16582 Filed 7–14–10; 8:45 am]

BILLING CODE 9110–9B–P

Proposed Rules

Federal Register
Vol. 75, No. 135
Thursday, July 15, 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 ENERGY

10 CFR Part 430

[Docket Number: EE–2010–BT–STD–0011]

RIN 1904–AC22

Energy Conservation Program: Energy Conservation Standards for Furnace Fans: Reopening of Public Comment Period

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: This document announces a reopening of the time period for submitting comments on the framework document to establish energy conservation standards for the use of electricity for purposes of circulating air through duct work of residential heating and cooling systems ("furnace fans"). The comment period closed on July 6, 2010. The comment period is reopened from July 15, 2010 until July 27, 2010.

DATES: Comments, data, and information relevant to the furnace fan rulemaking will be accepted until July 27, 2010.

ADDRESSES: Interested parties may submit comments, identified by docket number EERE–2010–BT–STD–0011 and/or Regulation Identifier Number (RIN) 1904–AC22, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: FurnFans-2010-STD-0011@ee.doe.gov.* Include docket number EERE–2010–BT–STD–0011 and/or RIN 1904–AC22 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Furnace Fans, Docket No. EERE–2010–BT–STD–0011 and/or RIN 1904–AC22, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Please submit one signed paper original.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, Resource Room of the Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards first at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) initiated a rulemaking to consider establishing new energy conservation standards or energy use standards for furnace fans on June 3, 2010 by publishing a notice in the **Federal Register** (75 FR 31323). The notice informed interested parties of the availability of a framework document that detailed the expected analytical approach and scope of coverage for the rulemaking, and identified several issues on which DOE is particularly interested in receiving comment. DOE held a public meeting on June 18, 2010 to discuss and receive comments on its analytical approach and associated issues. (A transcript of the public meeting is currently available on the DOE Web page at the following URL: *http://www.eere.energy.gov/buildings/appliance_standards/residential/furnace_fans_framework.html*) DOE announced in the **Federal Register** notice and at the public meeting that it would accept written comments through July 6, 2010.

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) requested an extension of the time to submit comments. In its request, AHRI stated that because many AHRI members will be attending the ASHRAE meetings, and considering the 4th of July holiday, industry would not have adequate time to appropriately respond to all the questions and issues raised by DOE in the framework document.

Based on the number and scope of questions and issues raised in the DOE framework document (and during the public meeting), DOE believes that reopening the comment period to allow additional time for interested parties to submit comments is appropriate. Therefore, DOE is reopening the comment period until July 27, 2010 to provide interested parties additional time to prepare and submit comments. DOE will accept comments received no later than July 27, 2010 and will consider any comments received between July 6, 2010 and July 27, 2010 to be timely filed.

Issued in Washington, DC, on July 8, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–17212 Filed 7–14–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–STD–0003]

RIN 1904–AC19

Energy Conservation Program: Re-Opening of the Public Comment Period for Commercial Refrigeration Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed rule: Re-opening of public comment period.

SUMMARY: On May 6, 2010, the U. S. Department of Energy (DOE) published a Notice of Public Meeting (NOPM) in the **Federal Register** to announce the availability of the framework document for commercial refrigeration equipment and provide notice of a public meeting. The NOPM provided for the submission

of comments by June 7, 2010, and comments were also accepted at a public meeting held on May 18, 2010. This document announces that the period for submitting comments on the framework document for commercial refrigeration equipment is to be re-opened from July 15, 2010 to July 30, 2010.

DATES: DOE will accept comments, data, and information regarding the framework document for commercial refrigeration equipment received between July 15, 2010 and July 30, 2010.

ADDRESSES: Any comments submitted must identify the framework document for commercial refrigeration equipment, and provide docket number EERE–2010–BT–STD–0003 and/or RIN number 1904–AC19. Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: CRE-2010-STD-0003@ee.doe.gov.* Include docket number EERE–2010–BT–STD–0003 and/or RIN 1904–AC19 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC, 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. Please note: DOE's Freedom of Information Reading Room (Room 1E–190 at the Forrestal Building) no longer houses rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2192. E-mail: *Charles_Llenza@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8145, *Michael.Kido@hq.doe.gov;* or Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7796, *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On May 6, 2010, DOE published a NOPM in the **Federal Register** (75 FR 24824) to announce the availability of the framework document for commercial refrigeration equipment and provide notice of a public meeting. The NOPM provided for the submission of comments by June 7, 2010, and comments were also accepted at a public meeting held on May 18, 2010. The People's Republic of China submitted a request for DOE to extend the comment period to allow additional time for review of the documents and the submission of comments. DOE has determined that an extension of the public comment period is appropriate as a result of this comment and is hereby extending the comment period. DOE will consider any comments received between July 15, 2010 and July 30, 2010 and deems any comments received between publication of the NOPM on May 6, 2010 and July 30, 2010 to be timely submitted.

Further Information on Submitting Comments

Under Title 10 of the Code of Federal Regulations 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on July 8, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–17213 Filed 7–14–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–STD–0015]

RIN 1904–AB86

Energy Conservation Program: Re-Opening of the Public Comment Period for Walk-In Coolers and Walk-in Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Proposed Rule: re-opening of public comment period.

SUMMARY: On April 5, 2010, the U. S. Department of Energy (DOE) published a Notice of Public Meeting (NOPM) in the **Federal Register** to announce the availability of the technical support document for walk-in coolers and freezers and a public meeting on May 14, 2010. On April 14, 2010, DOE published a correction notice to change the date of the public meeting to May 19, 2010 and extend the deadline for the submission of comments to May 28, 2010. This document announces that the period for submitting comments on the preliminary technical support document for walk-in coolers and walk-in freezers is to be re-opened from July 15, 2010 to July 30, 2010.

DATES: DOE will accept comments, data, and information regarding the preliminary technical support document for walk-in coolers and walk-in freezers received between July 15, 2010 and July 30, 2010

ADDRESSES: Any comments submitted must identify the preliminary analysis for walk-in coolers and walk-in freezers, and provide docket number EERE–2008–BT–STD–0015 and/or RIN number 1904–AB86. Comments may be submitted using any of the following methods:

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

• *E-mail: WICF-2008-STD-0015@ee.doe.gov*. Include docket number EERE–2008–BT–STD–0015 and/or RIN 1904–AB86 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.

• *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC, 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. **Please note:** DOE's Freedom of Information Reading Room (Room 1E–190 at the Forrestal Building) no longer houses rulemaking materials.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–2192. E-mail: *Charles.Llenza@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8145, *Michael.Kido@hq.doe.gov;* or Ms. Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7796, *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: On April 5, 2010, DOE published a NOPM in the **Federal Register** to announce the availability of the technical support document for walk-in coolers and freezers and a public meeting on May 14, 2010. 75 FR 17080. On April 14, 2010, DOE published a correction notice to change the date of the public meeting to May 19, 2010 and extend the deadline for the submission of comments to May 28, 2010. 75 FR 19297. Comments were accepted through May 28, 2010 and were also accepted at the public meeting held on May 19, 2010. At the public meeting, DOE received a request to further extend the comment period to allow for the consideration of issues discussed at the public meeting. DOE has determined that an extension of the public comment period is appropriate as a result of this request and is hereby re-opening the comment period. DOE will consider any comments received between July 15, 2010 and July 30, 2010 and deems any comments received between publication of the NOPM on April 5, 2010 and July 30, 2010 to be timely submitted.

Further Information on Submitting Comments

Under Title 10 of the Code of Federal Regulations 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on July 8, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–17214 Filed 7–14–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0711; Directorate Identifier 2008–SW–25–AD]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company (Robinson) Model R22, R22 Alpha, R22 Beta, and R22 Mariner Helicopters, and Model R44, and R44 II Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Robinson Model R22, R22 Alpha, R22 Beta, and R22 Mariner helicopters, and Model R44 and R44 II helicopters. The AD would require visually inspecting each tail rotor (T/R) control pedal bearing block support (support) for a crack, measuring the thickness of each uncracked support, installing support safety tabs on certain supports, and replacing supports of a certain thickness during overhaul. This proposal is prompted by two reports of Model R22 helicopters experiencing broken supports during flight, which resulted in the T/R control pedals becoming jammed. The actions specified by the proposed AD are intended to prevent the supports from breaking, which can bind the T/R control pedals, resulting in a reduction of yaw control and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before September 13, 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 Robinson Helicopter Company, 2901

Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198.

FOR FURTHER INFORMATION CONTACT: Eric D. Schrieber, Aviation Safety Engineer, telephone (562) 627–5348, fax (562) 627–5210, regarding Robinson Model R22 helicopters, or Fred Guerin, Aviation Safety Engineer, telephone (562) 627–5232, fax (562) 627–5210, regarding Robinson Model R44 helicopters, at the FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712.

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–2010–0711, Directorate Identifier 2008–SW–25–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).

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 Robinson Model R22, R22 Alpha, R22 Beta, and R22 Mariner helicopters, serial numbers (S/N) 0002 through 3325, that have more than 2,200 hours total time-in-service (TIS); and Model R44 and R44 II helicopters, S/N 0001 through 1200, that have more than 2,200 hours total TIS. The AD would require, within 100 hours TIS, visually inspecting both A359–1 and A359–2 supports for a crack and replacing any cracked or broken support before further flight, and if not cracked, measuring the thickness of both supports and if less than 0.050-inch thick, installing support safety tabs, and at the next 2,200 hour TIS overhaul, replacing any support that is less than 0.050-inch thick with a support that is at least 0.050-inch thick. This proposal is prompted by two reports of Model R22 helicopters with more than 7,000 hours TIS, with supports made from 0.040-inch thick sheet metal, experiencing broken supports during flight, which led to the T/R control pedals becoming jammed, resulting in hard landings and damage to the helicopters. The actions specified by the proposed AD are intended to prevent the supports from breaking, which can bind the T/R control pedals, resulting in a reduction of yaw control and subsequent loss of control of the helicopter.

We have reviewed Robinson Helicopter Company Service Bulletin SB–63 and SB–97, both dated February 22, 2008, which describe procedures for inspecting both supports for a crack, and if no crack is found, measuring each support and installing safety tabs on supports that are less than 0.050-inch thick, and at the next 2,200 hour TIS overhaul, replacing certain supports.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. The actions would be required to be accomplished by following specified portions of the service bulletins described previously.

This proposed AD would affect 4,524 helicopters of U.S. registry, and proposed actions would take approximately 0.5 work hour to inspect and measure the supports. We estimate that 2,050 helicopters would require an additional 1 work hour to install both safety tabs; 6 work hours to replace both supports if cracked or broken or before overhaul, or 3 work hours to replace both supports as part of a 2,200 hours TIS overhaul, at an average labor rate of $85 per work hour. Required parts would cost approximately $20 per support if replacement is required. Based on these figures, the total cost impact of the proposed AD on U.S. operators would be $1,101,830, assuming 1,538 (approximately 75% of the 2,050 helicopters) have both supports replaced during overhaul, and 512 helicopters (approximately 25% of the 2,050 helicopters) have both supports replaced before the next 2,200 hours TIS overhaul.

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:

Robinson Helicopter Company: Docket No. FAA–2010–0711; Directorate Identifier 2008–SW–25–AD.

Applicability: Model R22, R22 Alpha, R22 Beta, and R22 Mariner helicopters, serial numbers (S/N) 0002 through 3325, that have more than 2,200 hours total time-in-service (TIS); and Model R44 and R44 II helicopters, S/N 0001 through 1200, that have more than 2,200 hours total TIS, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the tail rotor (T/R) control pedal bearing block support (support) from breaking, which can bind the T/R control pedals, resulting in a reduction of yaw control and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours TIS, visually inspect each A359–1 (left) and A359–2 (right) pedal support for a crack by referring to the figure in Robinson Helicopter Company (Robinson) Service Bulletin SB–97, dated February 22, 2008 (SB–97) for all Model R22 helicopters, and Robinson Service Bulletin SB–63, dated February 22, 2008 (SB–63) for all Model R44 helicopters.

(1) If you find a crack in a support, before further flight, replace the cracked support with an airworthy support that is at least 0.050-inch thick.

(2) For each uncracked support, measure the thickness of the support. If the support is less than 0.050-inch thick, before further flight, install a safety tab on the support in accordance with steps 4 and 5 of the Compliance Procedures section in SB–97 or SB–63, as appropriate for your model helicopter.

(b) At the next 2,200 hours TIS overhaul, replace any support that is less than 0.050-inch thick, with an airworthy support that is at least 0.050-inch thick.

(c) 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, Los Angeles Aircraft Certification Office, FAA, ATTN: Eric D. Schrieber, Aviation Safety Engineer, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5348, fax (562) 627–5210 (regarding Model R22 helicopters); or ATTN: Fred Guerin, Aviation Safety Engineer, telephone (562) 627–5232, fax (562) 627–5210 (regarding Model R44 helicopters) for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on July 6, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–17283 Filed 7–14–10; 8:45 am]

BILLING CODE 4910–13–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for Toxic Pollutants in the Delaware Estuary and Extend These Criteria to Delaware Bay

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Delaware River Basin Commission (DRBC or "Commission") will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to update many of the Commission's stream quality objectives (also called water quality criteria) for human health and aquatic life for toxic pollutants in the Delaware Estuary (DRBC Water Quality Zones 2 through 5) and to extend application of the criteria to Delaware Bay (DRBC Water Quality Zone 6). The proposed changes will bring the Commission's criteria for toxic pollutants into conformity with current guidance published by the U.S. Environmental Protection Agency (EPA) and provide a more consistent regulatory framework for managing the tidal portion of the main stem Delaware River.

DATES: The public hearing will take place on Thursday, September 23, 2010 at 2:30 p.m. and will continue on that day until all those who wish to testify are afforded an opportunity to do so. Written comments will be accepted through 5 p.m. on Friday, October 1, 2010.

ADDRESSES: The public hearing will take place in the Goddard Room at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey. Driving directions are available on the Commission's Web site, *http://www.drbc.net.* Please do not rely on Internet mapping services as they may not provide accurate directions to this location.

Written comments may be submitted by e-mail to *regs@drbc.state.nj.us* by fax to Regulations at 609–883–9522; by U.S. Mail to Regulations c/o Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628–0360; or by private mail carrier to Regulations c/o Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628–0360. In all cases, please include the commenter's name, address and affiliation if any in the comment and include "Water Quality Criteria" in the subject line.

FOR FURTHER INFORMATION CONTACT: The current rule and the full text of the proposed amendments are posted on the Commission's Web site, *http://www.drbc.net,* along with the report entitled "Water Quality Criteria for Toxic Pollutants for Zones 2–6 of the Delaware Estuary: Basis and Background Document" (DRBC, June 2010) and a set of PowerPoint slides presented to the Commission at the latter's public meeting on December 9, 2009 by the chair of the Commission's Toxics Advisory Committee. Hard copies of these materials may be obtained for the price of postage by contacting Ms. Paula Schmitt at 609–883–9500, ext. 224. For questions about the technical basis for the rule, please contact Dr. Ronald MacGillivray at 609–477–7252. For queries about the rulemaking process, please contact Pamela Bush at 609–477–7203.

SUPPLEMENTARY INFORMATION:

Background. At the request of the states of Delaware, New Jersey and Pennsylvania, which border the Delaware Estuary (hereinafter, "the Estuary States"), the Commission in 1996 adopted water quality criteria for human health and aquatic life for Water Quality Zones 2 through 5 (Trenton, New Jersey to Delaware Bay) of the main stem Delaware River and the tidal portions of its tributaries for a set of pollutants that included the list of Priority Pollutants published by the EPA in accordance with section 307 of the federal Clean Water Act (CWA); other pollutants for which EPA had published national recommended criteria in accordance with section 304(a) of the CWA; and additional pollutants for which one or more of the Estuary States had adopted criteria. *See* 40 CFR 401.15 (consisting of a list of 65 toxic pollutants, including categories of pollutants, for which effluent limitations are required in accordance with section 307(a)(1) of the Clean Water Act, 33 U.S.C. 1317(a)(1)); Appendix A of 40 CFR Part 423 (consisting of a list of 129 "Priority Pollutants," individual chemicals and forms of chemicals for which EPA has established national criteria); and 33 U.S.C. 1314(a) (providing for criteria development and publication by EPA).

Managing an interstate waterway that is simultaneously an industrial and commercial hub, a source of drinking water for urban and suburban populations in three states and a fragile tidal ecosystem is a complex task. After nearly fifteen years of applying uniform human health and aquatic life criteria in the Delaware Estuary, the Commission has determined that maintaining a uniform set of criteria in a single regulatory code is an essential predicate to measuring and managing the ecological health of this vital interstate resource.

Since 1996, EPA has updated its guidance for the development of human health water quality criteria and its list of national recommended water quality criteria for many toxic pollutants to reflect advances in scientific knowledge. Although the states have independently amended some of their criteria to conform to the current guidance and national recommended criteria, the Commission has not yet done so. The result is that many of DRBC's estuary toxics criteria are not currently consistent with state criteria, best available science, or current EPA guidance. Moreover, because the Bay and Estuary comprise a single tidal system in which each water quality zone is at times downstream and at times upstream of the adjacent zone or zones, regulators, dischargers and other stakeholders have determined that they are ill-served by excluding the Bay from application of uniform criteria in the Estuary. Amending the criteria at this time is necessary to restore consistency and fairness in the regulation of discharges, to facilitate coordination among state and federal programs and to continue to ensure that regulation of water quality in the shared interstate waters of the Estuary and Bay is based on the best science available.

The proposed amendments to the Commission's human health and aquatic life criteria for the Estuary and Bay were developed by the Commission's standing Toxics Advisory Committee (TAC), comprised of representatives of the four basin states—Delaware, New Jersey, New York and Pennsylvania—and members of the academic, agricultural, public health, industrial and municipal sectors and non-governmental environmental community. The TAC in 2007 adopted as its objectives (a) evaluating recent data and current methodologies for establishing water quality criteria for toxic pollutants and (b) developing recommendations for revising the Commission's 1996 criteria to reflect current science and risk assessment procedures and provide for consistency across interstate waters. The TAC's recommendations were formally presented to the Commissioners at a public meeting on December 9, 2009 by then TAC chair, Christopher S. Crocket of the Philadelphia Water Department. Dr. Crockett's PowerPoint presentation is available on the Commission's Web site.

No Change Proposed to Criteria for PCBs and Taste and Odor. The amendments proposed by the Commission in this rulemaking do not include changes to the Commission's criteria for polychlorinated biphenyls (PCBs), currently listed in Table 6 (criteria for carcinogens) and Table 7 (criteria for systemic toxicants) of Article 3 of the Commission's Water Quality Regulations and Water Code, or to the criteria to protect the taste and odor of ingested water and fish, set forth in Table 4 of the same Article. The Commission initiated a separate rulemaking in August of 2009 to update its human health criteria for carcinogenic effects for PCBs in the Delaware Estuary (see 74 FR 41100). The comment period for that proposal ended on October 19, 2009 and the Commission has not yet approved a final rule. The current PCB criteria will continue in effect pending completion of the Commission's separate rulemaking for PCBs. The Commission's Toxics Advisory Committee has not yet taken up the matter of revisions to the criteria to protect taste and odor.

Proposed Changes. The Commission's criteria for human health and aquatic life in the Delaware Estuary are listed in tables 3, 5, 6 and 7 of section 3.30 "Interstate Streams—Tidal" of the Water Quality Regulations and Water Code. In addition to extending these criteria to Water Quality Zone 6, two major types of changes to the criteria are proposed: (1) Compounds are proposed to be added to or deleted from the four tables and (2) numeric criteria for many of the compounds currently listed in the tables are proposed to be revised. In addition, to assist users sub-headings have been added for categories of pollutants (metals, pesticides, etc.) and the sequence of the parameters has been modified to arrange them within these categories. Minor changes for consistency in spelling and capitalization are also proposed. The additions, deletions and criteria changes are proposed in order to make the list of regulated compounds consistent with current EPA guidance and to ensure the criteria are uniform throughout the shared waters. The Basis and Background Document cited above sets forth in detail the policies and technical assumptions on which the TAC relied in developing the revised criteria.

The proposed changes to tables 3, 5, 6 and 7 are described briefly below:

For Table 3, "Maximum Contaminant Levels ["MCLs"] to be Applied as Human Health Stream Quality Objectives in Zones 2 and 3":

- Antimony, Cadmium, 1,2-Dichloropropane, Ethylbenzene and 1,2,4-Trichlorobenzene are proposed to be removed because the proposed updates to Table 7 (criteria for systemic toxicants) would establish DRBC criteria for these compounds more stringent than the MCLs.
- Nickel is proposed to be removed because the MCL for nickel was withdrawn by the EPA.
- Chromium (total) is proposed to be replaced by Chromium III for consistency with current EPA guidance.
- Current MCL values for Beryllium, Copper, Lead, alpha-BHC, beta-BHC, 2,4-Dichloro-phenoxyacetic acid (2,4-D), Methoxychlor, Toxaphene, Dioxin (2,3,7,8-TCDD), 2,4,5-Trichloro-phenoxypropionic acid (2,4,5-TP-Silvex), Benzene, Carbon Tetrachloride, 1,2-Dichloroethane, 1,1-Dichloroethylene, Dichloromethane (methylene chloride), Tetrachloroethylene (PCE), Toluene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, Trichloroethylene, Vinyl Chloride, Benzo(a)pyrene, Asbestos, Bis(2-Ethylhexyl) Phthalate, Fluoride, Nitrate, and Pentachlorophenol are proposed to be added because these MCL values were developed by EPA after 1996 in accordance with the Safe Drinking Water Act, 42 U.S.C.A. § 1412g–1(b).

As to Table 5, "Stream Quality Objectives for Toxic Pollutants for the Protection of Aquatic Life", Table 6, "Stream Quality Objectives for Carcinogens" and Table 7, "Stream Quality Objectives for Systemic Toxicants," nearly all of the freshwater and marine criteria are proposed to be updated to conform to current EPA guidance, resulting in minor changes in most instances and substantial changes in some. Most but not all of the proposed criteria are more stringent than the existing criteria.

Proposed changes to Table 6 (criteria for carcinogens) also include the following:

- Beryllium and 1,1-Dichloroethene are proposed to be removed because EPA no longer lists these compounds as carcinogens.
- 1,1,1,2-Tetrachloroethane is proposed to be removed because it is no longer recommended by the EPA for water quality criteria development.

• Arsenic, beta-BHC, N-Nitrosodi-N-butylamine, N-Nitrosodiethylamine, and N-Nitrosopyrrolidine are proposed to be added because EPA and an Estuary State have adopted criteria for them.

• Dinitrotoluene mixture (2, 4 & 2, 6) is proposed to be replaced by 2, 4-Dinitrotoluene to be consistent with current EPA guidance.

• Hexachlorobutadiene is proposed to be moved to Table 6 (criteria for carcinogens) from Table 7 because its toxicity is based on carcinogenicity.

Proposed changes to Table 7 (criteria for systemic toxicants) also include the following:

• 1,1,1,2-Tetrachloroethane is proposed to be removed because it is no longer recommended by the EPA for water quality criteria development.

• Chromium (Total), Methylmercury, alpha-Endosulfan, beta-Endosulfan, Endosulfan Sulfate, Endrin Aldehyde, Benzene, 2-Chloronaphthalene, Cyanide, 2-Methyl-4,6-dinitrophenol, Pentachlorobenzene, 1,2,4,5-Tetrachloro-benzene, 2,4,5-Trichlorophenol, and Vinyl Chloride are proposed to be added to Table 7 because EPA and an Estuary State adopted criteria for them.

• DDT is proposed to be replaced with "DDT and Metabolites (DDD and DDE)" to conform to current EPA guidance relating to the systemic toxicity of DDT and its degradation products, DDD and DDE. DDT, DDD and DDE, which are also deemed to be carcinogens, continue to be listed individually in Table 6.

• Hexachlorobutadiene has been moved from Table 7 to Table 6 because its toxicity is based on carcinogenicity.

• The column identifying EPA classifications is proposed to be removed from Table 7 because this information is not needed for application of the criteria for systemic toxicants. Detailed information on derivation of the criteria, including EPA classifications, is presented in the Basis and Background Document posted on DRBC's Web site.

Extension of Criteria to Delaware Bay (Zone 6). A new section 3.10.6C.11. is proposed to be added to make tables 3 through 7 of Article 3 of the Water Quality Regulations and Water Code applicable to Water Quality Zone 6, Delaware Bay.

It is proposed to amend the Water Quality Regulations and Water Code as follows:

Material proposed to be added to the Water Code and Water Quality Regulations is printed in **bold face** and material proposed to be deleted is enclosed in brackets **[ ]** and printed in **bold face**. Asterisks indicate ellipsis of rule text retained without changes. Explanatory text is printed in ordinary style face and enclosed in brackets [ ].

Section 3.30 Interstate Streams – Tidal.

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3.30.2 Zone 2.

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[Amend Tables 3, 5, 6 and 7 following subsection 3.30.2 as indicated to update current criteria and remove and add compounds.]

TABLE 3: MAXIMUM CONTAMINANT LEVELS TO BE APPLIED AS HUMAN HEALTH STREAM QUALITY OBJECTIVES IN ZONES 2 AND 3 OF THE DELAWARE RIVER ESTUARY.

Parameter	Maximum Contaminant Level (µg/l)
Metals	
[Antimony]	**[6]**
Arsenic	**[50] 10**
Barium	**[2.0 mg/l] 2000**
Beryllium	**4**
[Cadmium]	**[5]**
Chromium **(trivalent) [(total)]**	100
Copper	**1300**
[Nickel]	**[100]**
Lead	**15**
Selenium	50
Pesticides/PCBs	

alpha-BHC	**0.2**
beta-BHC	**0.2**
gamma - BHC (Lindane)	**[0.2] 2**
2,4-Dichloro-phenoxyacetic acid (2,4-D)	**70**
Methoxychlor	**40**
Toxaphene	**3**
Dioxin (2,3,7,8-TCDD)	**0.00003**
2,4,5 Trichloro-phenoxypropionic acid (2,4,5-TP-Silvex)	**50**
Volatile Organic Compounds (VOCs)	
Benzene	**5**
Carbon Tetrachloride	**5**
1,2-Dichloroethane	**5**
1,1-Dichloroethylene	**7**
[1,2 - trans – Dichloroethene] 1,2 - trans - Dichloroethylene	100
Dichloromethane (methylene chloride)	**5**
[1,2 – Dichloropropane]	**[5]**
[Ethylbenzene]	**[700]**
Tetrachloroethylene (PCE)	**5**
Toluene	**1000**
Total Trihalomethanes	**[100] 80**
[1,2,4 – Trichlorobenzene]	**[70]**
1,1,1-Trichloroethane	**200**
1,1,2-Trichloroethane	**5**
Trichloroethylene	**5**
Vinyl Chloride	**2**
Polycyclic Aromatic Hydrocarbons (PAHs)	
Benzo(a)Pyrene	**0.2**
Other Compounds	
Asbestos	**7 million fibers/L**
Bis(2-Ethylhexyl) Phthalate	**6**
Fluoride	**4,000**
Nitrate	**10,000**
Pentachlorophenol	**1**

Dioxin (2,3,7,8-TCDD)	**0.00003**

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TABLE 5: STREAM QUALITY OBJECTIVES FOR TOXIC POLLUTANTS FOR THE PROTECTION OF AQUATIC LIFE IN THE DELAWARE RIVER ESTUARY.

Parameter	Freshwater Objectives (µg/l)		Marine Objectives (µg/l)	
	Acute	Chronic	Acute	Chronic
Metals **[(Values indicated are total recoverable; See Section 3.10.3.C.2. for form of metal)]**				
Aluminum[a,b]	750	87	[-] NA	[-] NA
Arsenic (trivalent)[c]	**[360] 340**	**[190] 150**	69	36
Cadmium[c]	**[$e^{(1.128*LN(Hardness)-3.828)}$] 0.651*EXP(1.0166* LN(hardness)-3.924)**	**[$e^{(0.7852*LN(Hardness)-3.49)}$] 0.651*EXP(0.7409* LN(hardness)-4.719)**	**[43] 40**	**[9.3] 8.8**
Chromium (trivalent)[c]	**[$e^{(0.8190*LN(Hardness)+3.688)}$] 0.277*EXP(0.819* LN(hardness)+3.7256)**	**[$e^{(0.8190*LN(Hardness)+1.561)}$] 0.277*EXP(0.819* LN(hardness)+0.6848)**	**[-] NA**	**[-] NA**
Chromium (hexavalent)[c]	16	11	1,100	50
Copper[c]	**[$e^{(0.9422*LN(Hardness)-1.464)}$] 0.908*EXP(0.9422* LN(hardness)-1.7)**	**[$e^{(0.8545*LN(Hardness)-1.465)}$] 0.908*EXP(0.8545* LN(hardness)-1.702)**	**[5.3] 4.8**	**[3.4] 3.1**
Lead[c]	**[48] 38**	**[16] 5.4**	**[220] 210**	**[8.5] NA**
Mercury[c]	**[2.4] 1.4**	**[0.012] 0.77**	**[2.1] 1.8**	**[0.025] 0.94**
Nickel[c]	**[$e^{(0.846*LN(Hardness)+3.3612)}$] 0.846*EXP(0.846* LN(hardness)+2.255)**	**[$e^{(0.846*LN(Hardness)+1.1645)}$] 0.846*EXP(0.846* LN(hardness)+0.0584)**	**[75] 64**	**[8.3] 22**
Selenium[a]	**20**	**5.0**	**[300] 290**	**71**
Silver[c]	**[$e^{(1.72*LN(Hardness)-6.52)}$] 0.85*EXP(1.72* LN(hardness)-6.59)**	**[-] NA**	**[2.3] 1.9**	**[-] NA**
Zinc[c]	**[$e^{(0.8473*LN(Hardness)+0.8604)}$] 0.95*EXP(0.8473* LN(hardness)+0.884)**	**[$e^{(0.8473*LN(Hardness)+0.7614)}$] 0.95*EXP(0.8473* LN(hardness)+0.884)**	**[95] 90**	**[86] 81**
Pesticides/PCBs				
Aldrin	**[1.5] 3**	**[-] NA**	**[0.65] 1.3**	**[-] NA**
gamma - BHC (Lindane)	**[1.0] 0.95**	**[0.08] NA**	**[0.08] 0.16**	**[-] NA**
Chlordane	**[1.2] 2.4**	0.0043	**[0.045] 0.09**	0.004
Chlorpyrifos (Dursban)	0.083	0.041	0.011	0.0056
DDT and metabolites (DDE & DDD)[d]	[0.55] **1.1**	0.001	**[0.065] 0.13**	0.001
Dieldrin	**[1.25] 0.24**	**[0.0019] 0.056**	**[0.355] 0.71**	0.0019
Endosulfan[e]	**[0.11] 0.22**	0.056	**[0.017] 0.034**	0.0087

Parameter	Freshwater Objectives (µg/l)		Marine Objectives (µg/l)	
	Acute	Chronic	Acute	Chronic
Endrin	**[0.09] 0.086**	**[0.0023] 0.036**	**[0.019] 0.037**	**0.0023**
Heptachlor	**[0.26] 0.52**	0.0038	**[0.027] 0.053**	0.0036
Heptachlor Epoxide	**0.52**	**0.0038**	**0.053**	**0.0036**
Parathion	0.065	0.013	**[-] NA**	**[-] NA**
PCBs (Total)	1.0	0.014	5.0	0.03
Toxaphene	0.73	0.0002	0.21	0.0002
Other Compounds				
Cyanide **(free) [(total)]**	22	5.2	**[1.0] 2.7**	**[-] 1**
Pentachlorophenol	$e^{(1.005*pH-4.83)}$	$e^{(1.005*pH-5.29)}$	13	7.9
Indicator Parameters				
Whole Effluent Toxicity	0.3 Toxic Units $_{acute}$	1.0 Toxic Units $_{chronic}$	0.3 TU_a	1.0 TU_c

Footnotes to Table 5:

[a] Total recoverable criteria

[b] Aluminum criteria listed are restricted to waters with pH between 6.5 and 9.0.

[c] Dissolved criteria

[d] Criteria apply to DDT and its metabolites (i.e., the total concentration of DDT and its metabolites should not exceed this value).

[e] Values were derived from data for endosulfan and are most appropriately applied to the sum of alpha-endosulfan and beta-endosulfan.

Criteria for cadmium, chromium (trivalent), copper, nickel, silver and zinc are hardness-dependent and are expressed as the dissolved form (see Section 3.10.3.C.2. on form of metal).

TABLE 6: STREAM QUALITY OBJECTIVES FOR CARCINOGENS FOR THE DELAWARE RIVER ESTUARY.

PARAMETER	EPA class	FRESHWATER OBJECTIVES (µg/l)		MARINE OBJECTIVES (µg/l)
		FISH & WATER INGESTION	FISH INGESTION ONLY	FISH INGESTION ONLY
Metals				
Arsenic	**A**	**0.017**	**0.061**	**0.061**
[Beryllium]		**[0.00767]**	**[0.132]**	**[0.0232]**

Pesticides/PCBs				
Aldrin	B2	**[0.00189] 0.000049**	**[0.0226] 0.000050**	**[0.00397] 0.000050**
Alpha – BHC	B2	**[0.00391] 0.0026**	**[0.0132] 0.0049**	**[0.00231] 0.0049**
beta – BHC	**C**	**0.0091**	**0.017**	**0.017**
Chlordane	B2	**[0.000575] 0.00080**	**[0.000588] 0.00081**	**[0.000104] 0.00081**
DDD	B2	**[0.00423] 0.00031**	**[0.00436] 0.00031**	**[0.000765] 0.00031**
DDE	B2	**[0.00554] 0.00022**	**[0.00585] 0.00022**	**[0.00103] 0.00022**
DDT	B2	**[0.000588] 0.00022**	**[0.000591] 0.00022**	**[0.000104] 0.00022**
Dieldrin	B2	**[0.000135] 0.000052**	**[0.000144] 0.000054**	**[0.0000253] 0.000054**
Heptachlor	B2	**[0.000208] 0.000079**	**[0.000214] 0.000079**	**[0.0000375] 0.000079**
Heptachlor Epoxide	B2	**[0.000198] 0.000039**	**[0.000208] 0.000039**	**[0.0000366] 0.000039**
PCBs (Total)	B2	0.0000444	0.0000448	0.0000079
Toxaphene	B2	**[0.000730] 0.00028**	**[0.000747] 0.00028**	**[0.000131] 0.00028**
Volatile Organic Compounds (VOCs)				
Acrylonitrile	B1	**[0.0591] 0.051**	**[0.665] 0.25**	**[0.117] 0.25**
Benzene	A	**[1.19] 0.61**	**[71.3] 14**	**[12.5] 14**
Benzidine	A	**[0.000118] 0.000086**	**[0.000535] 0.00020**	**[0.000094] 0.00020**
Bromoform	B2	**[4.31] 4.3**	**[164.0] 140**	**[28.9] 140**
Bromodichloromethane	B2	**[0.559] 0.55**	**[55.7] 17**	**[9.78] 17**
Carbon Tetrachloride	B2	**[0.254] 0.23**	**[4.42] 1.6**	**[0.776] 1.6**
Chlorodibromomethane	C	**[0.411] 0.40**	**[27.8] 13**	**[4.88] 13**
Chloroform	B2	**[5.67] 5.7**	**[471.0] 470**	**[82.7] 470**
3,3 - Dichlorobenzidine	B2	**[0.0386] 0.021**	**[0.0767] 0.028**	**[0.0135] 0.028**
1,2 - Dichloroethane	B2	[0.383] 0.38	[98.6] 37	[17.3] 37
[1,1 – Dichloroethene]	C	**[0.0573]**	**[3.20]**	**[0.562]**
1,2 - Dichloropropane	**B2**	**0.50**	**15**	**15**
1,3 - Dichloropropene	B2	**[87.0] 0.34**	**[14.1] 21**	**[2.48] 21**
Dichloromethane (Methylene chloride)	B2	**[4.65] 5**	**[1,580] 590**	**[277] 590**

[Tetrachloroethene] Tetrachloroethylene	B2	**[0.80] 0.69**	**[8.85] 3.3**	**[1.55] 3.3**
[1,1,1,2 – Tetrachloroethane]	C	**[1.29]**	**[29.3]**	**[5.15]**
1,1,2,2 - Tetrachloroethane	C	**[0.172] 0.17**	**[10.8] 4.0**	**[1.89] 4.0**
1,1,2 - Trichloroethane	C	**[0.605] 0.59**	**[41.6] 16**	**[7.31] 16**
[Trichloroethene] Trichloroethylene	B2	**[2.70] 2.5**	**[80.7] 30**	**[14.2] 30**
Vinyl Chloride	A	**[2.00] 0.025**	**[525.0] 2.4**	**[92.9] 2.4**
Polycyclic Aromatic Hydrocarbons (PAHs)				
Benz[a]anthracene	B2	**[0.00171] 0.0038**	**[0.00177] 0.18**	**[0.00031] 0.18**
Benzo[b]fluoranthene	B2	**[0.000455] 0.038**	**[0.000460] 0.18**	**[0.000081]0.18**
Benzo[k]fluoranthene	B2	**[0.000280] 0.38**	**[0.000282] 1.8**	**[0.000049] 1.8**
Benzo[a]pyrene	B2	**[0.0000644] 0.0038**	**[0.0000653] 0.018**	**[0.0000115] 0.018**
Chrysene	B2	**[0.0214] 3.8**	**[0.0224] 18**	**[0.00394] 18**
Dibenz[a,h]anthracene	B2	**[0.0000552] 0.0038**	**[0.0000559] 0.018**	**[0.0000098] 0.018**
Indeno[1,2,3-cd]pyrene	B2	**[0.0000576] 0.038**	**[0.0000576] 0.18**	**[0.0000101] 0.18**
Other Compounds				
Bis (2-chloroethyl) ether	B2	**[0.0311] 0.03**	**[1.42] 0.53**	**[0.249] 0.53**
Bis (2-ethylhexyl) phthalate	B2	**[1.76] 1.2**	**[5.92] 2.2**	**[1.04] 2.2**
[Dinitrotoluene mixture (2,4 & 2,6)] 2,4 - Dinitrotoluene	B2	**[17.3] 0.11**	**[1420] 3.4**	**[249] 3.4**
1,2 - Diphenylhydrazine	B2	**[0.0405] 0.036**	**[0.541] 0.2**	**[0.095] 0.2**
Hexachlorobenzene	B2	**[0.000748] 0.00028**	**[0.000775] 0.00029**	**[0.000136] 0.00029**
Hexachlorobutadiene	C	**[0.445] 0.44**	**[49.7] 18**	**[8.72] 18**
Hexachloroethane	C	**[1.95] 1.4**	**[8.85] 3.3**	**[1.56] 3.3**
Isophorone	B2	**[36.3] 35**	**[2590] 960**	**[455] 960**
N-Nitrosodi-N-butylamine	**B2**	**0.0063**	**14**	**14**
N-Nitrosodi-N-methylamine	B2	**[0.000686] 0.00069**	**[8.12] 3.0**	**[1.43] 3.0**
N-Nitrosodiethylamine	**B2**	**0.0008**	**1.24**	**1.24**
N-Nitrosodi-N-phenylamine	B2	**[4.95] 3.3**	**[16.2] 6**	**[2.84] 6**
N-Nitrosodi-N-propylamine	B2	**[0.00498] 0.0050**	**[1.51] 0.51**	**[0.265] 0.51**

N-Nitrosopyrrolidine	**B2**	**0.016**	**34**	**34**
Pentachlorophenol	B2	**[0.282] 0.27**	**[8.16] 3.0**	**[1.43] 3.0**
Dioxin (2,3,7,8 – TCDD)	NA	**[1.3 x 10^{-8}] 0.000000005**	**[1.4 x 10^{-8}] 0.0000000051**	**[2.4 x 10^{-9}] 0.0000000051**
2,4,6 - Trichlorophenol	B2	**[2.14] 1.4**	**[6.53] 2.4**	**[1.15] 2.4**

TABLE 7: STREAM QUALITY OBJECTIVES FOR SYSTEMIC TOXICANTS FOR THE DELAWARE RIVER ESTUARY

PARAMETER	**[EPA Class]**	FRESHWATER OBJECTIVES (µg/l)		MARINE OBJECTIVES (µg/l)
		FISH & WATER INGESTION	FISH INGESTION ONLY	FISH INGESTION ONLY
Metals				
Antimony		**[14.0] 5.6**	**[4,310] 640**	**[757] 640**
Arsenic	**[A]**	**[9.19] ***	**[73.4] NA**	**[12.9] NA**
Beryllium	**[B2]**	**[165] ***	**[2,830] 42**	**[498] 42**
Cadmium		**[14.5] 3.4**	**[84.1] 16**	**[14.8] 16**
Chromium (trivalent)		**[33,000] ***	**[673,000] 380,000**	**[118,000] 380,000**
[Hexavalent] Chromium **(hexavalent)**	**[A]**	**[166] 92**	**[3,370] NA**	**[591] NA**
Chromium (Total)		**NA**	**750**	**750**
Mercury		**[0.144] 0.050**	**[0.144] 0.051**	**[0.144] 0.051**
Methylmercury		**0.3 mg/kg fish tissue**	**0.3 mg/kg fish tissue**	**0.3 mg/kg fish tissue**
Nickel		**[607] 500**	**[4,580] 1,700**	**[805] 1,700**
Selenium		**[100] 170**	**[2,020] 4,200**	**[355] 4,200**
Silver		**[175] 170**	**[108,000] 40,000**	**[18,900] 40,000**
Thallium		**[1.70] 0.24**	**[6.20] 0.47**	**[1.10] 0.47**
Zinc		**[9110] 7,400**	**[68700] 26,000**	**[12100] 26,000**
Pesticides/PCBs				
Aldrin	**[B2]**	**[0.96] 0.025**	**[11.5] 0.025**	**[2.03] 0.025**
gamma - BHC (Lindane)		**[7.38] 0.98**	**[24.9] 1.8**	**[4.37] 1.8**
Chlordane	**[B2]**	**[0.0448] 0.14**	**[0.0458] 0.14**	**[0.00805] 0.14**
DDT **and Metabolites (DDD and**	**[B2]**	**[0.100] 0.037**	**[0.100] 0.037**	**[0.0176] 0.037**

DDE)				
Dieldrin	**[B2]**	**[0.108] 0.041**	**[0.115] 0.043**	**[0.020] 0.043**
[Endosulfan]		**[111]**	**[239]**	**[42.0]**
alpha -Endosulfan		**62**	**89**	**89**
Beta- Endosulfan		**62**	**89**	**89**
Endosulfan Sulfate		**62**	**89**	**89**
Endrin	**[D]**	**[0.755] 0.059**	**[0.814] 0.060**	**[0.143] 0.060**
Endrin Aldehyde		**0.29**	**0.30**	**0.30**
Heptachlor	**[B2]**	**[0.337] 0.18**	**[0.344] 0.18**	**[0.060] 0.18**
Heptachlor Epoxide	**[B2]**	**[0.0234] 0.0046**	**[0.0246] 0.0046**	**[0.00433] 0.0046**
Total PCBs	**[B2]**	0.00839	0.00849	0.00149
Volatile Organic Compounds (VOCs)				
Acrolein		**[320] 6.1**	**[780] 9.3**	**[137] 9.3**
Benzene		*****	**3,100**	**3,100**
Bromoform	**[B2]**	**[682] 650**	**[25,900] 9,600**	**[4,560]9,600**
Bromodichloromethane	**[B2]**	**[693] 680**	**[69,000] NA**	**[12,100] NA**
Dibromochloromethane	**[C]**	**[690] 680**	**[46,600] 21,000**	**[8,190] 21,000**
Carbon Tetrachloride	**[B2]**	**[23.1] ***	**[402] 150**	**[70.6] 150**
Chloroform	**[B2]**	**[346] 68**	**[28,700] 2,100**	**[5,050] 2,100**
Chlorobenzene	**[D]**	**[677] 130**	**[20,900] 1,600**	**[3,670] 1,600**
[1,1 – Dichloroethene] **1,1 - Dichloroethylene**	**[C]**	**[309] ***	**[17,300] 7,100**	**[3,040] 7,100**
[1,2 - trans – Dichloroethene] **1,2 - trans - Dichloroethylene**		**[696] 140**	**[136,000] 10,000**	**[23,900] 10,000**
1,3 - Dichloropropene	**[B2]**	**[10.4] 1,000**	**[1,690] 63,000**	**[297] 63,000**
Ethylbenzene		**[3,120] 530**	**[28,700] 2,100**	**[5,050] 2,100**
Methyl Bromide		**[49.0] 47**	**[N/A] 1,500**	**[N/A] 1,500**
Methylene Chloride	**[B2]**	**[2,090] ***	**[710,000] 260,000**	**[125,000] 260,000**
1,1,2 – Trichloroethane	**[C]**	**[138] ***	**[9,490] 3,600**	**[1,670] 3,600**
[Tetrachloroethene] **Tetrachloroethylene**		**[318] ***	**[3,520] 1,300**	**[618] 1,300**
[1,1,1,2 – Tetrachloroethane]	**[C]**	**[1,000]**	**[22,400]**	**[3,940]**
Toluene		**[6,760] 1,300**	**[201,000] 15,000**	**[35,400] 15,000**

Polycyclic Aromatic Hydrocarbons (PAHs)				
Anthracene	[D]	[4,110] 8,300	[6,760] 40,000	[1,190] 40,000
Fluoranthene		[296] 130	[375] 140	[65.8] 140
Fluorene	[D]	[730] 1,100	[1,530] 5,300	[268] 5,300
Pyrene	[D]	[228] 830	[291] 4,000	[51.1] 4,000
Other Compounds				
Acenaphthene		[1,180] 670	[2,670] 990	[469] 990
Benzidine	[A]	[81.8] 59	[369] 140	[64.9] 140
Bis (2-chloroisopropyl) ether		[1,390] 1,400	[174,000] 65,000	[30,600] 65,000
Bis (2-ethylhexyl) phthalate	[B2]	[492] *	[1,660] 620	[291] 620
Butylbenzyl phthalate	[C]	[298] 1,500	[520] 1,900	[91.4] 1,900
2 - Chloronaphthalene		1,000	1,600	1,600
2 - Chlorophenol		[122] 81	[402] 150	[70.6] 150
Cyanide		140	140	140
Dibutyl Phthalate	[D]	[2,710] 2,000	[12,100] 4,500	[2,130] 4,500
1,2 - Dichlorobenzene	[D]	[2,670] 420	[17,400] 1,300	[3,060] 1,300
1,3 - Dichlorobenzene	[D]	[414] 420	[3,510] 1,300	[617] 1,300
1,4 - Dichlorobenzene		[419] 63	[3,870] 190	[677] 190
2,4 - Dichlorophenol		[92.7] 77	[794] 290	[139] 290
Diethyl Phthalate	[D]	[22,600] 17,000	[118,000] 44,000	[20,700] 44,000
Dimethyl Phthalate	[D]	[313,000] 270,000	[2,990,000] 1,100,000	[526,000] 1,100,000
2,4 - Dimethylphenol		[536] 380	[2,300] 850	[403] 850
2,4 - Dinitrophenol		[70] 69	[14,300] 5,300	[2,500] 5,300
2,4 - Dinitrotoluene		[69.2] 68	[5670] 2,100	[996] 2,100
Hexachlorobenzene	[B2]	[0.958] 0.35	[0.991] 0.36	[0.174] 0.36
[Hexachlorobutadiene]	[C]	[69.4]	[7,750]	[1,360]
Hexachlorocyclopentadiene		[242] 40	[17,400] 1,100	[3,050] 1,100
Hexachloroethane	[C]	[27.3] 20	[124] 46	[21.7] 46
Isophorone	[C]	[6,900] 6,700	[492,000] 180,000	[86,400] 180,000
2-Methyl-4,6-dinitrophenol		13	280	280
Nitrobenzene	[D]	[17.3] 17	[1,860] 690	[327] 690
Pentachlorobenzene		1.4	1.5	1.5
Pentachlorophenol		[1,010] *	[29,400] 11,000	[5,160] 11,000

Phenol		**[20,900] 10,000**	**[4,620,000] 860,000**	**[811,000] 860,000**
1,2,4,5-Tetrachlorobenzene		**0.97**	**1.1**	**1.1**
1,2,4 - Trichlorobenzene	**[D]**	**[255] 35**	**[945] 70**	**[166] 70**
2,4,5-Trichlorophenol		**1,800**	**3,600**	**3,600**
Vinyl Chloride		*****	**10,000**	**10,000**

*** The MCL for this compound applies in Zones 2 and 3 and is listed in Table 3. Objectives for "Fish Ingestion Only" listed for this compound apply in Zones 4, 5, and 6.**

* * * * *

3.30.6 Zone 6.

* * * * *

[Add the following text immediately following sub-section 3.30.6 C.10. and preceding sub-section 3.30.6 D.]

11. Toxic Pollutants.

a. Applicable criteria to protect the taste and odor of ingested water and fish are presented in Table 4.

b. Applicable freshwater stream quality objectives for the protection of aquatic life are presented in Table 5.

c. Applicable freshwater stream quality objectives for the protection of human health are presented in Tables 6 and 7.

Dated: July 8, 2010.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 2010–17118 Filed 7–14–10; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0518]

RIN 1625–AA08

Special Local Regulations; Sabine River, Orange, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary Special Local Regulation in the Port Arthur Captain of the Port Zone on the Sabine River, Orange, Texas. This Special Local Regulation is intended to restrict vessels from portions of the Sabine River during the Thunder on the Sabine boat races. This Special Local Regulation is necessary to protect spectators and vessels from the hazards associated with powerboat races.

DATES: Comments and related material must be received by the Coast Guard on or before August 16, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0518 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 Mr. Scott Whalen, Marine Safety Unit Port Arthur, TX, Coast Guard; telephone 409–719–5086, e-mail *scott.k.whalen@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–2010–0518), 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–2010–0518" 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–2010–0518" 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**.

Background and Purpose

This temporary special local regulation is necessary to ensure the safety of vessels and spectators from hazards associated with a powerboat race. The Captain of the Port has determined that powerboat races in close proximity to watercraft and infrastructure pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, powerboats traveling at high speeds, and large numbers of spectators in close proximity to the water could easily result in serious injuries or fatalities. Establishing a special local regulation around the location of the race course will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Proposed Rule

This proposed temporary special local regulation is necessary to ensure the safety of spectators and vessels during the setup, course familiarization, testing and race in conjunction with the Orange, TX, Thunder on the Sabine boat races. The powerboat race and associated testing will occur between 8 a.m. on September 25, 2010 and 6 p.m. on September 26, 2010. The special local regulation will be enforced daily from 8 a.m. to 6 p.m. on September 25 and 26, 2010.

The special local regulation will encompass all waters of the Sabine River adjacent to Naval Reserve Center and Orange, TX public boat ramp. The northern boundary will be from the end of Navy Pier One at 30°05′45″ N/ 093°43′24″ W then easterly to the rivers eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N. All geographic coordinates are North American Datum of 1983 [NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the special local regulation area is prohibited unless authorized by the Captain of the Port or his designated on scene representative. For authorization to enter the proposed safety zone, vessels can contact the Captain of the Port's on scene representative on VHF Channel 16 or Vessel Traffic Service Port Arthur on VHF Channel 65A, by telephone at (409) 719–5070, or by facsimile at (409) 719–5090

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The basis of this finding is that the safety zone will only be in effect for 10 hours each day and notifications to the marine community will be made through broadcast notice to mariners and Marine Safety Information Bulletin. During non-enforcement hours all vessels will be allowed to transit through the safety zone without permission of the Captain of the Port, Port Arthur or a designated representative. Additionally, scheduled breaks will be provided to allow waiting vessels to transit safely through the safety zone.

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 proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced from 8 a.m. until 6 p.m. each day that it is effective; (2) during non-enforcement hours all vessels will be allowed to transit through the safety zone without having to obtain permission from the Captain of the Port, Port Arthur or a designated representative; and (3) vessels will be allowed to pass through the zone with permission of the Coast Guard Patrol Commander during scheduled break periods between races and at other times when permitted by the Coast Guard Patrol Commander.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Scott Whalen, Marine Safety Unit Port Arthur, TX; telephone (409) 719–5086, e-mail *scott.k.whalen@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a special local regulation. Based on our preliminary determination, there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded. Because this event establishes a special local regulation, paragraph (34)(h) of figure 2–1 of the Instruction applies. Thus, no further environmental documentation is required. 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 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 a new temporary § 100.35T08–0518 to read as follows:

§ 100.35T08–0518 Safety Zone; Sabine River, Orange, TX.

(a) *Definitions.* As used in this section "Participant Vessel" means all vessels registered with event officials to race or work in the event. These vessels include race boats, rescue boats, tow boats, and picket boats associated with the race.

(b) *Location.* The following area is a safety zone: all waters of the Sabine River, shoreline to shoreline, adjacent to the Naval Reserve Unit and the Orange public boat ramps located in Orange, TX. The northern boundary is from the end of Navy Pier One at 30°05′45″ N/ 093°43′24″ W then easterly to the rivers eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N.

(c) *Effective Period.* This regulation is effective from 8 a.m. on September 25, 2010, to 6 p.m. on September 26, 2010. This regulation will be enforced daily from 8 a.m. until 6 p.m. on September 25 and 26, 2010.

(d) *Regulations.*

(1) In accordance with the general regulations in § 100.35 of this part, entry into this zone is prohibited to all vessels except participant vessels and those vessels specifically authorized by the Captain of the Port, Port Arthur or a designated representative.

(2) Persons or vessels requiring entry into or passage through must request permission from the Captain of the Port, Port Arthur, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (409) 723–6500.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, Port Arthur, designated representatives and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 3, 2010.

J.J. Plunkett,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. 2010–17115 Filed 7–14–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257, 261, 264, 265, 268, 271 and 302

[EPA–HQ–RCRA–2009–0640; FRL–9175–4]

RIN 2050–AE81

Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearings.

SUMMARY: On June 21, 2010, EPA proposed to regulate the disposal of coal combustion residuals generated from the combustion of coal at electric utilities and by independent power producers. Given the significant public interest in this proposed rule and to further public participation opportunities, EPA is announcing five public hearings to be held in cities across the United States. The hearings will provide the public with an opportunity to present data, views or arguments concerning the proposed rule. The public hearings will take place in Arlington, Virginia; Denver, Colorado; Dallas, Texas; Charlotte, North Carolina; and Chicago, Illinois.

DATES: A public hearing will be conducted in Arlington, Virginia, on August 30, 2010; Denver, Colorado, on

September 2, 2010; Dallas, Texas, on September 8, 2010; Charlotte, North Carolina, on September 14, 2010; and Chicago, Illinois, on September 16, 2010. Persons who wish to present oral testimony at one or more of the public hearings must preregister at least three business days prior to the hearing. The last day to preregister will be August 25, 2010, for the Arlington, Virginia, public hearing; August 30, 2010, for the Denver, Colorado, public hearing; September 2, 2010, for the Dallas, Texas, public hearing; September 9, 2010, for the Charlotte, North Carolina, public hearing; and September 13, 2010, for the Chicago, Illinois, public hearing. The preregistration cut-off time is 5 p.m. Eastern Daylight Time (EDT) on the final day of preregistration for the five public hearings. *See* **SUPPLEMENTARY INFORMATION** for information on how to register.

ADDRESSES: The public hearings will be held at the following locations:

Arlington, VA—August 30, 2010, Hyatt Regency, 2799 Jefferson Davis Highway, Arlington, VA 22202, Phone: (703) 418–1234, *http://www.crystalcity.hyatt.com.*

Denver, CO—September 2, 2010, Grand Hyatt, 1750 Welton Street, Denver, CO 80202, Phone: (303) 295–1234, *http://www.granddenver.hyatt.com.*

Dallas, TX—September 8, 2010, Hyatt Regency Dallas, 300 Reunion Boulevard, Dallas, TX 75207, Phone: (214) 651–1234, *http://www.dallasregency.hyatt.com.*

Charlotte, NC—September 14, 2010, Holiday Inn Charlotte (Airport), 2707 Little Rock Road, Charlotte, NC 28214, Phone: (704) 394–4301, *http://www.hicharlotteairport.com.*

Chicago, IL—September 16, 2010, Hilton Chicago, 720 South Michigan Avenue, Chicago, IL 60605, Phone: (312) 922–4400, *http://www.chicagohilton.com/hotels__hiltonchicago.aspx.*

For additional details on the public hearings *please see* **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the public hearing, please contact Bonnie Robinson, Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mailcode 5304P, Washington, DC 20460; telephone number (703) 308–8429; e-mail address: *robinson.bonnie@epa.gov* or Elaine Eby, Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mailcode 5304P, Washington, DC 20460; telephone number (703) 308–8449; e-mail address *eby.elaine@epa.gov.* Questions concerning the proposed rule should be addressed to. Alexander Livnat, Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, 5304P; 1200 Pennsylvania Ave., NW., Washington DC 20460, telephone number: (703) 308–7251, e-mail address: *livnat.alexander@epa.gov,* or Steve Souders, Office of Resource Conservation and Recovery, U.S. Environmental Protection Agency, 5304P; 1200 Pennsylvania Ave., NW., Washington DC 20460, telephone number: (703) 308–8431, e-mail address: *souders.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published in the **Federal Register** on June 21, 2010 (75 FR 35128). Additional information on the proposed rule can be found at *http://www.epa.gov/coalashrule.* (Note: The Agency will shortly be publishing in the **Federal Register** several administrative corrections that are needed to the June 21, 2010 print publication of the proposed rule. An unofficial pre-publication version of the corrected proposed rule and a summary of the administrative corrections made to the rule is available at *http://www.epa.gov/coalashrule* in the meantime.)

On June 21, 2010, EPA proposed to establish regulatory requirements applicable to the disposal of coal combustion residuals, commonly known as coal ash, generated from the combustion of coal at electric utilities and by independent power producers. These regulations were proposed under the authority of sections 1008(a), 2002(a), 3001, 3004, 3005, and 4004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6907(a), 6912(a), 6921,6924, 6925 and 6944. These statutes, combined, are commonly referred to as "RCRA." Several of these statutory provisions require that EPA offer the public an "opportunity for a hearing" as part of the process for adopting a final requirement. *See, e.g.,* 42 U.S.C. 6907(a), 6921(b)(1)(C)(3)(C).

To date, EPA has received a submission requesting multiple hearings on the proposed rule, and given the significant public interest in this rule, EPA is announcing five public hearings to be held in cities across the United States. The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. EPA may ask clarifying questions during the oral presentations, but will not respond formally to any comments or the presentations made.

Each public hearing will consist of three sessions, a morning session starting at 10 a.m. (local time) and ending at noon, an afternoon session starting at 1 p.m., and ending at 5 p.m., and an evening session beginning at 6:30 and ending at 9 p.m. or later, if necessary, depending on the number of speakers that preregister for the hearing.

If you would like to present oral testimony at the hearing, please preregister at the following Web site: *http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/ccr-rule/ccr-form.htm.* If you would like to present oral testimony and are unable to preregister at this Web site, please contact either Bonnie Robinson or Elaine Eby at the addresses given above under **FOR FURTHER INFORMATION CONTACT** prior to the close of the preregistration period. Note that you only need to preregister if you wish to present oral testimony. That is, you do not have to preregister in order to observe the public hearing or to submit only a written statement (*see* below). The Agency encourages, however, all persons planning to attend one or more of the public hearings to preregister for it, which will facilitate the planning of the event. As noted above, preregistration closes at 5 p.m. EDT three business days prior to each public hearing. If you do not preregister by the deadline and wish to provide oral testimony, EPA may allow, if time permits, some or all unregistered persons to present oral testimony at the public hearing. EPA will consider such requests on a first-come, first-served basis on the day of the public hearing, according to the time available.

If you wish to submit only a written statement at the public hearing (that is, you do not want to present oral testimony), EPA officials will accept such written statements at the morning, afternoon, and evening sessions. EPA will place such statements in the docket to the rulemaking and will consider your statement as part of the rulemaking record. You do not need to preregister for the hearing if you wish only to submit a written statement; however, as previously stated, preregistration is encouraged.

Oral testimony will be limited to 3 minutes for each person to address the proposed rule. We will not be providing equipment for persons to show overhead slides or make computerized slide presentations. EPA encourages each person to provide two copies of

their oral testimony either electronically or computer disk, CD–ROM, or paper copy at the public hearing. Verbatim transcripts of the public hearings and written statements will be included in the docket to this rulemaking.

Any person needing special accommodations at the public hearings, including wheelchair access or sign language translation, should contact Bonnie Robinson or Elaine Eby at the addresses given above under **FOR FURTHER INFORMATION CONTACT** at least five business days in advance of the public hearing.

Finally, in addition to today's public hearing announcement, EPA will be maintaining a Web site providing the most up-to-date information on these public hearings. *See http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/ccr-rule/ccr-hearing.htm.* Those persons planning to participate in the public hearing process, either by providing oral testimony or observing the hearing, are urged to visit this Web site at least two days prior to the date of the each public hearing to determine if there are any relevant announcements or changes related to the hearing.

Dated: July 8, 2010.

Suzanne Rudzinski,

Acting Director, Office of Resource Conservation and Recovery.

[FR Doc. 2010–17143 Filed 7–14–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–1060; MB Docket No. 10–118; RM–11603].

Radio Broadcasting Services; Gearhart, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR Section 73.202(b). The Commission requests comment on a petition filed by Black Hills Broadcasting, L.P. proposing the allotment of FM Channel 243A as the first local service at Gearhart, Oregon. The channel can be allotted at Gearhart in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.2 km (5.1 miles) south of Gearhart, at 45–57–11 North Latitude and 123–56–14 West Longitude. *See* Supplementary Information *infra.*

DATES: The deadline for filing comments is August 16, 2010. Reply comments must be filed on or before August 31, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: J. Dominic Monahan, Esq., Forum Building, 777 High Street–Suite 300, Post Office Box 10747, Eugene, Oregon 97401.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 10–118, adopted June 10, 2010, and released June 14, 2010. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Gearhart, Channel 243A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–17300 Filed 7–14–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0911031392–91399–01]

RIN 0648–AY34

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea Subarea

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 94 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 94, if approved, would require participants using nonpelagic trawl gear in the directed fishery for flatfish in the Bering Sea subarea to modify the trawl gear to raise portions of the gear off the ocean bottom. Amendment 94 also would change the boundaries of the Northern Bering Sea Research Area to establish the Modified Gear Trawl Zone (MGTZ) and to expand the Saint Matthew Island Habitat Conservation Area. Nonpelagic trawl gear also would be required to be modified to raise portions of the gear off the ocean bottom if used in any directed fishery for groundfish in the proposed MGTZ. This action is necessary to reduce potential adverse effects of nonpelagic trawl gear on bottom habitat, to protect additional blue king crab habitat near St. Matthew Island, and to allow for efficient flatfish harvest as the

distribution of flatfish in the Bering Sea changes. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Written comments must be received by August 30, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified for this action by 0648–AY34 (PR), by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 94, maps of the action area, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from *www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* The EA for Amendment 89, which contains information referenced in this proposed rule, is available from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Bering Sea groundfish fisheries are managed under the FMP. In 1981, the North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council submitted Amendment 94 for review by the Secretary of Commerce, and a notice of availability of Amendment 94 was published in the **Federal Register** on June 29, 2010, with comments on Amendment 94 invited through August 30, 2010 (75 FR 37371). Comments may address Amendment 94 or this proposed rule, but must be received by 1700 hours, A.D.T. on August 30, 2010 to be considered in the approval/disapproval decision on Amendment 94. All comments received by that time, whether specifically directed to Amendment 94, or to this proposed rule, will be considered in the approval/disapproval decision on Amendment 94.

Background

If approved by NMFS, Amendment 94 would require participants in the directed fishery for flatfish in the Bering Sea subarea to use modified nonpelagic trawl gear. It also would change the boundaries of the Northern Bering Sea Research Area (NBSRA) to establish the MGTZ, and would expand the Saint Matthew Island Habitat Conservation Area (SMIHCA). Four minor technical changes to the FMP also would be made, three of which do not result in regulatory changes. Details on these minor technical changes are in the EA/RIR/IRFA for this action (see **ADDRESSES**) and in the notice of availability for Amendment 94 published in the **Federal Register** on June 29, 2010 (75 FR 37371). One minor technical amendment for the NBSRA would require a regulatory amendment and is further explained below.

In October 2009, the Council unanimously adopted Amendment 94. Modifying nonpelagic trawl gear was considered with the Council's development of Amendment 89 to the FMP (73 FR 43362, July 25, 2008). Amendment 89 established the Bering Sea Habitat Conservation Measures, closing portions of the Bering Sea subarea to nonpelagic trawling and establishing the NBSRA and SMIHCA. The Council adopted Amendment 89 in June 2007, but developed the modified nonpelagic trawl gear action separately through subsequent coordination with NMFS, the United States Coast Guard, and the nonpelagic trawl fishing industry.

Modified Nonpelagic Trawl Gear

Nonpelagic trawl gear uses a pair of long lines called sweeps to herd fish into the net. These lines drag across the bottom and may adversely impact benthic organisms (*e.g.,* crab species, sea whips, sponges, and basket stars). Approximately 90 percent of the bottom contact of nonpelagic trawl gear used to target flatfish is from the sweeps, which can be more than 1,000 feet (304.8 m) in length. Based on research by the Alaska Fisheries Science Center (AFSC), NMFS and described in the EA/RIR/IRFA (see **ADDRESSES**), nonpelagic trawl gear can be modified to raise the sweeps off the bottom to reduce potential adverse effects on bottom habitat while maintaining effective catch rates for flatfish target species in sand and mud bottom habitat. AFSC studies comparing nonpelagic trawl gear to modified nonpelagic trawl gear show that the modified nonpelagic trawl gear reduces mortality and disturbance of sea whips, basket stars, sponges, and crab species. The studies further show that modified nonpelagic trawl gear does not significantly reduce catch rates of flatfish species. In 2008 and 2009, the AFSC and NOAA Office for Law Enforcement worked with the fishing industry to test the modified nonpelagic trawl gear under normal fishing conditions and determined that this gear can be safely used and efficiently inspected. Details of the development of the modified nonpelagic trawl gear are in the EA/RIR/IRFA for this action (see **ADDRESSES**).

The Council recommended that nonpelagic trawl gear used in the Bering Sea flatfish fishery or in the MGTZ be modified by adding elevating devices to a portion of the trawl gear that contacts the bottom, including sweeps and portions of the net bridles. Some gear configurations may have long net bridles that make up a substantial portion of the gear's bottom contact. The elevating devices are any kind of a device that raises the sweeps or net bridles off the bottom (*e.g.,* bobbins, discs). The modified nonpelagic trawl gear would have to be constructed and maintained to meet three gear standards for elevating devices: location, clearance, and spacing. These standards are intended to allow flexibility in the construction of the modified gear, while ensuring the gear functions in a manner that would reduce the potential adverse impacts of the nonpelagic trawl gear on benthic organisms, as demonstrated in the AFSC studies described above.

The first proposed standard would apply to the location of the elevating devices on the gear. Proposed Figure 26

to part 679 shows a diagram of the modified nonpelagic trawl gear, including identification of the parts of the gear. The portion of the gear where elevating devices would be required is identified as the elevated section shown in the proposed Figure 26. The elevated section is identified in proposed Figure 26 both for gear using, and for gear not using, headline extensions from the net to provide flexibility in the construction of the modified gear. A vessel would be required to place elevating devices on the sweeps beginning no more than 180 feet (54.9 m) from the door bridles and ending at the connection of the net bridles to the sweeps, if the net bridles are 180 feet (54.9 m) or less in length. If the net bridles are longer than 180 feet (54.9 m), then the elevating devices would be required on the bottom net bridle ending 180 feet (54.9 m) before the net attachment to the net bridles. Elevating devices would not be required on the 180-foot (54.9 m) portion of the bottom lines adjacent to the door bridle and the portion of the net bridle less than 180 feet (54.9 m), because these locations either do not contact the bottom, or the elevating devices in these locations may interfere with the handling of the gear. This 180-foot (54.9 m) elevating device allowance for the net bridles provides some flexibility in the construction of the gear as net bridles are typically between 90 feet (27.4 m) and 200 feet (61 m). Some vessels may use pelagic doors, which are likely to lift up to 180 feet (54.9 m) of the sweep off the bottom; therefore the 180-foot (54.9 m) elevating device allowance at the door end of the gear would ensure elevating devices are not required where the gear is not likely to contact the bottom. These 180-foot (54.9 m) allowances would result in approximately two to four fewer elevating devices being used on part of this portion of gear that may contact the bottom. The locations of the elevating devices were recommended to the Council by the AFSC in consultation with the fishing industry. The Council determined that the recommended locations were appropriate to raise the sweeps and any bottom lines beyond the 180-foot (54.9 m) allowances, while not requiring more elevating devices than would be necessary to achieve results similar to the AFSC-modified nonpelagic trawl gear studies.

The second proposed gear standard would require that elevating devices provide a minimum clearance of 2.5 inches (6.4 cm). Clearance is the separation that a device creates between the sweep or net bridle and a parallel hard surface, measured adjacent to the elevating device. The size of the elevating devices would likely depend on the type of equipment used to retrieve and deploy the gear, the size of elevating devices available, and the cost of the gear.

Proposed Figure 25 to part 679 shows locations for measuring the clearance of a variety of elevating devices and methods used to attach the elevating devices to the sweeps and net bridles. Proposed Figure 25 to part 679 should be used as a reference to ensure identification of the correct location for measuring compliance with the clearance standard, regardless of the methods and materials used to construct and maintain the gear.

The proposed regulations also would prohibit the cross section of the line between elevating devices from being greater than the cross section of the material at the nearest measurement location. This would prevent the use of line material of a larger cross section than the material at the measurement location, which would likely result in not achieving the clearance intended with the gear standards as shown in proposed Figures 25 and 27 to part 679. Portions of the line between elevating devices that are doubled for section terminations, or used for line-joining devices, would not be required to be a smaller cross section than the measuring location. This would allow some flexibility for the construction and maintenance of the gear while ensuring that most, if not all, of the line between elevating devices provides the intended clearance. To ensure sufficient strength in the joining of line sections, supporting material used for the elevating devices may need to be a greater cross section than the cross section of the line material between elevating devices. To ensure this larger cross section of the supporting material is accounted for in measuring the clearance, the proposed regulations would include equations to reduce the required minimum clearance at the measuring points in proposed Figure 25 to part 679 by one half the portion of the supporting material cross section that is greater than the cross section of the line material between elevating devices. Using these equations would ensure that the additional elevation provided by supporting material with a cross section larger than the line material would be credited towards meeting the minimum clearance required as measured per proposed Figure 25 to part 679. Figure 27 would be added to 50 CFR part 679 to show the measurement locations to determine the cross sections of the line material, and of the supporting material for the elevating devices. Cross section measurements made as directed in proposed Figure 27 to part 679 would provide information to determine the minimum clearance needed when the supporting material for the elevating device has a larger cross section than the cross section of the line between elevating devices.

While the proposed clearance standard does not directly measure the distance between the seafloor and the sweep during fishing—such distance may be affected by the devices pressing into the substrate and the sag of the sweeps between devices—the clearance standard would provide an objective measurement that could be compared to the elevation gained by devices used during AFSC studies. The AFSC-modified nonpelagic trawl gear studies show that 3 inches (7.6 cm) of clearance for elevating devices spaced 60 feet (18.3 m) apart, and 4 inches (10.2 cm) of clearance for elevating devices spaced 90 feet (27.4 m) apart, reduced effects on benthic organisms. To allow for a minor amount of wear of the elevating devices but to ensure clearances similar to those used in the AFSC studies, the proposed clearance standard would be based on 2.5 inches (6.4 cm) and 3.5 inches (8.9 cm).

The third proposed gear standard would require spacing the elevating devices at a minimum of 30 feet (9.1 m) and a maximum of 95 feet (29 m), depending on the clearance provided by the elevating devices. The minimum distance between elevating devices is necessary to ensure no more contact of the elevating devices occurs than is necessary to provide clearance from the bottom. Elevating devices that provide more clearance allow for greater distance between the elevating devices.

The AFSC studies determined that spacing the devices at 60 feet (18.3 m), with a clearance of less than 3.5 inches (8.9 cm) produced similar reductions in impacts to benthic organisms as spacing the elevating devices at 90 feet (27.4 m) with more than 3.5 inches (8.9 cm) of clearance. The spacing standard would require that if the elevating devices provide more than 3.5 inches (8.9 cm) of clearance, the devices must be spaced at least 30 feet (9.1 m) and no more than 95 feet (29 m) apart. If the elevating devices provide between 2.5 inches (6.4 cm) and 3.5 inches (8.9 cm) of clearance, the devices must be spaced at least 30 feet (9.1 m) and no more than 65 feet (19.8 m) apart. The additional 5 feet (1.5 m) in the spacing standard compared to the spacing used in the AFSC studies would allow for minor movement of the elevating devices during use, as well as for minor amounts of extra spacing that may occur

from gear construction and maintenance. This would allow some flexibility in the construction and maintenance of the gear, while reducing impacts to a similar degree as seen in the AFSC-modified nonpelagic trawl gear studies. Manufacturers of the modified nonpelagic trawl gear likely would place the elevating devices at 60 feet (18.3 m) and 90 feet (27.4 m) spacing as the devices would likely be mounted where sections of line are joined, and the line is available in 90 feet (27.4 m) lengths. By working with the nonpelagic trawl fishing industry, the AFSC determined that locating the elevating devices on the gear in this manner would elevate the majority of the gear similar to the elevation used in the AFSC research and allow for operational and maintenance efficiencies for the vessel operators.

Boundary Changes of Specific Areas

Proposed Amendment 94 would include boundary changes to areas with nonpelagic trawl gear restrictions in the Bering Sea subarea. Amendment 94 and this proposed rule would reduce the NBSRA to establish the MGTZ and to increase the SMIHCA (Figure 1). The NBSRA and the SMIHCA are currently closed to fishing with nonpelagic trawl gear. The NBSRA was established under Amendment 89 (73 FR 43362, July 25, 2008) to provide a location with little to no nonpelagic trawling for the purpose of studying the effects of nonpelagic trawling on bottom habitat. The SMIHCA also was established under Amendment 89 to protect blue king crab habitat from the potential impacts of nonpelagic trawl gear. Figure 1 shows the current southern boundary of the NBSRA, and how this boundary would change with the proposed revision to the SMIHCA eastern border and with the proposed MGTZ.

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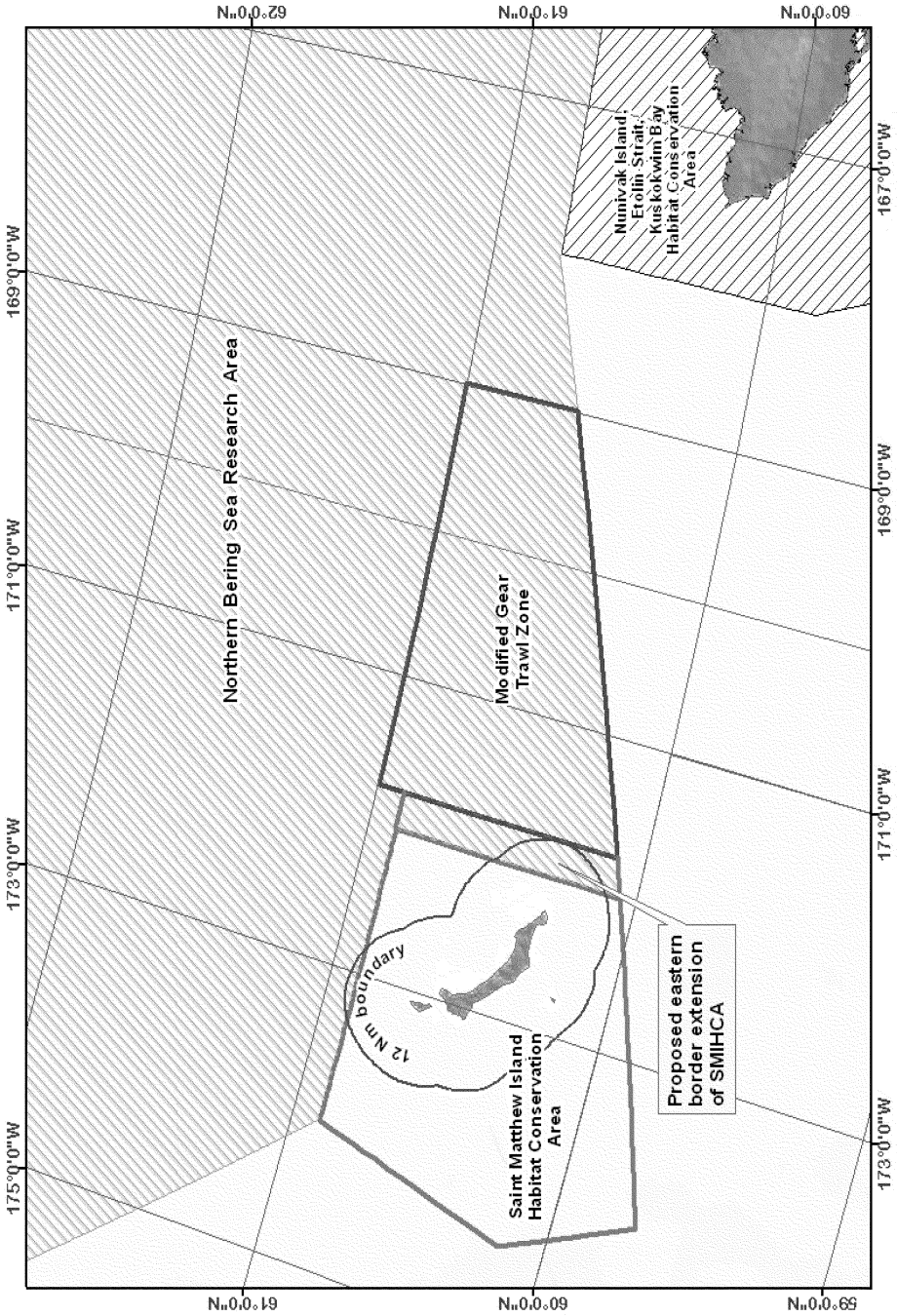

Figure 1. The Northern Bering Sea Research Area (NBSRA), Proposed Expansion of the Saint Matthew Island Habitat Conservation Area (SMIHCA) and the Proposed Modified Gear Trawl Zone (MGTZ). The current boundary of the NBSRA is shown by the area filled with the right-slanting lines. The NBSRA would be reduced with the expansion of the SMIHCA and the establishment of the MGTZ.

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The Council recommended moving the eastern boundary of the SMIHCA, parallel to the current boundary, to the eastern edge of the 12-nautical mile (nm) Territorial Sea surrounding Saint Matthew Island. NMFS' annual trawl surveys from 2007 through 2009 have found blue king crab in the area east of the SMIHCA out to the edge of the 12-nm Territorial Sea. Based on this information, the Council's Crab Plan Team recommended moving the eastern boundary of the SMIHCA to the eastern extent of the 12-nm Territorial Sea. Expanding the SMIHCA based on the best available information would ensure the SMIHCA meets the Council's intent to protect blue king crab habitat east of Saint Matthew Island. The Council also recommended that the eastern border of the SMIHCA meet the western border of the proposed MGTZ, so that no portion of the NBSRA would lie between these areas, thus simplifying management. This common boundary also would lie along a division in habitat types, with the habitat in the western side of the proposed MGTZ more favorable to flatfish species and the habitat in the eastern side of the proposed revised SMIHCA more favorable to crab species. Detailed information regarding NMFS' resource surveys and bottom habitats of the SMIHCA and the proposed MGTZ are in the EA/RIR/IRFA for this proposed action (see **ADDRESSES**).

The proposed boundaries of the MGTZ are based on management goals, local area resources, and stock survey information. The geographic coordinates designating the northern boundary of the MGTZ follow the whole number latitude to facilitate mapping and management in the area, and includes the area identified by the fishing industry as an important location for flatfish resources. Based on public testimony in October 2009, the Council recommended the proposed eastern boundary of the MGTZ, to create a buffer between flatfish fishing and the Nunivak Island, Etolin Strait, Kuskokwim Bay Habitat Conservation Area, a location important for subsistence activities that was established under Amendment 89 (73 FR 43362, July 25, 2008). The southern boundary of the MGTZ matches the current boundary of the NBSRA, allowing for fishing in the MGTZ in waters adjacent to the portion of the Bering Sea subarea currently open to nonpelagic trawl fishing. Nonpelagic trawling within the MGTZ would require the use of modified nonpelagic trawl gear, regardless of the target species. Because the MGTZ is currently closed to nonpelagic trawling, the Council recommended mitigating any potential effects from nonpelagic trawling by requiring that all nonpelagic trawl fishing gear used in the MGTZ meet the standards proposed here for modified nonpelagic trawl gear. The AFSC surveys in the western portion of the MGTZ show primarily flatfish species, with little Pacific halibut occurrence. This area would provide the opportunity to fish for flatfish resources with little potential for Pacific halibut bycatch. The opportunity for directed fishing for flatfish in the MGTZ is important to the fishing industry because of the low abundance of Pacific halibut in this area, and the potential movement of the flatfish species distribution farther north under changing ocean conditions. The reopening of the MGTZ to fishing with modified nonpelagic trawl gear was an incentive to the fishing industry to continue the development of modified nonpelagic trawl gear after the Council's recommendation of Amendment 89.

The minor technical change to the FMP that requires a regulatory change is the revision to the northern boundary of the NBSRA to match the southern boundary of Statistical Area 400 at the Bering Strait. Area 514 of the Bering Sea subarea extends north to the southern boundary of Area 400 (Figure 2). The coordinates of the current northern boundary of the NBSRA are incorrectly described in Table 43 to part 679, and leave an area open to nonpelagic trawling near the Bering Strait. The Council intended for the entire northern portion of the Bering Sea subarea to be part of the NBSRA. This minor technical amendment would close this area, which is currently open to nonpelagic trawling.

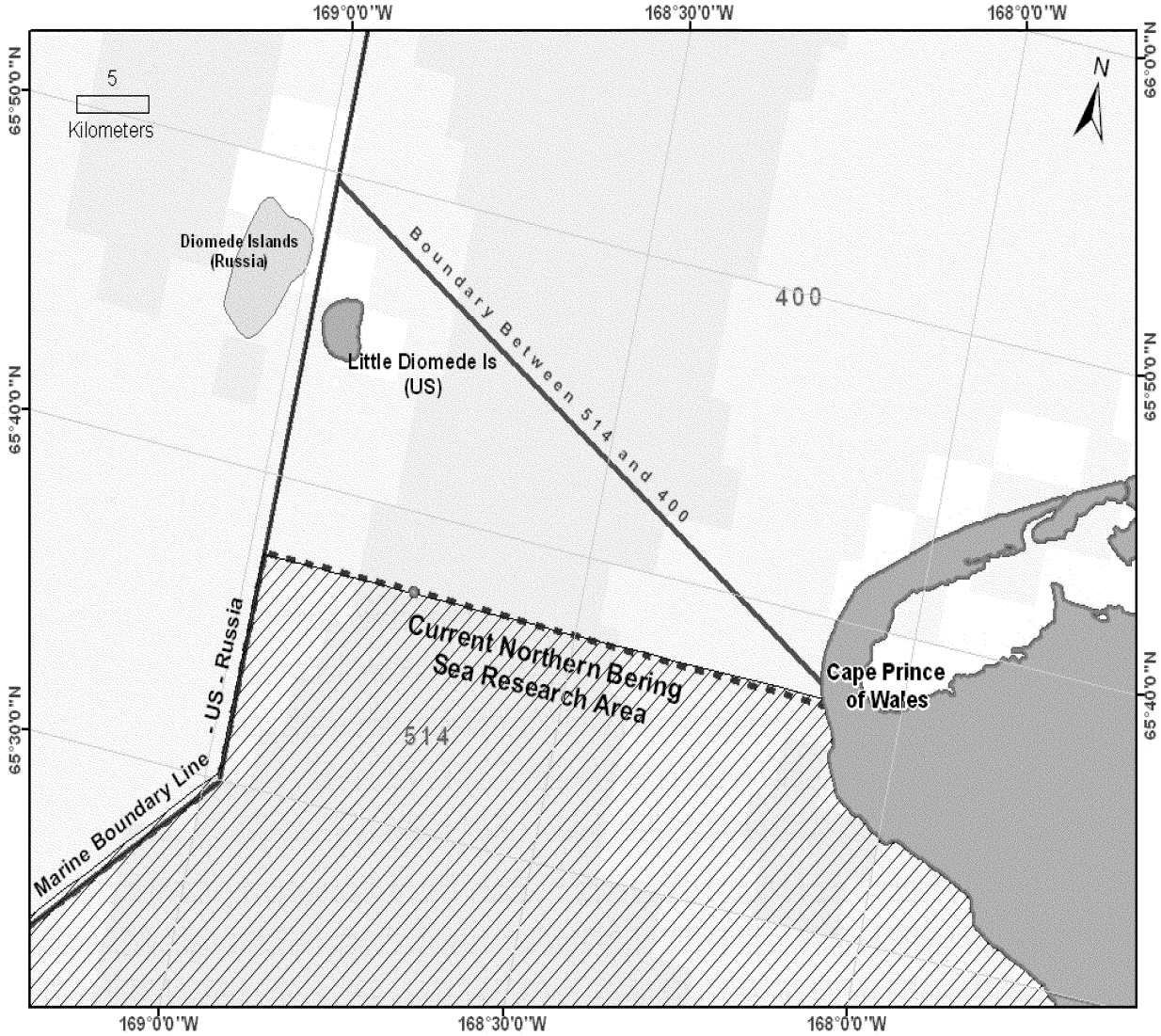


Figure 2. Northern Boundary of the Northern Bering Sea Research Area and Boundary Between Statistical Areas 514 and 400. The area between the current NBSRA boundary and Statistical Areas 514 and 400 boundary is currently open to nonpelagic trawl fishing, but would be closed with Amendment 94.

Proposed Regulatory Amendments

The Council recommended, and the Secretary proposes, the following regulatory changes and additions to 50 CFR part 679 to implement Amendment 94.

1. Section 679.2 would be revised to add a definition for the MGTZ, and to add text to several definitions to support the requirement to use nonpelagic trawl gear that has been modified to meet the gear standards that would be specified at § 679.24. The definition for "directed fishing" would be revised by adding a subparagraph specific to directed fishing for flatfish in the Bering Sea subarea. This revision would require the use of modified nonpelagic trawl gear for the directed flatfish fishery in the Bering Sea subarea under proposed § 679.7(c)(5), and would list the species that are flatfish for purposes of the modified nonpelagic trawl gear requirement. The definition for "federally permitted vessels" would be revised to include the fishery restrictions that would be established for the MGTZ, and for modified nonpelagic trawl gear fishing in the Bering Sea subarea. This revision would identify vessels that would need to comply with the modified nonpelagic trawl gear requirements. The definition for "fishing trip" would be revised to apply to vessels that are directed fishing for flatfish based on a fishing trip and the species composition of the catch, as described in the proposed definition for directed fishing for flatfish. The fishing trip definition also applies to recordkeeping and reporting requirements in § 679.5. Under this proposed rule, the heading for the first definition of a fishing trip would be revised to add "recordkeeping and reporting requirements under § 679.5" to reflect the full scope of the current application of this definition in 50 CFR part 679. A definition for the "Modified Gear Trawl Zone" would be added to define this proposed fishery

management area consistent with other fishery management area definitions and for use under the proposed revised definition for "federally permitted vessels."

2. Subparagraph (5) would be added to § 679.7(c) to prohibit directed fishing for Bering Sea flatfish without modified nonpelagic trawl gear that meets the standards specified at proposed § 679.24(f). This revision is needed to require the use of modified nonpelagic trawl gear for directed fishing for flatfish in the Bering Sea subarea, for directed fishing for groundfish with nonpelagic trawl gear within the MGTZ, and to ensure the modified nonpelagic trawl gear meets the standards specified at § 679.24(f). Subparagraphs (3) and (4) would be added and reserved to allow for future rulemaking recommended by the Council for Pacific cod fishing in the BSAI parallel fisheries. If approved, the Pacific cod parallel fishery rulemaking is likely to be effective before rulemaking for Amendment 94. Adding and reserving subparagraphs (3) and (4) will provide less confusion as these rulemakings progress simultaneously.

3. Figure 17 to part 679 and Table 43 to part 679 would be revised to show the proposed boundaries of the NBSRA. Figure 17 to part 679 would be revised to remove the area that is proposed to create the MGTZ, and to remove the area that would become part of the eastern portion of the SMIHCA. The northern portion of Figure 17 to part 679 also would be revised to include the area of the Bering Sea subarea near the Bering Strait that is currently open to nonpelagic trawling (Figure 2). The coordinates in Table 43 to part 679 would be revised to delineate the proposed new boundaries of the NBSRA. These revisions are necessary to implement the Council's recommended changes in the boundaries of the NBSRA and the SMIHCA, and to remove the portion of the NBSRA that would be become the MGTZ.

4. Table 46 to part 679 would be revised to delineate the proposed new boundaries of the SMIHCA. The coordinates in Table 46 to part 679 would be changed to reflect the extension of the eastern boundary to the 12-nm Territorial Sea. This revision is necessary to establish the proposed boundaries of the SMIHCA.

5. Proposed Table 51 to part 679 would be added to delineate the coordinates of the MGTZ. Because the proposed area is a simple shape and easily identified, no figure is added to the regulations. This revision is necessary to identify the boundaries of the proposed MGTZ.

6. Section 679.22 lists the closure areas for the Alaska groundfish fisheries. Because the MGTZ would be closed to nonpelagic trawling, except for directed fishing with modified nonpelagic trawl gear, this section would be revised to add the MGTZ. This revision is necessary to identify the area, and the gear type that would be required in this area.

7. Paragraph (f) would be added to § 679.24 to establish enforceable standards for modified nonpelagic trawl gear. The standards would include a minimum clearance for the sweeps, and a minimum and maximum distance between elevating devices, depending on the clearance provided by the elevating devices. The standards also would describe the measuring locations to determine compliance with the clearance requirement and cross section limitations for the line between elevating devices. This revision is necessary to ensure that standards are described in the regulations to facilitate construction, maintenance, and inspection of modified nonpelagic trawl gear that would meet the intent of the Council to reduce potential adverse impacts on bottom habitat from nonpelagic trawl gear.

8. Figures 25, 26, and 27 to part 679 would be added to describe the measuring locations for determining compliance with the clearance standards, and to describe the location of the elevating devices that would be required under proposed § 679.24(f). Section 679.24(f) would refer to these figures to facilitate the description of how the modified nonpelagic trawl gear is to be configured and how to determine compliance with the clearance standard for the gear. This revision is necessary to facilitate compliance with the gear standards for those who may be constructing, maintaining, or inspecting the modified nonpelagic trawl gear.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with and necessary to implement Amendment 94, and in accordance with other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an initial regulatory flexibility analysis (IRFA), as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. Descriptions of the action, the reasons it is under consideration, and its objectives and legal basis, are included at the beginning of this section in the preamble and in the summary section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The proposed action would: Require nonpelagic trawl vessels targeting flatfish in the Bering Sea subarea to use elevating devices on trawl sweeps to raise them off the seafloor; adjust the southern boundary of the NBSRA to exclude the MGTZ; and provide additional closure area to the SMIHCA. Any person fishing with nonpelagic trawl gear in the MGTZ would be required to use the modified nonpelagic trawl gear that meets the gear standards. Amendment 94 would adjust the SMIHCA eastern boundary to be consistent with the Council's intent to protect blue king crab habitat, based on the best available scientific information. This proposed rule also would adjust the northern boundary of the NBSRA northwards to meet the northern boundary of the Bering Sea subarea to ensure the northern boundary of the NBSRA meets the Council's intent for Amendment 89. The effect of the NBSRA boundaries, including this northern portion, was analyzed in the EA for Amendment 89 (see **ADDRESSES**).

In 2007, all of the catcher/processors (CPs) targeting flatfish in the Bering Sea subarea (46 vessels) exceeded the $4.0 million threshold that the Small Business Administration (SBA) uses to define small fishing entities. Thus due to their combined groundfish revenues, the CPs would be considered large entities for purposes of the RFA. However, based on their combined groundfish revenues, none of the four catcher vessels that participated in 2007 exceeded the SBA's small entity threshold, and these vessels are considered small entities for purposes of the RFA. It is likely that some of these vessels also are linked by company affiliation, which may then categorize them as large entities, but there is no available information regarding the ownership status of all vessels at an entity level. Therefore, the IRFA may overestimate the number of small entities directly regulated by the proposed action.

The Council considered three alternatives, an option, and a set of minor technical changes for this action. Alternative 1 is the status quo, which does not meet the Council's

recommendations to further protect Bering Sea bottom habitat. Both Alternatives 2 and 3 would require modified nonpelagic trawl gear for vessels directly fishing for flatfish in the Bering Sea subarea. Additionally, under Alternative 3, which is the preferred alternative, an area that is currently closed to nonpelagic trawling would be opened to vessels using modified nonpelagic trawl gear. Alternative 2 does not provide fishing opportunity within the MGTZ, and therefore does not minimize the potential economic impact on small entities in the same manner as provided by Alternative 3. The SMIHCA option has no economic effect on small entities as this area is currently closed to nonpelagic trawling as part of the NBSRA. The minor changes ensure the FMP is easier to read and understand, and that the FMP accurately reflects the Council's intent and the provisions of the Magnuson-Stevens Act.

The modified nonpelagic trawl gear component of Alternatives 2 and 3 contains explicit provisions regarding mitigating potential adverse economic effects on directly regulated entities, the vast majority of which are large entities. The proposed regulations for implementing the nonpelagic trawl gear modification were developed in consultation with members of the nonpelagic trawl CP fleet to minimize potential adverse economic effects on directly regulated entities while still meeting the Council's Magnuson-Stevens Act objectives to minimize potential adverse effects on bottom habitat caused by nonpelagic trawl gear. Performance standards (rather than design standards) would be required for the modified nonpelagic trawl gear, which simplifies compliance requirements for directly regulated entities, including small entities, while still maintaining the ability of NMFS to enforce the regulation.

Additionally, the Council has recommended that NMFS implement the amendment on a timeline that takes into account the resources available to directly regulated entities. NMFS has determined that implementation will not occur sooner than the beginning of the 2011 fishing year. Such a timetable is important to allow sufficient time for any vessels that require re-engineering to accommodate the modified nonpelagic trawl gear to schedule shipyard time without having to forego participation in the fishery. The preferred alternative (Alternative 3) and options reflect the least burdensome of available management structures in terms of directly regulated small entities, while fully achieving the conservation and management purposes articulated by the Council and consistent with applicable statutes.

This regulation does not impose new recordkeeping and reporting requirements on the regulated small entities.

The IRFA did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

Tribal Consultation

Executive Order (E.O.) 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law (Pub. L.) 108–199 (188 Stat. 452), as amended by section 518 of Public Law 109–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations.

On October 13, 2009, NMFS received a request from the Native Village of Unalakleet for tribal consultation on a number of fishery management issues regarding the Bering Sea. On February 16, 2010, NMFS met with tribal representatives from the Native Village of Unalakleet, Koyuk, Stebbins, Elim, Gambell, Savoonga, Saint Michael, Shaktoolik, and King Island in Unalakleet, AK. Among other issues, proposed Amendment 94 was discussed. Among the recommendations provided to NMFS, the tribal representatives requested that no nonpelagic trawling be allowed to expand northward into the northern Bering Sea. This would include not establishing the MGTZ in this proposed action. In March 2010, NMFS received letters from the communities of Shishmaref, King Island, Saint Michael, Solomon, Koyuk, Wales, Brevig Mission, and Savoonga stating concerns regarding commercial nonpelagic trawling in the NBSRA. NMFS will provide opportunity for further discussion on this proposed action, and will consider information shared during these discussions in the review of this proposed action. NMFS will contact all tribal governments and Alaska Native corporations that may be affected by the proposed action and provide them with a copy of this proposed rule.

Section 5(b)(2)(B) of E.O. 13175 requires NMFS to prepare a tribal summary impact statement as part of the final rule. This statement must contain (1) A description of the extent of the agency's prior consultation with tribal officials, (2) a summary of the nature of their concerns, (3) the agency's position supporting the need to issue the regulation, and (4) a statement of the extent to which the concerns of tribal officials have been met. If the Secretary of Commerce approves Amendment 94, a tribal impact summary statement that summarizes and responds to issues raised on the proposed action—and describes the extent to which the concerns of tribal officials have been met—will be included in the final rule for Amendment 94.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 8, 2010.

Eric C. Schwaab,

Assistant Administrator, For Fisheries, National Marine Fisheries Services.

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

2. In § 679.2, revise the definitions for "Federally permitted vessels" and "Fishing trip," add in alphabetical order the definition for "Modified Gear Trawl Zone" and paragraph (5) to "Directed fishing," to read as follows:

§ 679.2 Definitions.

* * * * *

Directed Fishing means:

* * *

(5) *With respect to the harvest of flatfish in the Bering Sea subarea,* for purposes of nonpelagic trawl restrictions under § 679.22(a) and modified nonpelagic trawl gear requirements under §§ 679.7(c)(5) and 679.24(f), fishing with nonpelagic trawl gear during any fishing trip that results in a retained aggregate amount of yellowfin sole, rock sole, Greenland turbot, arrowtooth flounder, flathead sole, Alaska plaice, and other flatfish that is greater than the retained amount of any other fishery category defined under § 679.21(e)(3)(iv) or of sablefish.

* * * * *

Federally permitted vessel means a vessel that is named on either a Federal fisheries permit issued pursuant to § 679.4(b) or on a Federal crab vessel permit issued pursuant to § 680.4(k) of this chapter. Federally permitted vessels must conform to regulatory requirements for purposes of fishing

restrictions in habitat conservation areas, habitat conservation zones, habitat protection areas, and the Modified Gear Trawl Zone; for purposes of anchoring prohibitions in habitat protection areas; for purposes of requirements for the BS nonpelagic trawl fishery pursuant to § 679.7(c)(5) and § 679.24(f); and for purposes of VMS requirements.

* * * * *

Fishing trip means:

(1) With respect to retention requirements (MRA, IR/IU, and pollock roe stripping), recordkeeping and reporting requirements under § 679.5, and determination of directed fishing for flatfish.

* * * * *

Modified Gear Trawl Zone means an area of the Bering Sea subarea specified at Table 51 to this part that is closed to directed fishing for groundfish with nonpelagic trawl gear, except by vessels using modified nonpelagic trawl gear meeting the standards at § 679.24(f).

* * * * *

3. In § 679.7, reserve paragraphs (c)(3) and (c)(4), and add paragraph (c)(5) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(c) * * *

(3) [Reserved]

(4) [Reserved]

(5) Conduct directed fishing for flatfish as defined in § 679.2 with a vessel required to be federally permitted in any reporting area of the Bering Sea subarea as described in Figure 1 to this part without meeting the requirements for modified nonpelagic trawl gear specified in § 679.24(f).

* * * * *

4. In § 679.22, add paragraph (a)(21) to read as follows:

§ 679.22 Closures.

(a) * * *

(21) *Modified Gear Trawl Zone.* No vessel required to be federally permitted may fish with nonpelagic trawl gear in the Modified Gear Trawl Zone specified at Table 51 to this part, except for federally permitted vessels that are directed fishing for groundfish using modified nonpelagic trawl gear that meets the standards at § 679.24(f).

* * * * *

5. In § 679.24, add paragraph (f) to read as follows:

§ 679.24 Gear Limitations.

* * * * *

(f) *Modified Nonpelagic Trawl Gear.* Nonpelagic trawl gear modified as shown in Figure 26 to this part must be used by any vessel required to be federally permitted and that is used to directed fish for flatfish, as defined in § 679.2, in any reporting areas of the BS or directed fish for groundfish with nonpelagic trawl gear in the Modified Gear Trawl Zone specified in Table 51 to this part. Nonpelagic trawl gear used by these vessels must meet the following standards.

(1) *Elevated Section Minimum Clearance.* Except as provided for in (3)(iii) of this paragraph, elevating devices must be installed on the elevated section shown in Figure 26 to this part to raise the elevated section at least 2.5 inches (6.4 cm), as measured adjacent to the elevating device contacting a hard, flat surface that is parallel to the elevated section, regardless of the elevating device orientation, and measured between the surface and the widest part of the line material. Elevating devices must be installed on each end of the elevated section, as shown in Figure 26 to this part. Measuring locations to determine compliance with this standard are shown in Figure 25 to this part.

(2) *Elevating Device Spacing.* Elevating devices must be secured along the entire length of the elevated section shown in Figure 26 to this part and spaced no less than 30 feet (9.1 m) apart; and either

(i) If the elevating devices raise the elevated section shown in Figure 26 to this part 3.5 inches (8.9 cm) or less, the space between elevating devices must be no more than 65 feet (19.8 m); or

(ii) If the elevating devices raise the elevated section shown Figure 26 to this part more than 3.5 inches (8.9 cm), the space between elevating devices must be no more than 95 feet (29 m).

(3) *Clearance Measurements and Line Cross Sections.* (i) The largest cross section of the line of the elevated section shown in Figure 26 to this part between elevating devices shall not be greater than the cross section of the material at the nearest measurement location, as selected based on the examples shown in Figure 25 to this part. The material at the measurement location must be:

(A) The same material as the line between elevating devices, as shown in Figures 25a and 25d to this part;

(B) Different material than the line between elevating devices and used to support the elevating device at a connection between line sections (*e.g.,* on a metal spindle, on a chain), as shown in Figure 25b to this part; or

(C) Disks of a smaller cross section than the elevating device, which are strung continuously on a line between elevating devices, as shown in Figure 25c to this part.

(ii) Portions of the line between elevating devices that are braided or doubled for section terminations or used for line joining devices are not required to be a smaller cross section than the measuring location.

(iii) *Required minimum clearance for supporting material of a larger cross section than the cross section of the line material.* When the material supporting the elevating device has a larger cross section than the largest cross section of the line between elevating devices, except as provided for in paragraph (3)(ii), based on measurements taken in locations shown in Figure 27 to this part, the required minimum clearance shall be as following:

(A) For elevating devices spaced 30 feet (9.1 m) to 65 feet (19.8 m), the required minimum clearance is ≥ [2.5 inches − ((support material cross section − line material cross section)/2)], or

(B) For elevating device spaced 66 feet (19.8 m) to 95 feet (29 m), the required minimum clearance is ≥ [3.5 inches − ((support material cross section − line material cross section)/2)].

6. Table 43 to part 679 is revised to read as follows:

Table 43 to Part 679 – Northern Bering Sea Research Area

Longitude			Latitude		
168	7.41	W	65	37.91	N*
165	1.54	W	60	45.54	N
167	59.98	W	60	45.55	N
169	00.00	W	60	35.50	N
169	00.00	W	61	00.00	N
171	45.00	W	61	00.00	N
171	45.00	W	60	54.00	N
174	1.24	W	60	54.00	N
176	13.51	W	62	6.56	N
172	24.00	W	63	57.03	N
172	24.00	W	62	42.00	N
168	24.00	W	62	42.00	N
168	24.00	W	64	0.00	N
172	17.42	W	64	0.01	N
168	58.62	W	65	30.00	N
168	58.62	W	65	49.81	N**

Note: The area is delineated by connecting the coordinates in the order listed by straight lines except as noted by * below. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

* This boundary extends in a clockwise direction from this set of geographic coordinates along the shoreline at mean lower-low tide line to the next set of coordinates.

** Intersection of the 1990 United States/Russia maritime boundary line and a line from Cape Prince of Wales to Cape Dezhneva (Russia) that defines the boundary between the Chukchi and Bering Seas, Area 400 and Area 514, respectively.

7. Table 46 to part 679 is revised to read as follows:

Table 46 to Part 679 – St. Matthew Island Habitat Conservation Area

Longitude			**Latitude**		
171	45.00	W	60	54.00	N
171	45.00	W	60	6.15	N
174	0.50	W	59	42.26	N
174	24.98	W	60	9.98	N
174	1.24	W	60	54.00	N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

8. Table 51 to part 679 is added to read as follows:

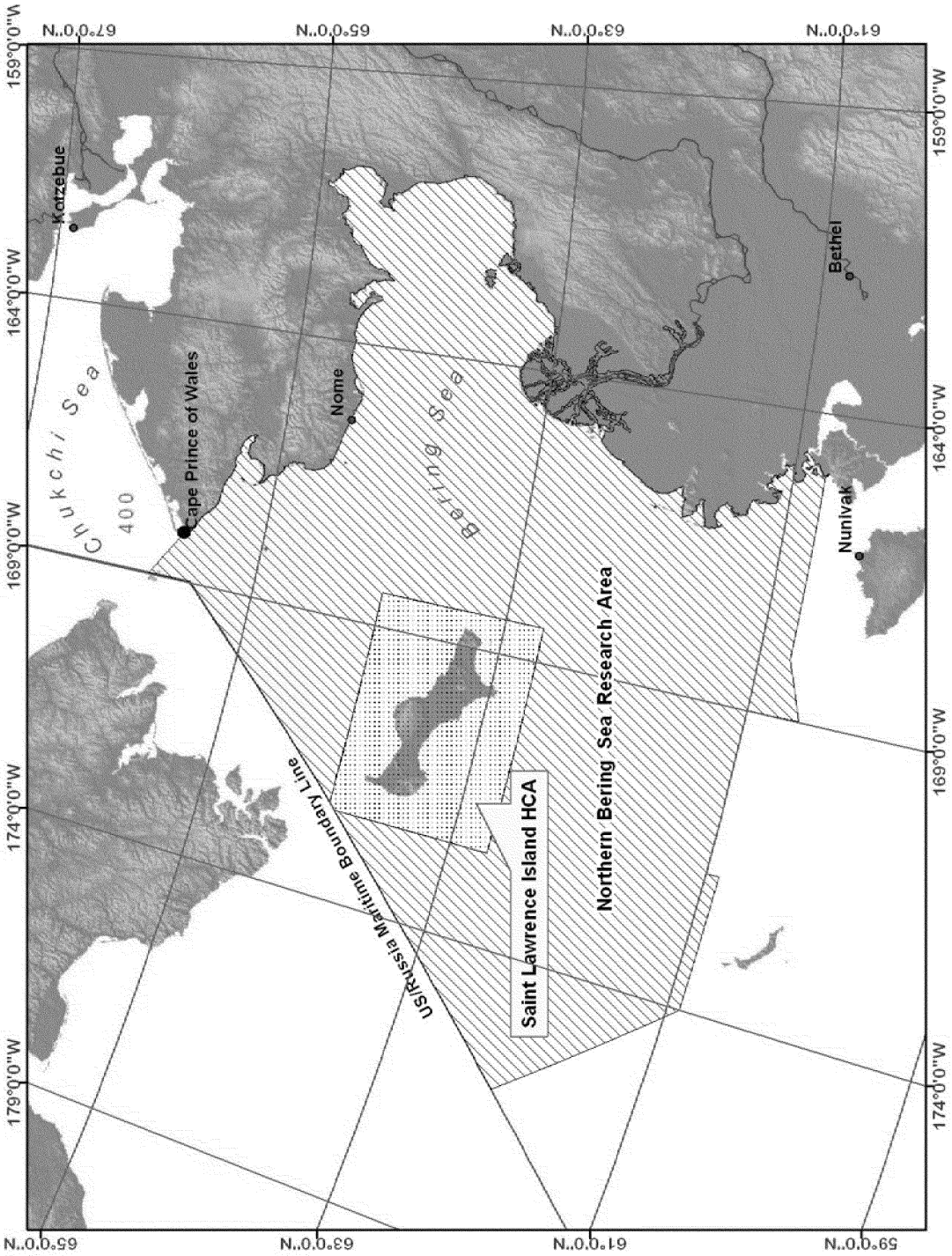
Table 51 to Part 679 – Modified Gear Trawl Zone

Longitude			Latitude		
171	45.00	W	61	00.00	N
169	00.00	W	61	00.00	N
169	00.00	W	60	35.48	N
171	45.00	W	60	06.15	N

Note: The area is delineated by connecting the coordinates in the order listed by straight lines. The last set of coordinates for each area is connected to the first set of coordinates for the area by a straight line. The projected coordinate system is North American Datum 1983, Albers.

9. Figure 17 to part 679 is revised to read as follows:

Figure 17 to Part 679 – Northern Bering Sea Research Area and Saint Lawrence Island Habitat Conservation Area (HCA)



10. Figure 25 to part 679 is added to read as follows:

Figure 25 to Part 679 – Elevating Device Clearance Measurement Locations for Modified Nonpelagic Trawl Gear

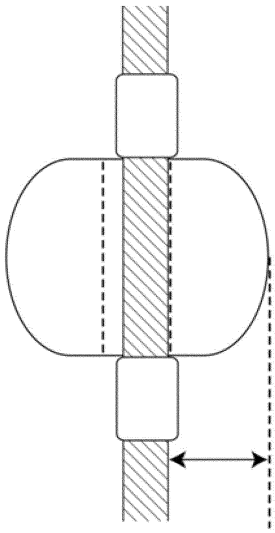


Figure 25a Line Clamps Flush to Elevating Device

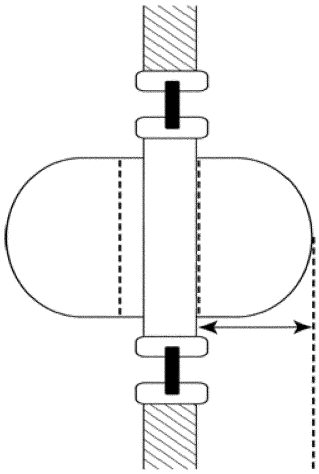


Figure 25b Elevating Device Supported by Material Different from Line Material

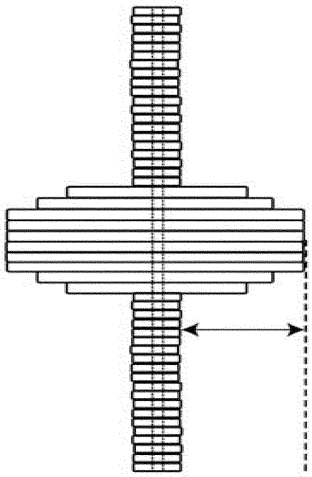


Figure 25c Cookie Gear

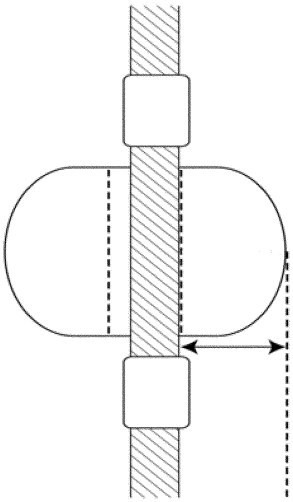


Figure 25d Line Clamps Not Flush to Elevating Device

Measuring points are shown for a variety of elevating devices located on the elevated section shown in Figure 26 to part 679. The measuring location is indicated on each figure by the arrow. The measurement is made from where the line contacts the inside surface of the device.

11. Figure 26 to part 679 is added to read as follows:

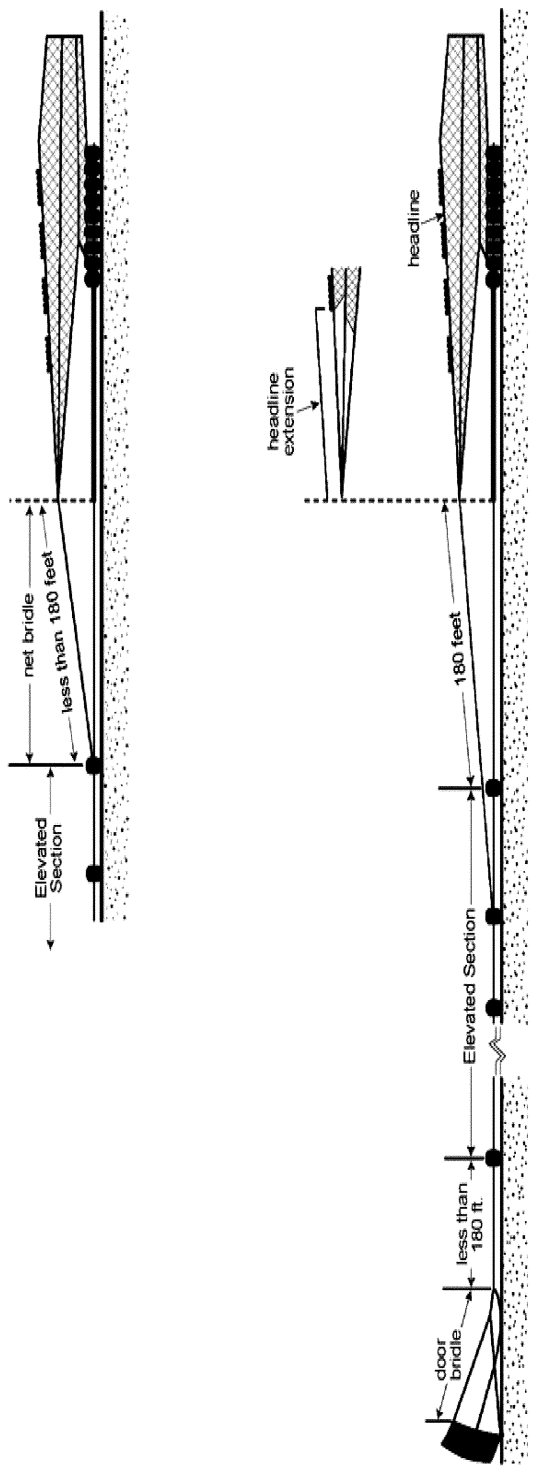
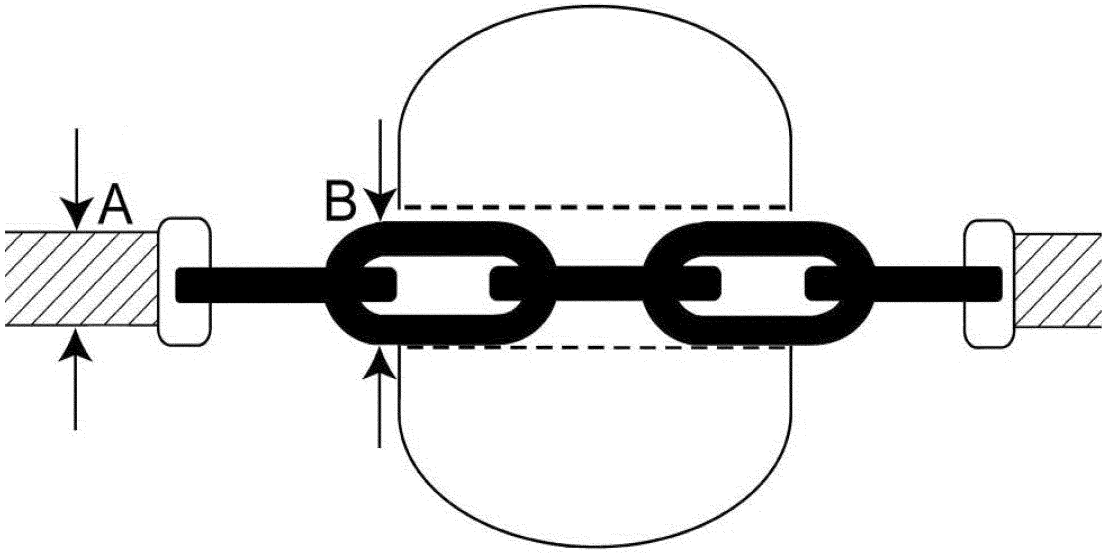


Figure 26 to Part 679 – Modified Nonpelagic Trawl Gear

This figure shows the location of elevating devices in the elevated section of modified nonpelagic trawl gear, as specified under § 679.24(f). The top image shows the location of the end elevating device in the elevated section for gear with net bridles less than 180 feet. The bottom image shows the locations of the beginning elevating devices near the doors and the end elevating devices near the net for gear with net bridles greater than 180 feet.

12. Figure 27 to part 679 is added to read as follows:

Figure 27 to Part 679 Locations for Measuring Maximum Cross Sections of Line Material (shown as A) and Supporting Material (shown as B) for Modified Nonpelagic Trawl Gear The location for measurement of maximum line material cross section does not include any devices or braided or doubled material used for section termination.



[FR Doc. 2010–17166 Filed 7–14–10; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register

Vol. 75, No. 135

Thursday, July 15, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0066]

Notice of Request for Extension of Approval of an Information Collection; Interstate Movement of Fruit from Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the interstate movement of certain fruit from Hawaii to help ensure that plant pests are not spread to the continental United States.

DATES: We will consider all comments that we receive on or September 13, 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-2010-0066*) 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-2010-0066, 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-2010-0066.

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: For information on regulations for the interstate movement of certain fruit from Hawaii, contact Mr. David Lamb, Import Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734-0627. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Interstate Movement of Fruit from Hawaii.

OMB Number: 0579-0331.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests that are new to or not widely distributed within the United States. The regulations in 7 CFR part 318, State of Hawaii and Territories Quarantine Notices, prohibit or restrict the interstate movement of fruits, vegetables, and other products from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam to the continental United States to prevent the spread of plant pests or noxious weeds.

In accordance with the regulations in Subpart—Regulated Articles From Hawaii and the Territories (§§ 318.13-1 through 318.13-26), certain fruit, such as breadfruit, jackfruit, fresh pods of cowpea and its relatives, dragon fruit, mangosteen, moringa pods, and melon, must meet conditions for movement to the continental United States. These conditions involve information collection activities, including certificates and limited permits.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.2 hours per response.

Respondents: Growers of certain fruit in Hawaii.

Estimated annual number of respondents: 110.

Estimated annual number of responses per respondent: 24.7636.

Estimated annual number of responses: 2,724.

Estimated total annual burden on respondents: 545 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 9th day of July 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–17271 Filed 7–14–10; 10:28 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Child Nutrition Database

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is a revision of a currently approved collection. This collection is the voluntary submission of data including nutrient data from the food service industry to update and expand the Child Nutrition Database in support of the School Meals Initiative for Healthy Children.

DATES: Written comments on this notice must be received by September 13, 2010 to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Timothy Vazquez, Nutritionist, Nutrition and Technical Assistance Section, Nutrition Promotion and Technical Assistance Branch, Child Nutrition Division, Room 630, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Timothy Vazquez at 703–305–2549 or via e-mail to *CNDINTERNET@fns.usda.gov* with, "Vazquez/CN Database" in the subject line. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 630, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instruction should be directed to Timothy Vazquez at (703) 305–2609.

SUPPLEMENTARY INFORMATION:

Title: Child Nutrition Database.

OMB Number: 0584–0494.

Expiration Date: July 31, 2011.

Type of Request: Revision of currently approved collection.

Abstract: The development of the Child Nutrition (CN) Database is regulated by the United States Department of Agriculture (USDA), Food and Nutrition Service. This database is designed to be incorporated in USDA-approved nutrient analysis software programs and provide an accurate source of nutrient data. The software allows schools participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) to analyze meals and measure the compliance of the menus to established nutrition goals and standards specified in 7 CFR 210.10 for the NSLP and 7 CFR 220.8 for the SBP. The information collection for the CN Database is conducted using an outside contractor. The CN Database is updated annually with brand name or manufactured foods commonly used in school food service. The Food and Nutrition Service's contractor collects this data from the food industry to update and expand the CN Database. The submission of data from the food industry will be strictly voluntary, and based on analytical, calculated, or nutrition facts label sources. Collection of this information is accomplished by form FNS–710, *CN Database Qualification Report.*

Affected Public: Business for-profit (Manufacturers of food produced for schools.)

Form: FNS—710.

Estimated Number of Respondents: 16.

Estimated Number of Responses per Respondent: 22.

Estimated Total Annual Responses: 352.

Estimated Time per Response: 2 Hours.

Total Annual Burden: 704 Hours.

Dated: July 7, 2010.

Audrey Rowe,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2010–17235 Filed 7–14–10; 8:45 am]

BILLING CODE 3410–30–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Mississippi Advisory Committee to the Commission will convene on Wednesday, August 11, 2010 at 1 p.m. and adjourn at approximately 5 p.m. (CST) at Mississippi College School of Law, Room 151B, 151 East Griffith Street, Jackson, MS 39201. The purpose of the meeting is to conduct briefing and planning a future civil rights project.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by August 23, 2010. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400, (or for hearing impaired TDD 913–551–1414), or by e-mail to *frobinson@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, July 12, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–17231 Filed 7–14–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Foreign Fishing Vessels Operating in Internal Waters.

OMB Control Number: 0648–0329.

Form Number(s): NA.

Type of Request: Regular submission (extension of a currently approved collection).

Number of Respondents: 2.

Average Hours Per Response: 30 minutes.

Burden Hours: 12.

Needs and Uses: Foreign fishing vessels, granted permission by a governor of a State to engage in fish processing within the internal waters of that State, are required under the Magnuson-Stevens Fishery Conservation and Management Act to report the tonnage and location of fish received from vessels of the United States. The fish processing includes, in addition to processing, other activity relating to fishing such as preparation, supply, storage, refrigeration, or transportation. Weekly reports are submitted to the National Marine Fisheries Service Regional Administrator to allow monitoring of fish received by foreign vessels.

Affected Public: Business or other for-profit organizations.

Frequency: Weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: July 9, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–17185 Filed 7–14–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fisheries Certificate of Origin.

OMB Control Number: 0648–335.

Form Number(s): NOAA 370.

Type of Request: Regular submission (extension of a currently approved collection).

Number of Respondents: 440.

Average Hours Per Response: 20 minutes.

Burden Hours: 4,167.

Needs and Uses: The information on the Fisheries Certificate of Origin is required by the International Dolphin Conservation Program Act, amendment to the Marine Mammal Protection Act, and is needed: To document the Dolphin-safe status of tuna import shipments; to verify that import shipments of fish not harvested by large scale, high seas driftnets; and to verify that imported tuna not harvested by an embargoed nation or one that is otherwise prohibited from exporting tuna to the United States. The forms are submitted by importers and processors.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: July 9, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–17186 Filed 7–14–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Triangular Transactions

AGENCY: Bureau of Industry and Security, 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 13, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information provides a means to authorize approved imports to the U.S. to be transhipped to another destination instead of being imported to the U.S. as approved on an International Import Certificate. A triangular symbol is stamped on import certificates as notification that the importer does not intend to import or retain the items in the country issuing the certificate, but that, in any case, the items will not be delivered to any other destination except in accordance with the Export Administration Regulations.

II. Method of Collection

Submitted in paper form.

III. Data

OMB Control Number: 0694–0009.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 1 hour.

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 9, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–17216 Filed 7–14–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Report of Requests for Restrictive Trade Practice or Boycott

AGENCY: Bureau of Industry and Security.

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 13, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The information obtained from this collection authorization is used to carefully and accurately monitor requests for participation in foreign boycotts against countries friendly to the U.S. which are received by U.S. persons. The information is also used to identify trends in such boycott activity and to assist in carrying out U.S. policy of opposition to such boycotts.

II. Method of Collection

Submitted in paper form.

III. Data

OMB Control Number: 0694–0012.

Form Number(s): BIS 621–P, BXA 621–P, BIS 6051–P, BXA 6051–P, BIS–6051 P–a, BXA–6051 P–a

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,291.

Estimated Time per Response: 1 hour to 1 hour and 30 minutes.

Estimated Total Annual Burden Hours: 1,416.

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 9, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–17224 Filed 7–14–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX41

Fisheries in the Western Pacific; American Samoa Pelagic Longline Limited Entry Program

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

ACTION: Notice; availability of permits.

SUMMARY: NMFS is soliciting applications for American Samoa pelagic longline limited entry permits. At least ten permits of various class sizes will be available for 2010. This notice is intended to announce the availability of permits and to solicit applications for the permits.

DATES: Completed permit applications must be received by NMFS by November 12, 2010.

ADDRESSES: Request blank application forms from NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4733, or the PIR website *www.fpir.noaa.gov.*

Mail completed applications and payment to NMFS PIR, ATTN: ASLE Permits, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4733.

FOR FURTHER INFORMATION CONTACT: Walter Ikehara, Sustainable Fisheries, NMFS PIR, tel 808–944–2275, fax 808–973–2940, or e-mail *PIRO-permits@noaa.gov.*

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR 665.816 allow NMFS to issue new permits for the American Samoa pelagic longline limited entry program if the number of permits in a size class falls below the maximum allowed. At least 10 permits are available for issuance (note that the number of available permits may change before the application period closes): four in Class A (vessels less than or equal to 40 ft (12.2 m), five in Class B (over 40 ft (12.2 m) through 50 ft (15.2

m)), and one in Class D (over 70 ft (21.3 m)).

Persons with the earliest documented participation in the fishery on a Class A sized vessel will receive the highest priority for obtaining permits in any size class, followed by persons with the earliest documented participation in Classes B, C, and D, in that order. If there is a tie in priority, the person with the second earliest documented participation will be ranked higher in priority.

Complete applications must include the completed and signed application form, legible copies of documents supporting historical participation in the American Samoa pelagic longline fishery, and payment for the non-refundable application processing fee, in accordance with the regulations at 50 CFR 665.13. Applications must be received by NMFS (see **ADDRESSES**) by November 12, 2010 to be considered for a permit; applications will not be accepted if received after that date.Authoritative additional information on the American Samoa limited entry program may be found in 50 CFR part 665.

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

Dated: July 9, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–17296 Filed 7–14–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on silicon metal from the People's Republic of China ("PRC"). The period of review ("POR") is June 1, 2008, through May 31, 2009. This administrative review covers one mandatory respondent and two respondents that claim they did not ship or sell subject merchandise to the United States during the POR.

We found no margin for the U.S. sales subject to this administrative review. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Patrol ("CBP") to liquidate the appropriate entries without regard to antidumping duties.

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a statement of the issue and a brief summary of the argument. We intend to issue the final results of this review no later than 120 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3518, and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION: The Department received a timely request from Petitioner, Globe Metallurgical Inc. ("Petitioner"), in accordance with 19 CFR 351.213(b), for an administrative review of the antidumping duty order on silicon metal from the PRC of three companies: Datong Jinneng Industrial Silicon Co., Ltd. ("Datong Jinneng"),[1] Jiangxi Gangyuan Silicon Industry Co., Ltd. ("Jiangxi Gangyuan"),[2] and Shanghai Jinneng International Trade Co., Ltd. ("Shanghai Jinneng"). The Department also received a timely request from Shanghai Jinneng and Datong Jinneng (Shanghai Jinneng's affiliated supplier and producer of subject merchandise) for an administrative review of Shanghai Jinneng. On July 29, 2009, the Department published a notice of initiation of an antidumping duty administrative review on silicon metal from the PRC, in which it initiated a review of Datong Jinneng, Jiangxi Gangyuan, and Shanghai Jinneng. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 74 FR 37690 (July 29, 2009) ("*Initiation Notice*").

On September 11, 2009, the Department issued the antidumping questionnaire to Shanghai Jinneng based on the results of a CBP import data query placed on the record on August 17, 2009, which indicated that only Shanghai Jinneng made sales of subject merchandise during the POR. Both Jiangxi Gangyuan, and Datong Jinneng reported that they had no entries of subject merchandise during the POR. Between October 2009 and May 2010, Shanghai Jinneng responded to the Department's questionnaire and supplemental questionnaires and Petitioner commented on Shanghai Jinneng's responses.

In response to the Department's December 9, 2009, letter providing parties with an opportunity to submit comments regarding surrogate country and surrogate value selection,[3] Shanghai Jinneng and Petitioner filed surrogate country and surrogate value comments from January 2010 through June 2010.

On March 4, 2010, the Department extended the deadline for the issuance of the preliminary results of the administrative review until July 7, 2010. *See Silicon Metal From the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 9869 (March 4, 2010).

Scope of the Order

The product covered by the order is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight, and silicon metal with a higher aluminum content containing between 89 and 96 percent silicon by weight. The subject merchandise is currently classifiable under item numbers 2804.69.10 and 2804.69.50 of the *Harmonized Tariff Schedule of the United States* ("HTSUS") as a chemical product, but is commonly referred to as a metal. Semiconductor–grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to this order. This order is not limited to silicon metal used only as an alloy agent or in the chemical industry. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Intent To Rescind the Administrative Review, in Part

As noted above, Jiangxi Gangyuan and Datong Jinneng reported that they did not have any entries of subject merchandise during the POR. To test these claims, the Department ran a CBP data query and issued a no–shipment inquiry to CBP asking it to provide any

[1] The abbreviation "Inc." incorrectly appeared after "Datong Jinneng Industrial Silicon Co." in the *Initiation Notice*. The abbreviation "Ltd." should have been used.

[2] We have used the abbreviation "Co." rather than "Company", which was used in the *Initiation Notice*, because "Co." is used in the Automated Customs System Module.

[3] *See* Letter from Howard Smith, Program Manager, Office 4, to All Interested Parties, "Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China (PRC)," dated December 9, 2009.

information that contradicted the companies' claims. The Department has not obtained any evidence contradicting Jiangxi Gangyuan's and Datong Jinneng's claims and, thus, has preliminarily rescinded this administrative review with respect to these companies pursuant to 19 CFR 351.213(d)(3):

Non–Market Economy Country Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a non–market economy ("NME") country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the "Act"), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding have contested such treatment. Accordingly, the Department calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test set out in the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China*, 64 FR 71104, 71105 (December 20, 1999) (where the respondent was wholly foreign–owned, and thus, qualified for a separate rate).

Wholly Chinese–Owned

Shanghai Jinneng stated that it is a wholly Chinese–owned company.[4] Therefore, the Department must analyze whether this respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589.

The evidence provided by Shanghai Jinneng supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) there is an absence of restrictive stipulations associated with the company's business and export licenses; (2) there are applicable legislative enactments decentralizing control of PRC companies; and (3) there are formal measures by the government decentralizing control of PRC companies.[5]

2. Absence of De Facto Control

The Department considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that the evidence on the record supports a preliminary finding of de facto absence of governmental control with respect to Shanghai Jinneng based on record statements and supporting documentation showing that the company: 1) sets its own export prices independent of the government and without the approval of a government authority; 2) has the authority to negotiate and sign contracts and other agreements; 3) has autonomy from the government regarding the selection of management; and 4) retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses.[6]

The evidence placed on the record of this administrative review by Shanghai Jinneng demonstrates an absence of *de jure* and *de facto* government control with respect to the company's exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we have preliminary granted Shanghai Jinneng separate rate status.

Selection of a Surrogate Country

When the Department conducts an antidumping duty administrative review of imports from a NME country, section 773(c)(1) of the Act directs the Department to base NV, in most cases, on the NME producer's factors of production ("FOP") valued in a surrogate market–economy country or countries considered appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department will value FOP using "to the extent possible, the prices or costs of factors of production in one or more market–economy countries that are – (A) at a level of economic development comparable to that of the NME country, and (B) significant producers of comparable merchandise." Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOP in a single country.

In the instant review, the Department identified India, Indonesia, the Philippines, Colombia, Thailand, and Peru as a non–exhaustive list of countries that are at a level of economic development comparable to the PRC and for which good quality data is most

[4] *See* Shanghai Jinneng's Section A Response ("SAR"), at 2.

[5] *See* Shanghai Jinneng's SAR, at 4-9.

[6] *See* Shanghai Jinneng's SAR, at 10-13.

likely available.[7] On January 13, 2010, the Petitioner and Shanghai Jinneng proposed selecting India as the surrogate country because it is at a level of economic development comparable to the PRC and the U.S. Geological Survey, Minerals Yearbook ("USGS") and Metal Bulletin, Inc. indicate that India is a significant producer of comparable merchandise.[8] With respect to data considerations, in selecting a surrogate country, it is the Department's practice that, ". . . if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country." *See Policy Bulletin 04.1: Non–Market Economy Surrogate Country Selection Process*, (March 1, 2004) ("*Policy Bulletin 04.1*") available at *http://ia.ita.doc.gov*. Currently, the record contains surrogate value information, including possible surrogate financial statements, only from India. Thus, the Department is preliminarily selecting India as the surrogate country on the basis that: (1) it is at a comparable level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOP. Therefore, we have calculated NV using Indian prices, when available and appropriate, to value Shanghai Jinneng's FOP. *See* Memorandum to the File through Howard Smith, Program Manager, AD/CVD Operations, Office 4, from Melissa Blackledge, Senior International Trade Analyst, regarding "Antidumping Duty Administrative Review of Silicon Metal from the People's Republic of China: Selection of Factor Values," dated July 7, 2010 ("Surrogate Value Memorandum"). In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly–available information to value FOP until 20 days after the date of publication of the preliminary results.[9]

Fair Value Comparisons

In accordance with section 777A(d)(2) of the Act, to determine whether Shanghai Jinneng sold silicon metal to the United States at less than NV, we compared the weighted–average export of the silicon metal to the NV of the silicon metal, as described in the "U.S. Price," and "Normal Value" sections of this notice.

Export Price

The Department considered the U.S. prices of sales by Shanghai Jinneng to be export prices ("EPs") in accordance with section 772(a) of the Act, because these were the prices at which the subject merchandise was first sold before the date of importation by the producer/exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. We calculated EPs based on prices to unaffiliated purchaser(s) in the United States.

Shanghai Jinneng reported that it incurred value added tax ("VAT") and an export tax on subject merchandise. Petitioner argues that the Department should deduct the export tax from U.S. price, which, according to petitioner, is in accordance with the statute and the Department's practice of calculating a tax–neutral dumping margin. Shanghai Jinneng contends that in the 2007–2008 administrative review, the Department concluded that its practice, which had been upheld by the Court of International Trade ("CIT") and Court of Appeals for the Federal Circuit, is not to reduce U.S. price for tax payments by NME respondents to NME governments. Shanghai Jinneng claims that the facts related to export taxes in this administrative review are the same as in the 2007–2008 administrative review. In the 2007–2008 administrative review, the Department determined not to reduce U.S. price by the amount of Chinese export tax and VAT on silicon metal exports. In this instant review, consistent with *Magnesium Corp.* and the 2007–2008 administrative review, the Department is not reducing U.S. price for export taxes or VAT in China. *See Silicon Metal from the People's Republic China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (Jan. 12, 2010), and accompanying Issues and Decision Memorandum at Comment 1; *Magnesium Corp. of America, et. al. v. United States, et. al.*,166 F.3d 1364, 1370–71 (Fed. Cir.1999) ("*Magnesium Corp.*").

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 70 FR 39744, 39754 (July 11, 2005), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review*, 71 FR 2517, 2521 (January 17, 2006). Under section 773(c)(3) of the Act, FOP include, but are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on FOP reported by the respondent for materials, energy, labor and packing.

Thus, in accordance with section 773(c) of the Act, we calculated NV by adding together the values of the FOPs, general expenses, profit, and packing costs.[10] We calculated FOP values by multiplying the reported per–unit factor–consumption rates by publicly available surrogate values (except as discussed below). Specifically, we valued material, labor, energy, and packing by multiplying the amount of the factor consumed in producing subject merchandise by the average unit surrogate value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject

[7] *See* memorandum entitled, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Silicon Metal ("Silicon Metal") from the People's Republic of China ("PRC")," dated October 28, 2009.

[8] *See* Shanghai Jinneng's January 13, 2010, and Respondent's January 13, 2010 submissions at 6 and 2, respectively.

[9] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[10] We based the values of the FOPs on surrogate values (*see* "Selected Surrogate Values" section below).

merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the U.S. Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). We increased the calculated costs of the FOPs for surrogate general expenses and profit. *See* Analysis Memorandum at 4.

With respect to the application of the by–product offset to NV, consistent with the Department's determination in the antidumping duty investigation of diamond sawblades from the PRC, because our surrogate financial statements contain no references to the treatment of by–products and because Shanghai Jinneng reported that it sold silica fume, a by–product, we will deduct the surrogate value of silica fume from NV. This is consistent with accounting principles based on a reasonable assumption that if a company sells a by–product, the by–product necessarily incurs expenses for overhead, selling, general & administrative expenses ("SG&A"), and profit. *See*, *e.g.*, *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decisions Memorandum at Comment 9, unchanged in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 35864 (June 22, 2006).

Selected Surrogate Values

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data.

In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non–export average values, most contemporaneous with the POR, product–specific, and tax–exclusive. *See*, *e.g.*, *Pure Magnesium from the People's Republic of China: Preliminary Results of 2007–2008 Antidumping Duty Administrative Review*, 74 FR 27090 (June 8, 2009), unchanged in *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 66089 (December 14, 2009). The record shows that the Indian import statistics represent import data that are contemporaneous with the POR, product–specific, and tax–exclusive. Thus, for these preliminary results, in accordance with the Department's practice, the Department used data from Indian Import Statistics in the Global Trade Atlas ("GTA") and other publicly available Indian sources in order to calculate surrogate values for Shanghai Jinneng's FOPs (*i.e.*, packing and raw material inputs) except where listed below.

In past cases, it has been the Department's practice to value various factors of production ("FOPs") using import statistics of the primary selected surrogate country from World Trade Atlas ("WTA"), as published by Global Trade Information Services ("GTIS"). *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 50946, 50950 (October 2, 2009), unchanged in *Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 74 FR 65520 (Dec. 10, 2009).

However, in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. Dollar. The Department then contacted GTIS about the change in the original reporting currency for India from the Indian Rupee to the U.S. Dollar. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian Rupees, the WTA software is limited with regard to the number of significant digits it can manage. Therefore, GTIS made a decision to change the original reporting currency for Indian data from the Indian Rupee to the U.S. Dollar in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian Rupee to the U.S. Dollar using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted. *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances, and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

However, the data reported in the Global Trade Atlas ("GTA") software, published by GTIS, reports import statistics, such as from India, in the original reporting currency and thus these data correspond to the original currency value reported by each country. Additionally, the data reported in the GTA software are reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently, the Department will now obtain import statistics from GTA for valuing various FOPs because the GTA import statistics are in the original reporting currency of the country from which the data are obtained and have the same level of accuracy as the original data released.

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long–standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.[11] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non–industry specific export subsidies.[12] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from an NME country. Where we could only obtain surrogate values that were not contemporaneous with the POR, we inflated (or deflated) the surrogate values using the Indian Wholesale Price

[11] Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("*OTCA 1988*") at 590.

[12] *See e.g.*, *Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at pages 4-5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at page 4; *See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at pages 17, 19-20; *See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at page 23.

Index ("WPI") as published in the International Financial Statistics of the International Monetary Fund.

We used the following surrogate values in our preliminary results of review (*see* Surrogate Value Memorandum for details). We valued charcoal, petroleum coke, wood, carbon electrodes, aluminum scrap, and polyethylene/polypropylene bags using June 2008 through May 2009 weighted–average Indian import values derived from the "*GTA*." *See http://www.gtis.com/gta.htm*. The Indian import statistics that we obtained from the *GTA* were published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and are contemporaneous with the POR. *See* Surrogate Value Memorandum at 1.

We valued quartz using the price of Grade I quartz with a silicon dioxide content of 98 percent or higher from the Indian Bureau of Mines' publication: 2007 edition of the *Indian Minerals Yearbook* ("*IBM Yearbook*"). We inflated the value for quartz using the POR average WPI rate. *Id* at 3.

We valued coal using Grade A coal prices obtained from the *IBM Yearbook*. We inflated the value for coal using the POR average WPI rate. *Id*.

We valued electricity using rates for large industries at 33KV, as published by the Central Electricity Authority of the Government of India in "Electricity Tariff & Duty and Average Rates of Electricity Supply in India", dated March 2008. These electricity rates represent actual country–wide, publicly available information on tax–exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation. For additional details, see *id*.

We valued truck freight using a per–unit average rate calculated from POR data on the following web site: *http://www.infobanc.com/logistics/logtruck.htm*. The logistics section of this website contains inland freight truck rates between many large Indian cities. *Id*. at 8.

We valued rail freight using a per–unit average rate from http://www.indianrailways.gov.in, the Indian Ministry of Railways website. *Id*. We inflated the value for rail freight using the POR average WPI rate. *Id*.

Shanghai Jinneng claimed silica fume as a by–product offset since it produced silica fume and sold a portion of this production during the POR. We valued silica fume using GTA data for entries under HTS 2811.22 (silicon dioxide) from countries identified as silicon metal or ferrosilicon producers by the USGS for ferroalloys published by the U.S. Department of the Interior, dated September 2009. For a more detailed discussion, see *id*. at 4.

For direct labor, indirect labor, and packing labor, pursuant to a recent decision by the Court of Appeals for the Federal Circuit, we have calculated an hourly wage rate to value the reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise. For a more detailed discussion, see *id*.

Lastly, we valued selling, general and administrative expenses, factory overhead costs, and profit using the contemporaneous 2008–2009 financial statements of FACOR Alloys Ltd., VBC Ferro Alloys Ltd., Sova Ispat Alloys (Mega Projects) Ltd., and Saturn Ferro Alloys Private Ltd., Indian producers of merchandise that is comparable to subject merchandise. *Id*. at 9. We did not use the 2008–2009 financial statement of Centom Steels and Ferro Alloys Ltd. placed on the record by Shanghai Jinneng, because it contained evidence of subsidies.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information with which to value FOPs in the final results of review within 20 days after the date of publication of the preliminary results of review.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that no dumping margin exists for Shanghai Jinneng for the period June 1, 2008 through July 31, 2009.

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within 10 days of the date of the public announcement of the results of this review in accordance with 19 CFR 351.224(b).

Comments

Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal comments must be limited to the issues raised in the written comments and may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). Parties submitting written comments or rebuttal comments are requested to provide the Department with an additional copy of those comments on diskette. Any interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department will issue the final results of the administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days of publication of these preliminary results, in accordance with section 751(a)(3)(A) of the Act, unless the time limit is extended.

Assessment Rates

Pursuant to 19 CFR 351.212, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, the Department calculated exporter/importer- (or customer) -specific assessment rates for merchandise subject to this review. Where appropriate, the Department calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty–assessment rates calculated on this basis, the Department will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, the Department calculated a per–unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty–assessment rates calculated on this basis, the Department will direct CBP to assess the resulting per–unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) -specific assessment rate is *de minimis* (*i.e.*, less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. The Department intends to instruct CBP to liquidate

entries containing subject merchandise exported by the PRC–wide entity at the PRC–wide rate in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for shipments of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the review, as provided by sections 751(a)(1) and (a)(2)(C) of the Act: (1) for all respondents receiving a separate rate, the cash deposit rate will be that established in the final results of the review; (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 139.49 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these preliminary results of administrative review in accordance with section 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–17299 Filed 7–14–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce ("Department") is currently conducting the 2008–2009 administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished ("TRBs"), from the People's Republic of China ("PRC"), covering the period June 1, 2008, through May 31, 2009. We have preliminarily determined that sales have been made below normal value ("NV") by certain companies subject to this review. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR") for which the importer-specific assessment rates are above *de minimis.*

Interested parties are invited to comment on these preliminary results. We will issue final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* July 15, 2010.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Trisha Tran, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5848 or (202) 482–4852, respectively.

Background

On June 15, 1987, the Department published in the **Federal Register** the antidumping duty order on TRBs from the PRC.[1] On June 1, 2009, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on TRBs from the PRC.[2] On June 30, 2009, the sole respondent in the prior review, the majority Spungen family-owned joint-venture Peer Bearing Company Ltd.—Changshan ("PBCD/CPZ") and its wholly Spungen-family-owned U.S. sales affiliate, Peer Bearing Company ("PBCD/Peer") (collectively "PBCD"), requested that the Department conduct an administrative review of its sales of subject merchandise prior to the acquisition of both companies by AB SKF during the POR. On June 30, 2009, the wholly AB SKF-owned Changshan Peer Bearing Company, Ltd. ("SKF/CPZ") and its wholly AB SKF-owned U.S. sales affiliate, Peer Bearing Company ("SKF/Peer") (collectively "SKF"), requested that the Department conduct an administrative review of its sales of subject merchandise subsequent to the acquisition of the PBCD companies during the POR.[3] On June 30, 2009, the Timken Company, of Canton, Ohio ("Petitioner") requested that the Department conduct an administrative review of all entries of subject merchandise produced and/or exported by CPZ, regardless of its ownership during the POR.

On June 30, 2009, Hubei New Torch Science & Technology Company Co., Ltd. ("New Torch"), a producer and exporter of subject merchandise, also requested that the Department conduct an administrative review of its sales of subject merchandise. On July 29, 2009, the Department initiated the administrative review of the antidumping duty order on TRBs from the PRC for the period June 1, 2008, through May 31, 2009.[4]

On August 26, 2009, the Department issued its antidumping duty questionnaire to PBCD, SKF, and New Torch. Between October 14, 2009, and June 18, 2010, PBCD, SKF, and New Torch responded to the Department's original and supplemental questionnaires. On October 1, 2009, we invited all interested parties to submit publicly available information to value factors of production ("FOPs") for consideration in the Department's preliminary results of review. On December 7, 2009, SKF submitted publicly available information to value FOPs for the preliminary results. On December 17, 2009, and June 16, 2010, PBCD submitted surrogate value

[1] *See Notice of Antidumping Duty Order: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China,* 52 FR 22667 (June 15, 1987).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 74 FR 26202 (June 1, 2009).

[3] Without consideration of ownership, the Changshan-based TRB production facility is referred to as "CPZ" and the Illinois-based U.S. sales affiliate is referred to as "Peer."

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review,* 74 FR 37690 (July 29, 2009).

information for the Department's consideration. From December 17, 2009, through June 18, 2010, Petitioner submitted comments and publicly available information to value FOPs for the preliminary results. On May 5, 2010, in its supplemental response to the Department's questionnaire, New Torch submitted publicly available information regarding the valuation of certain inputs.[5]

On March 2, 2010, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review by the full 120 days allowed under section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), to July 7, 2010.[6]

Period of Review

The POR is June 1, 2008, through May 31, 2009.

Scope of the Order

Imports covered by this order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15[7] and 8708.99.80.80.[8] Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Initiation of Scope Determination of New Torch's Wheel Hub Assemblies

From October 30, 2009, through May 5, 2010, in various supplemental questionnaires, New Torch stated that it produced and sold wheel hub assemblies to the United States during the POR, which it asserted were not subject to the scope of the order on TRBs. On June 15, 2010, the Department initiated two scope inquiries on wheel hub assemblies produced by PRC producers that are unrelated to the respondents in the instant administrative review. Subsequently, on June 17, 2010, New Torch requested that the Department accept a revised U.S. sales and FOP database, which would include sales and FOP information regarding New Torch's wheel hub assemblies sold to the United States during the POR. On July 6, 2010, the Department requested revised FOP and U.S. sales databases containing information with respect to New Torch's wheel hub assemblies sold to the United States during the POR.

For the purposes of these preliminary results, because the Department has not yet determined whether wheel hub assemblies are covered by the scope of the order on TRBs, the Department will continue to base its antidumping margin calculation on New Torch's original U.S. sales database, which does not include wheel hub assemblies. However, the Department will determine whether New Torch's wheel hub assemblies are covered by the scope of the order on TRBs for the final results. In addition, pursuant to the outcome of the Department's determination of whether New Torch's wheel hub assemblies are within the scope of the order on TRBs, the Department intends to use the appropriate databases to determine New Torch's antidumping margin calculation for the final results.

Non-Market Economy Country Status

Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country.[9] None of the parties to this review has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market-economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.[10]

The Department's practice with respect to determining economic comparability is explained in *Policy Bulletin 04.1*,[11] which states that "OP {Office of Policy} determines per capita economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank)."

On September 23, 2009, the Department identified six countries as being at a level of economic development comparable to the PRC for the specified POR: India, the

[5] On June 22, 2010, Petitioner submitted comments regarding PBCD and SKF for the upcoming preliminary results. SKF submitted rebuttal comments on June 30, 2010. Petitioner then submitted further rebuttal comments on July 6, 2010; however, due to the proximity to the deadline, the Department was unable to consider these submissions for purposes of the preliminary results.

[6] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Extension of Time Limit for the Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order,* 75 FR 9391 (March 2, 2010). *See also* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010, wherein all deadlines in this segment of the proceeding have been extended by seven days as a result of the closure of the Federal Government from February 5, 2010 through February 12, 2010.

[7] Effective January 1, 2007, the HTSUS subheading 8708.99.8015 is renumbered as 8708.99.8115. *See* United States International Trade Commission ("USITC") publication entitled, "Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988," USITC Publication 3898 (December 2006) found at *http://www.usitc.gov*.

[8] Effective January 1, 2007, the USHTS subheading 8708.99.8080 is renumbered as 8708.99.8180; *see Id.*

[9] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 70488 (December 18, 2003).

[10] *See also* the Department's memorandum entitled, "Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Surrogate Value Memorandum," dated concurrently with this notice ("Surrogate Value Memorandum").

[11] *See* the Department's Policy Bulletin No. 04.1, regarding, "Non-Market Economy Surrogate Country Selection Process," (March 1, 2004) ("*Policy Bulletin 04.1*"), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull04-1.html.*

Philippines, Indonesia, Colombia, Thailand, and Peru.[12] [13]

On October 1, 2009, the Department invited all interested parties to submit comments on the surrogate country selection.[14] On November 23, 2009, Petitioner, SKF, and PBCD submitted comments regarding the Department's selection of a surrogate country for the preliminary results. Petitioner submitted rebuttal surrogate country comments on December 3, 2009. In their comments, both Petitioner and SKF requested that India be selected as the primary surrogate country, whereas PBCD requested the Department also consider Indonesia and Thailand as potential surrogates. New Torch did not submit comments regarding surrogate country selection.

Policy Bulletin 04.1 provides some guidance on identifying comparable merchandise and selecting a producer of comparable merchandise. Based on an analysis of export data obtained from Global Trade Atlas, published by Global Trade Information Services, Inc. ("GTA") for harmonized tariff schedule ("HTS") subheadings 8482.20, 8482.20.00, 8482.91, 8482.91.00, 8482.99, 8482.99.00, 8483.20, 8483.20.00, 8483.30, 8483.30.90, 8708.99,[15] the Department finds that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are all producers of comparable merchandise. Finally, we have reliable data from India on the record that we can use to value the FOPs. While PBCD and SKF submitted Indonesian and Thai data on the record to value limited FOP inputs, Petitioner, SKF and New Torch each submitted surrogate values for the majority of the inputs using Indian sources, suggesting greater availability of appropriate surrogate value data in India. Additionally, Petitioner and SKF placed the financial statements of various Indian producers on the record, further demonstrating the greater availability of appropriate surrogate value data in India.

Therefore, the Department is preliminarily selecting India as the surrogate country on the basis that: (1) It is at a similar level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs. Accordingly, we have calculated NV using Indian prices when available and appropriate to value each respondent's FOPs.[16] In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review, interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of these preliminary results.[17]

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assigned a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

PBCD has demonstrated that the pre-acquisition CPZ was a China-Foreign joint venture, owned by two shareholders, a PRC based company and a U.S. company wholly-owned by the Spungen family. New Torch has stated that it is a joint stock limited, partially foreign invested enterprise. Therefore, the Department must analyze whether PBCD/CPZ and New Torch have demonstrated the absence of both *de jure* and *de facto* government control over export activities, and are therefore entitled to a separate rate. SKF submitted information indicating that SKF/CPZ is a wholly foreign-owned limited liability company. Therefore, for the purposes of these preliminary results, the Department finds that it is not necessary to perform a separate-rate analysis for SKF/CPZ.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[18]

The evidence provided by PBCD and New Torch supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government

[12] *See* the Department's Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Wendy Frankel, Office Director, AD/CVD Operations, Office 8, regarding, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings ("TRB") from the People's Republic of China ("PRC")," dated September 23, 2009 ("Surrogate Countries Memorandum").

[13] *See Policy Bulletin 04.1* at 2.

[14] *See* the Department's letter regarding, "2008–2009 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings from the People's Republic of China" requesting all interested parties to provide comments on surrogate-country selection and provide surrogate FOP values from the potential surrogate countries (*i.e.,* India, Indonesia, the Philippines, Thailand, Colombia, and Peru), dated October 1, 2009.

[15] Export information could not be found for all HTS subheadings specified in the scope of the order. As such, the Department utilized GTA data for all available HTS categories. GTA export statistics for India, the Philippines, Indonesia, Colombia, Thailand, and Peru only offer a basket category for *all* categories other than 8482.20.00 "Tapered roller bearings, including cone and tapered roller assemblies." In the case of the categories beginning with the four digit 8482 and 8483 heading, similar 'NESOI' or 'Other' subheadings were used in the alternative, though typically not as specific as that of the HTSUS category. However, in the case of the categories beginning with the four digit 8708 heading, GTA export statistics for each of the potential surrogate country candidates could only be found to the broadly defined 8708.99 subheading.

[16] *See* Surrogate Value Memorandum; *see also* "Factor Valuations" section, below.

[17] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum ("IDM") at Comment 2.

[18] *See Sparklers,* 56 FR at 20589.

decentralizing control of the companies.[19]

b. Absence of De facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[20]

The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control over export activities which would preclude the Department from assigning separate rates. For PBCD and New Torch, we determine that the evidence on the record supports a preliminary finding of *de facto* absence of government control based on record statements and supporting documentation showing the following: (1) Each respondent sets its own export prices independent of the government and without the approval of a government authority; (2) each respondent retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each respondent has the authority to negotiate and sign contracts and other agreements; and (4) each respondent has autonomy from the government regarding the selection of management.[21]

The evidence placed on the record of this review by each respondent demonstrates an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers and Silicon Carbide.* Therefore, we are preliminarily granting PBCD and New Torch a separate rate.

Affiliation—SKF/CPZ and Company A[22]

In its questionnaire responses, SKF/CPZ indicated that it was affiliated with Company A. For purposes of the preliminary results, the Department has determined not to conduct a collapsing analysis with respect to SKF/CPZ and Company A due to insufficient information on the record. However, we intend to solicit additional information with respect to this issue, and will address it subsequent to the preliminary results.

Bona Fide Sale Analysis—New Torch

New Torch reported a single sale of subject merchandise to the United States during the POR.[23] In evaluating whether or not a sale subject to review is commercially reasonable, and therefore *bona fide,* the Department considers, *inter alia,* such factors as (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arms-length basis.[24] The Department examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.[25] In *TTPC,* the court affirmed the Department's practice of considering that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,"[26] and that "the weight given to each factor investigated will depend on the circumstances surrounding the sale."[27] In *New Donghua,* the Court stated that the Department's practice makes clear that the Department "is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order."[28]

For the reasons stated below, we preliminarily find New Torch's reported U.S. sales during the POR to be *bona fide* based on the facts on the record. First, the sales were made to an unaffiliated customer with the terms set by negotiation and payment received in a timely manner, indicating that the sales were made at arm's-length. Second, there does not seem to be anything unusual in the timing of New Torch's sales. Third, New Torch's sales prices and quantities are similar to the prices and quantities examined during the POR. Fourth, there were no unusual expenses arising from these sales. Fifth, there is no record evidence that the merchandise was not resold at a profit. Therefore, based on the totality of the circumstances, the Department preliminarily finds that New Torch's sales are bona fide.[29]

Successor in Interest—SKF/CPZ

On September 11, 2008, approximately three and a half months into the POR, PBCD/CPZ and its Illinois-based U.S. sales affiliate, PBCD/Peer, were each acquired by AB SKF, a Swedish conglomerate, and henceforth known as SKF/CPZ and SKF/Peer. In addition, on August 28, 2009, SKF submitted a request for a changed circumstance review ("CCR") to determine that SKF/CPZ is not the successor-in-interest to PBCD/CPZ. On September 30, 2009, the Department informed parties that the information provided in SKF's August 28, 2009, submission was sufficient to warrant a successor-in-interest analysis regarding SKF's acquisition of CPZ, and that this determination would be performed within the context of the instant administrative review.

In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) Management, (2)

[19] *See* PBCD/SKF's Joint Section A Questionnaire Response, dated October 14, 2009, and New Torch's Section A Questionnaire Response, dated November 2, 2009.

[20] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[21] *See* PBCD/SKF's Joint Section A Questionnaire Response, dated October 14, 2009, and New Torch's Section A Questionnaire Response, dated November 2, 2009.

[22] The identity of "Company A" is proprietary. *See* the Department's memorandum entitled, "2008–2009 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for SKF–Owned Peer Bearing Company—Changshan," dated concurrently with this notice ("SKF Program Analysis Memorandum") for further discussion.

[23] *See* New Torch's November 12, 2009, Section C and D questionnaire response at C–8.

[24] *See Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1250 S ("TTPC") (CIT 2005), citing *Am. Silicon Techs.* v. *United States,* F. Supp. 2d 992, 995 (CIT 2000).

[25] *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States,* 374 F. Supp. 2d 1333, 1338 (CIT 2005), ("*New Donghua*") quoting *Fresh Garlic from the PRC: Final Results of Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002), and accompanying IDM.

[26] *See TTPC,* 366 F. Supp. 2d at 1250, citing *Windmill Int'l Pte., Ltd.* v. *United States,* F. Supp. 2d 1303, 1307 (CIT 2002).

[27] *See TTPC,* 366 F. Supp. 2d at 1263.

[28] *See New Donghua,* 374 F. Supp. 2d at 1339.

[29] *See* Memorandum to Wendy Frankel, Director, AD/CVD Operations, Office 8, Import Administration, through Erin Begnal, Program Manager, AD/CVD Operations, Office 8, from Trisha Tran, International Trade Analyst, AD/CVD Operations, Office 8, regarding Administrative Review of the Antidumping Duty Order Covering Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China (6/1/2008–5/31/2009): *Bona Fide* Nature of the Sales Under Review for Hubei New Torch Science & Technology Co., Ltd. ("New Torch") (July 7, 2010).

production facilities, (3) supplier relationships, and (4) customer base.[30] Although no single or even several of these factors will necessarily provide a dispositive indication of succession, generally the Department will consider one company to be a successor to another company if its resulting operation is not materially dissimilar to that of its predecessor.[31] Thus, if the "totality of circumstances" demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash-deposit rate of its predecessor.[32]

In its initial CCR request and subsequent responses to the Department's supplemental questionnaires, SKF provided documentation demonstrating that SKF/CPZ instituted a significant change to upper management that starkly contrasts with the management structure of PBCD/CPZ, including the appointment of a new board of directors and a new General Manager. Additionally, SKF expanded its production capabilities by acquiring two co-located affiliated business entities and integrated the production capabilities into one newly consolidated company.

The Department finds that the totality of the circumstances demonstrate that SKF/CPZ is not the successor-in-interest to PBCD/CPZ. First, the Department finds that, because SKF/CPZ has replaced and restructured the company's top management, SKF/CPZ has demonstrated that the company's operations and production decisions are distinct from the management and operations of PBCD/CPZ. Additionally, we find that changes in SKF/CPZ's integration and expansion of its production facilities and structure, along with SKF/CPZ's complete management restructure, demonstrate that SKF/CPZ is a distinct entity from that of the pre-acquisition company. As such, we preliminarily determine that SKF/CPZ is not the successor-in-interest to the pre-acquisition PBCD/CPZ.[33]

Fair Value Comparisons

To determine whether sales of TRBs to the United States by respondents were made at less than fair value ("LTFV"), we compared constructed export price ("CEP") and export price ("EP") to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice, below, and pursuant to section 771(35) of the Act.

U.S. Price

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for PBCD/CPZ and SKF/CPZ's sales where the exporter first sold subject merchandise to its affiliated company in the United States, PBCD/Peer and SKF/Peer, respectively, which in turn sold subject merchandise to unaffiliated U.S. customers. We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight from the plant to the port of exportation, international freight, brokerage and handling, marine insurance, other U.S. transportation, U.S. customs duty, U.S. warehousing expenses, where applicable, U.S. inland freight from port to the warehouse, and U.S. inland freight from the warehouse to the customer. Where foreign inland freight, foreign brokerage and handling fees, or international freight were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate rates from India. See "Factor Valuations" section below for further discussion of surrogate rates. In accordance with section 772(d)(1) of the Act, the Department deducted credit expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. Finally, we deducted CEP profit, in accordance with sections 772(d)(3) and 772(f) of the Act.[34]

Consistent with our determination in the 2006–2007 review,[35] we have preliminarily determined to use PRODCOD as a basis for comparing NV to CEP for PBCD and SKF's sales of subject merchandise.

SKF/CPZ Existing Inventory

On September 11, 2008, AB SKF acquired various Spungen family-owned companies, including PBCD/CPZ and PBCD/Peer. Through a share transfer agreement, AB SKF acquired PBCD/CPZ and PBCD/Peer, including PBCD/CPZ's assets and liabilities. Among these assets were existing unsold inventory held by PBCD/Peer, which was produced by PBCD/CPZ prior to the acquisition.

SKF has argued that the acquisition of PBCD/Peer's unsold inventory constituted a CEP sale of all remaining inventory to SKF/Peer as the first unaffiliated customer, and requested that the Department treat the transfer as a CEP sale for the purposes of this review. However, PBCD disagreed that the inventory transfer constituted a CEP sale, arguing, that no asset transfer or sale of inventory was specified by the acquisition documents.[36]

For these preliminary results, the Department finds that SKF's acquisition of PBCD/CPZ and PBCD/Peer, pursuant to the Master Purchase Agreement ("MPA"), should not be treated as the first sale to an unaffiliated customer of the inventory held by PBCD/Peer for the purpose of calculating the margin of dumping in this administrative review. The MPA specifies the details of the share transfer between ownership parties upon finalization of the acquisition agreement, which resulted in the transfer of ownership of various

[30] *See, e.g., Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review,* 75 FR 34688 (June 18, 2010), and IDM at Comment 1.

[31] *See, e.g., Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979 (March 1, 1999).

[32] *See Id* at 9980; *see also Brass Sheet and Strip from Canada: Final Result of Administrative Review,* 57 FR 20461 (May 13, 1992), and IDM at Comment 1.

[33] *See* Memorandum to Wendy Frankel, Director, AD/CVD Operations, Office 8, Import Administration, through Erin Begnal, Program Manager, AD/CVD Operations, Office 8, from Brendan Quinn, International Trade Analyst, AD/CVD Operations, Office 8, entitled "Tapered Roller Bearings from the People's Republic of China: Preliminary Successor-In-Interest Determination," dated July 7, 2010.

[34] *See* the Department's memorandum entitled, "2008–2009 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for Spungen-Owned Peer Bearing Company—Changshan," dated concurrently with this notice ("PBCD Program Analysis Memorandum"); *see also* the Department's memorandum entitled, "2008–2009 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for SKF–Owned Peer Bearing Company—Changshan," dated concurrently with this notice ("SKF Program Analysis Memorandum").

[35] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the Administrative Review,* 74 FR 3987 (January 22, 2009), and accompanying IDM at Comment 3.

[36] For a complete analysis of the arguments forwarded by parties on this issue, *see* SKF Program Analysis Memorandum.

Spungen-owned companies, including PBCD/Peer and PBCD/CPZ, to various AB SKF-owned affiliates. Therefore, as explained by SKF, there was no sale value specifically associated with just the TRB inventory as part of the MPA. Instead, SKF reported sales prices for the inventory based on an accounting value it obtained from a third party accounting firm for financial reporting purposes subsequent to the acquisition. Thus, the value reported by SKF is not reflective of negotiated sales prices for this merchandise. Therefore, the Department finds that the fact the SKF acquired the inventory of PBCD/Peer simply reflects the fact the inventory in question would remain with SKF/Peer and was not being retained by the former owner of PBCD/Peer. Accordingly, we are examining the sales of this merchandise from SKF to its first unaffiliated downstream customer, and have relied on the U.S. sales prices of SKF/Peer's downstream sales for purposes of calculating SKF/Peer's dumping margin.[37]

Export Price

Because New Torch sold subject merchandise to unaffiliated purchasers in the United States prior to importation into the United States, we used EP for these transactions in accordance with section 772(a) of the Act. We calculated EP based on the delivery method reported to the first unaffiliated purchaser in the United States. New Torch's sales required no deductions included in section 772(c) of the Act.[38]

Normal Value

We compared NV to individual EP and CEP transactions in accordance with section 777A(d)(2) of the Act, as appropriate. Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by the respondents for materials, energy, labor and packing.

In past cases, it has been the Department's practice to value various FOPs using import statistics of the primary selected surrogate country from World Trade Atlas ("WTA"), as published by Global Trade Information Services ("GTIS").[39] However, in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. Dollar. The Department then contacted GTIS about the change in the original reporting currency for India from the Indian Rupee to the U.S. Dollar. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian Rupees, the WTA software is limited with regard to the number of significant digits it can manage. Therefore, GTIS made a decision to change the original reporting currency for Indian data from the Indian Rupee to the U.S. Dollar in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian Rupee to the U.S. Dollar using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted.[40]

Because of the conversion and rounding problems in the data reported by WTA, the Department will now obtain import statistics from Global Trade Atlas ("GTA"), as published by GTIS, for valuing various FOPs. The data reported in the GTA software reports import statistics, such as from India, in the original reporting currency and thus this data corresponds to the original currency value reported by each country. Additionally, the data reported in the GTA software is reported to the nearest digit and thus there is not a loss of data by rounding, as there is with the data reported by the WTA software. Consequently the import statistics we obtain from GTA are in the original reporting currency of the country from which the data are obtained and have the same level of accuracy as the original data released.

In the instant review, PBCD and SKF reported sales that were further manufactured or assembled in a third country. Consistent with the TRBs 2007–2008, the Department has determined that the finishing operations in the third country do not constitute substantial transformation and, hence, do not confer a new country of origin for antidumping purposes.[41] As such, we have determined NV for such sales based on the country of origin (*i.e.,* the PRC), pursuant to section 773(a)(3)(A) of the Act, because PBCD and SKF knew at the time of the sale of merchandise that it was destined for export. The Department also included the further manufacturing and assembly costs incurred in the third country in the NV calculation, as well as the expense of transporting the merchandise from the factory in the PRC to the further manufacturing plant in the third country.[42]

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate surrogate value ("SV") to value FOPs, but when a producer sources an input from a market economy and pays for it in market economy currency, the Department normally will value the factor using the actual price paid for the input.[43] To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data.[44] As

[37] *See Id.* for further discussion of this issue.

[38] *See* the Department's memorandum entitled, "2008–2009 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for Hubei New Torch Science & Technology Co., Ltd.," dated concurrently with this notice ("New Torch Program Analysis Memorandum").

[39] *See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review,* 74 FR 50946, 50950 (October 2, 2009).

[40] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances, and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010) and accompanying IDM at Comment 4.

[41] *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2007–2008 Administrative Review of the Antidumping Duty Order,* 75 FR 844 (January 6, 2010) ("*TRBs 2007–2008*"), and accompanying IDM at Comment 1.

[42] *See* PBCD and SKF Program Analysis Memoranda.

[43] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill Tool Works* v. *United States,* 268 F. 3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[44] *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping*

Continued

appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for PBCD/CPZ, SKF/CPZ, and New Torch can be found in the Surrogate Value Memorandum.

For the preliminary results, in accordance with the Department's practice, except where noted below, we used data from the Indian import Statistics in the GTA and other publicly available Indian sources in order to calculate surrogate values for PBCD/CPZ, SKF/CPZ, and New Torch's FOPs (*i.e.* direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.[45] The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive.[46] In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the IMF's *International Financial Statistics.*[47]

In accordance with the OTCA 1988 legislative history, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.[48] In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[49] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Additionally, we disregarded prices from NME countries.[50] Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.[51]

PBCD and SKF claim that certain of their reported raw material inputs were sourced from an ME country and paid for in ME currencies. When a respondent sources inputs from an ME supplier in meaningful quantities, we use the actual price paid by respondent for those inputs, except when prices may have been distorted by dumping or subsidies.[52] Where we found ME purchases to be of significant quantities (*i.e.,* 33 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs,*[53] we used the actual purchases of these inputs to value the inputs.

Accordingly, we valued certain of respondents' inputs using the ME prices paid for in ME currencies for the inputs where the total volume of the input purchased from all ME sources during the POR exceeds or is equal to 33 percent of the total volume of the input purchased from all sources during the period. Where the quantity of the reported input purchased from ME suppliers was below 33 percent of the total volume of the input purchased from all sources during the POR, and were otherwise valid, we weight-averaged the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[54] Where appropriate, we added freight to the ME prices of inputs. For a detailed description of the actual values used for the ME inputs reported, see the Department's analysis memoranda dated concurrently with this notice.

Among the FOPs for which the Department calculated SVs using Indian import statistics are bearing-quality steel bar, cage steel, steel by-product, cone spacer, coal, anti-rust oil, and all packing materials.

In their June 16, 2010, surrogate value submission, PBCD expressed concerns regarding the quality of certain SV information from the primary surrogate country, India, specifically in regard to the valuation of bearing quality steel bar and wire rod inputs. In these comments, PBCD argues that the Indian import data for HTS 7228.30.29 (Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel; Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded; Bright Bars; Other), submitted by Petitioner and SKF as a surrogate to value bearing quality steel bar, are aberrational due to the relatively high value when benchmarked against similar bearing and roller quality steel HTS categories in the U.S. and potential surrogate countries. Furthermore, PBCD reiterates the position previously

Duty New Shipper Review, 67 FR 72139 (December 4, 2002), and accompanying IDM at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying IDM at Comment 5.

[45] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[46] *See* Surrogate Value Memorandum.

[47] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 74 FR 36656 (July 24, 2009).

[48] Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("*OTCA 1988*") at 590.

[49] *See e.g.,* Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at pages 4–5; Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at page 4; *See* Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at pages 17, 19–20; *See* Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at page 23.

[50] *See Id.*

[51] *See Id.*

[52] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27366 (May 19, 1997).

[53] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) ("*Antidumping Methodologies: Market Economy Inputs*").

[54] *See Antidumping Methodologies: Market Economy Inputs,* 71 FR at 61718.

forwarded by SKF in its December 7, 2009, surrogate value submission that, consistent with the analysis of potential wire rod SVs performed in the prior review, certain data considerations compel the Department to reject Indian import information for HTS 7228.50.90 (Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel; Other bars and rods, not further worked than cold-formed or cold-finished: Other) in favor of Thai import data for HTS 7228.50.90 (Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel; Other bars and rods, not further worked than cold-formed or cold-finished: Other) to value wire rod inputs in the instant review. Petitioner addressed the steel bar and wire rod surrogate issues in its June 18, 2010, surrogate value comments, as well as additional comments submitted on June 21, 2010. While Petitioner maintains that the Department should value all FOPs, including wire rod and steel bar, using surrogate data from the primary surrogate country (*i.e.* India), it adds that, should the Department determine that Thai data is preferable to Indian data for the valuation of wire rod inputs, as was determined in the prior review, Thai import data for HTS 7228.50.10 [55] are a more appropriate surrogate to value wire rod than the Thai import data for HTS 7228.50.90 suggested by PBCD and SKF.

For the preliminary results, we have determined to use contemporaneous Thai import data from HTS category 7228.50.10 and contemporaneous Indian import data from HTS category 7228.30.29 to calculate a SV for roller quality steel wire rod and bearing quality steel bar, respectively. As in *TRBs 2007–2008,* the Indian import statistics for HTS category 7228.50.90 show wide variations in the average unit values ("AUVs") between the individual countries listed as exporters in the data. Thai import statistics under Thai HTS categories 7228.50.10 and 7228.50.90 do not exhibit the wide level of AUV variance between imports from individual countries that is seen in the Indian data. Thus, we have determined to use Thai data to value steel wire rod. We have used Thai HTS category 7228.50.10 to value wire rod, as it is more specific to the input than Thai HTS category 7228.50.90 because the wire rod in this category are circular, as are the respondents' inputs. Using the same method of analysis, Indian import statistics for steel bar under Indian HTS category 7228.30.29 appear to be reasonably consistent and do not have wide fluctuations between the AUVs from individual countries. As it is our preference to use SVs from within the primary surrogate country, and because we do not find that the Indian import data under Indian HTS category 7228.30.29 are aberrational, we preliminarily determine to value steel bar from Indian HTS category 7228.30.29.[56]

We valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities.[57]

We valued inland water freight using price data for barge freight reported in a March 19, 2007, article published in *The Hindu Business Line.*[58] Since the inland water transportation rates are not contemporaneous with the POR, we inflated the rates using the Indian WPI inflator.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India,* published by the World Bank.[59] Since brokerage and handling rates are not contemporaneous with the POR, we inflated the rates using the Indian WPI inflator.

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in India.[60] Because the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation. In other words, the Department did not inflate this value to the POR because the utility rates represent current rates, as indicated by the effective date listed for each of the rates provided.[61]

We valued international air freight using rates based on the market economy air freight purchases of SKF and PBCD.[62]

We valued water using the revised Maharashtra Industrial Development Corporation water rates available at *http://www.midcindia.com/water-supply.*[63]

The Department is valuing international ocean freight from the PRC to the United States using data obtained from the Descartes Carrier Rate Retrieval Database ("Descartes"), which can be accessed via *http://descartes.com/.* The Department has calculated the period-average international freight rate by obtaining rates from multiple carriers for a single day in each quarter of the POR. For any rate that the Department determined was from a non-market economy carrier, the Department has not included that rate in the period-average international freight calculation. Additionally, the Department has not included any charges included in the rate that are covered by brokerage and handling charges that the respondent incurred and are valued by the reported market economy purchase or the appropriate surrogate value in the calculation.[64]

Because PBCD and SKF had shipments of subject merchandise to a third country for further manufacturing during the POR, we added the additional international freight cost to NV, and applied the surrogate value for international freight from the PRC to the third country. The Department valued ocean freight using publicly available data collected from Maersk Line.[65]

For direct, indirect, and packing labor, pursuant to a recent decision by the Court of Appeals for the Federal Circuit, we have calculated an hourly wage rate to use in valuing each respondent's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable

[55] Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel; Other bars and rods, not further worked than cold-formed or cold-finished: Of circular cross-section.

[56] *See* Surrogate Value Memorandum for further analysis.

[57] *See Id.*

[58] *See Id.*

[59] *See Id.*

[60] *See Id.*

[61] *See, e.g., Wire Decking from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 32905 (June 10, 2010), and accompanying IDM at Comment 3.

[62] *See* Surrogate Value Memorandum.

[63] *See Id.*

[64] *See Id.*

[65] *See Id.*

merchandise.[66] Because this wage rate does not separate the labor rates into different skill levels or types of labor, the Department has applied the same wage rate to all skill levels and types of labor reported by the respondents.[67]

To value factory overhead, selling, general and administrative expenses and profit, the Department used the average of the ratios derived from the financial statements of three Indian producers: SKF India Limited (for the year ending on December 31, 2008), ABC Bearings Limited (for the year ending on March 31, 2009), and FAG Bearings India Limited (for the year ending on December 31, 2008).[68]

Each respondent reported that steel scrap was recovered as a by-product of the production of subject merchandise and successfully demonstrated that the scrap has commercial value, therefore, we have granted by-product offset for the quantities of these reported by-products, valued using Indian GTA data.[69]

Currency Conversion

Where appropriate, we made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margin exists for the period June 1, 2008, through May 31, 2009:

TRBs FROM THE PRC

Exporter	Weighted-average margin (percent)
Spungen-Owned Peer Bearing Company-Changshan	52.26
SKF-Owned Changshan Peer Bearing Co., Ltd	9.94
Hubei New Torch Science & Technology Co., Ltd	00.00

Disclosure and Public Comment

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[70] Rebuttals to written comments may be filed no later than five days after the written comments are filed.[71] Further, parties submitting written comments and rebuttal comments are requested to provide the Department with an additional copy of those comments on diskette.

Any interested party may request a hearing within 30 days of publication of this notice.[72] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.[73]

The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated exporter/importer- (or customer) -specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer) -specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For PBCD, SKF, and New Torch, the cash deposit rate will be their respective rates established in the final results of this review, except if the rate is zero or *de minimis* no cash deposit will be required; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 92.84 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(1) and

[66] *See Dorbest Ltd.* v. *United States,* 2009–1257 at 20 (CAFC 2010) ("*Dorbest*").

[67] *See* Surrogate Value Memorandum.

[68] *See Id.*

[69] *See Id.*

[70] *See* 19 CFR 351.309(c).

[71] *See* 19 CFR 351.309(d).

[72] *See* 19 CFR 351.310(c).

[73] *See* 19 CFR 351.310(d).

777(i)(1) of the Act, and 19 CFR 351.213.

Dated: July 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–17302 Filed 7–14–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 0648–XX52

Stanford University Habitat Conservation Plan; Extension of Comment Period

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service, Interior (DOI).

ACTION: Notice; extension of comment period.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service, are extending the comment period for our joint request for comments on the Stanford University Habitat Conservation Plan (Plan), the Draft Environmental Impact Statement (DEIS) for Authorization of Incidental Take and Implementation of the Plan, and the Implementing Agreement (IA). As of July 2, 2010, we have received comments from four organizations and individuals requesting that the comment period be extended by 45 days. In response to these requests, we are extending the comment period for an additional 45 days.

DATES: We must receive any written comments on the DEIS, Plan, and IA by August 30, 2010, at 5 p.m. Pacific Time.

ADDRESSES: Comments concerning the DEIS, Plan, and IA can be sent by U.S. Mail or facsimile to:

1. Gary Stern, San Francisco Bay Region Supervisor, National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404; facsimile (707) 578–3435; or

2. Eric Tattersall, Chief, Conservation Planning and Recovery Division, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825; facsimile (916) 414–6713.

Comments concerning the DEIS, Plan, and IA can also be sent by email to: *Stanford.HCP@noaa.gov*. Include the document identifier: Stanford HCP.

FOR FURTHER INFORMATION CONTACT: Gary Stern (NMFS), 707–575–6060, or Sheila Larsen (USFWS), 916–414–6600.

SUPPLEMENTARY INFORMATION: We are extending the comment period for our jointly issued Stanford University Habitat Conservation Plan, a DEIS for Authorization of Incidental Take and Implementation of the Plan, and IA. On April 12, 2010, we opened a 90–day public comment period via a **Federal Register** notice (75 FR 18482). We then made a correction to our comment period closing date via a May 18, 2010 (75 FR 27708), notice. A public meeting was held at Stanford, CA on May 25, 2010. As of July 2, 2010, we received comments from four organizations and individuals requesting an extension of the comment period by 45 days. In response to requests from the public, we now extend the comment period for an additional 45 days. The comment period will now officially close on August 30, 2010, at 5 p.m. Pacific Time.

Background

For background information, see our April 12, 2010, notice (75 FR 18482).

Document Availability

Copies of the DEIS, Plan, and IA are available on the NMFS Southwest Region website at *http://swr.nmfs.noaa.gov* or the U.S. Fish and Wildlife Service's Sacramento Fish and Wildlife Office Website at *http://www.fws.gov/sacramento/*.

Alternatively, the documents are available for public review during regular business hours from 9 a.m. to 5 p.m. at the National Marine Fisheries Service's Santa Rosa Office and the U.S. Fish and Wildlife Service's Sacramento Fish and Wildlife Office (see **ADDRESSES**). Individuals wishing copies of the DEIS, Plan, or IA should contact either of the Services by telephone (see **FOR FURTHER INFORMATION CONTACT**) or by letter (see **ADDRESSES**).

Additionally, hardcopies of the DEIS, Plan, and IA are available for viewing, or for partial or complete duplication, at the following locations:

1. Social Sciences Resource Center, Green Library, Room 121, Stanford, CA 94305.

2. Palo Alto Main Library, 1213 Newell Road, Palo Alto, CA 94303.

Dated: July 12, 2010.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: July 9, 2010.

Alexandra Pitts,

Deputy Region Director, Pacific Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2010–17298 Filed 7–14–10; 8:45 am]

BILLING CODES 3510–22–S, 4310–55–S

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Cleantech Trade & Investment Mission

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce's International Trade Administration, U.S. and Foreign Commercial Service (USFCS), and Economic Development Administration (EDA) are holding the first ever U.S. Clean Technology Trade & Investment Mission to Lyon, France, November 29–December 2, 2010 and to Brussels, Belgium, December 2–4, 2010. This joint mission will be led by senior Department of Commerce officials Brian McGowan, Deputy Assistant Secretary for Economic Development, and Karen Zens, Deputy Assistant Secretary for International Operations (OIO) of the USFCS. This mission is designed to advance President Obama's economic growth initiatives and Secretary Locke's goal of simplifying access to the Department of Commerce's diverse suite of resources–all for the purpose of employment generation. This initiative will support both bureaus' job creation goals by increasing exports and attracting foreign direct investment (FDI), placing a particular emphasis on the clean technology sector.

This mission is especially significant as it includes, for the first time ever, both U.S. companies and delegates from U.S. communities. Please see the section titled "Participation Requirements" below for more information on community delegates and selection criteria that will be used to evaluate applicants. While traditional trade missions are limited to business-to-business connections, the addition of communities in this model provides much broader access to U.S. companies by leveraging regional business networks. Community delegates will

focus on clean technologies as a key component of their regional strategies for increasing exports and attracting FDI. Therefore, this new model allows the mission to advance a variety of Presidential and Department of Commerce priorities simultaneously, including job creation, export development, attracting FDI, building the green economy, and advancing regional innovation clusters.

Commercial Setting

France

France is an economic and political leader in the Eurozone due to its size, location, large economy, membership in European organizations, and energetic diplomacy. With a GDP of $2.865 trillion,[1] France is the world's fifth-largest economy. France's economy also ranks the second highest in trade volume for Western Europe (after Germany).

Both trade and investment between the U.S. and France are strong and are key factors for companies and communities to participate in the mission. On average, over 1 billion dollars in commercial transactions take place between France and the U.S. every day, with the U.S. being France's sixth largest supplier and its sixth largest customer. France ranks as the United States' eighth largest trading partner for total trade. Currently, there are approximately 2,300 French subsidiaries in the U.S. that provide more than 520,000 jobs and that generate an estimated $235 billion in turnover annually. As for investment, the U.S. is the top destination for French investments worldwide. In 2008, French direct investment inflow to the U.S. was approximately $14 billion. Foreign firms have invested in the U.S. through acquisitions and with greenfield investments. Between 2004 and 2008, France's FDI stock in the United States increased from $138 billion to over $163 billion. This makes this mission an ideal platform for companies and communities to position themselves for investment and export successes. Further, French FDI to the U.S. supports almost 500,000 jobs. Concurrently, the U.S. is the largest foreign direct investor in France, employing over 650,000 French citizens with aggregate investment estimated at $75 billion in 2008. This makes the U.S. more attractive to French investors and foreign direct investment.

[1] All currencies given are in U.S. dollars.

Renewable Energy

France possesses vast renewable energy resources, including wind, geothermal energy, and biomass, all of which have shown substantial growth in recent years. France is also currently ranked 2nd highest in the EU in terms of biofuel production and use. A continued increase in the level of production helps consolidate the nation's position. Both tax reductions and capital grants are in place to promote biofuels. In addition, major potential exists in the area of solid biomass. Biomass accounts for two thirds of all the renewables used in France today and hydro power for another third.

As France's government sets new goals in terms of green energy, U.S. communities have a window of opportunity to promote their regional businesses to play a pivotal role in providing the means to increase renewable energy capacity. Wind and solar power especially are at the core of a new push by the French government to increase the renewable share of total energy consumption from 6.7 percent in 2004 to 20 percent by 2020. Also, installed capacity for photovoltaic (PV) power is to increase from 32.7 MW in 2006—about 100 times less than Germany—to 3,000 MW by 2020. In addition, 5 million solar thermal units are to be installed in buildings by 2020, 80 percent of these in homes. All these factors considered create a large market of potential buyers for U.S. businesses, and therefore provide strong job creation potential for U.S. communities that are working to develop regional innovation clusters focused on the cleantech sector.

Water Resources Equipment and Services

One of the "best prospects" for U.S. business in France is water resources equipment and services. The total French market for water treatment equipment and related services is estimated to be worth $23 billion. A stable economy and financial institutions, stronger European Union (E.U.) regulations, and greater public awareness and the increasing costs associated with polluting have played a major role in an expanding market for water treatment equipment and services. In addition, greater interest in complying with environmental regulations by national and local government officials has stimulated this market. Despite the current financial and economic challenges, the water sector is still expected to grow at a stable rate and provide continued market opportunities in a number of areas.

Best prospects include wastewater sludge treatment; installation and maintenance of stand-alone sewage treatment tanks; remote monitoring technology; and membranes and water filters. Non point source pollution management and water conservation including leak detection and reclamation are becoming of major importance.

Pollutec

Pollutec is an International Exhibition of Environmental Equipment, Technology and Services for industry and local authorities. Pollutec is a key exhibition for U.S. companies and community delegates to attend as it is the world's leading event for the environmental market with 8,422 professionals from 110 countries all in search of comprehensive solutions to the environmental and economic challenges today. This creates the perfect atmosphere to meet industry professionals and key players in order to create expansion opportunities and to publicize products and regions. In its 24th edition, Pollutec will also bring together 2,400 exhibitors offering products across a range of sectors and 75,000 trade visitors from industry, local authorities, construction and the service sector. This year especially the exhibition has seen a shift in its visitors' prime focus with 39.7% of the visitors interested in energy, more specifically renewables, energy saving and efficiency, combating greenhouse gases, and urban mobility. Companies and communities will be amongst the first to capture this shift in focus and turn it into tangible exports sales and FDI.

For four days, U.S. community delegates and companies will network with potential trading and investment partners in the cleantech sector through customized one-on-one meetings with foreign companies arranged through a DOC/Pollutec partnership. Meanwhile, they will also learn about the latest cleantech trends and technologies through the Pollutec exhibition, which will feature all the techniques for prevention and treatment of various sources of pollution and more generally the preservation and implementation of environmental preservation and sustainable development. Pollutec offers an assortment of exhibition sectors including: Treatment of pollutant gases; analysis, measurement and monitoring; energy and greenhouse gases; renewable energy; CO_2 collection and storage; eco-management; biofuel; low consumption vehicles; electric vehicles; industrial, natural, and sanitary risks; services and

sustainable development; waste treatment and services; and recycling. An outstanding conference program will also run parallel including 320 seminars, presentations, and technical conferences by experts and associations.

Belgium

Densely populated Belgium is located at the heart of Europe's most industrialized region. Belgium per capita GDP ranks among the world's highest with a total of $390.2 billion in 2008. The U.S. ranks as Belgium's 5th principal trading partner; with Belgium ranked 18th for largest U.S. trading partner. The Belgian market is small enough that a huge European-wide commitment to a new product is not necessary, yet diverse and competitive enough that it offers a representative sample of potential buyers and competitors. Belgium's trade advantages are derived from its central geographic location and its highly skilled, multilingual, and productive workforce. With a total of 10.5 million people, the population density is the second highest in Europe, after the Netherlands, and is heavily reliant on international trade for its prosperity. Belgium's central location in the wealthy region of Europe makes the country an ideal gateway for exports to Europe. Within a radius of 300 miles, 140 million EU consumers can be reached (equivalent to almost 50% of the U.S. population) representing 60% of Europe's purchasing power. The government has focused its national reform program on key priorities intended to achieve long-term sustainable growth prospects, such as protecting the environment.

Belgium is one of the top 20 markets for U.S. environmental exports. U.S. green exports to Belgium grew by 50% since 2002 and in 2009, U.S. green exports reached ½; billion dollars (40% water, 30% air pollution control, 24% solid waste, and 6% other). These exports include products such as chemicals and supplies, and services such as consulting and engineering. Some of Belgian's leading commercial sectors for U.S. export and investment are solid waste disposal, water and wastewater, air, green building, and renewable energy.

The total stock of Belgian FDI in the U.S. was $18.6 billion in 2008, making it the 15th largest direct investor in the U.S. The flow of FDI from Belgium to the U.S. was negative $5.8 billion in 2008, a substantial decrease from the $13.9 million inflow to the U.S. in 2007. However, overall between 2004 and 2008, Belgian FDI stock in the United States increased from $12.6 billion to $18.6 billion. Belgian FDI in the U.S. supports 141,000 jobs.

Invest In America

Belgium has also hosted two Department of Commerce Invest In America (IIA) events, and those events resulted in greater success than other IIA events in any other country to date. The first IIA event from just a year and a half ago has produced five investment successes in California, Indiana, Virginia and Florida. However there are other successes that have not yet been recorded making it an even larger success. The most recent IIA event held a few months ago has already produced three investments. The Council of American States in Europe (C.A.S.E.), which helps European companies locate production sites or sales and distribution operations for their products and services in the U.S., has stated emphatically that Brussels holds the most qualified participants and generates the most investment results compared with other investment roadshows. The past events have attracted participants from the Netherlands, Germany, France and the UK, and we expect similarly broad participation in this portion of the mission as well.

Water & Wastewater

In 2009, 40% of U.S. environmental exports to Belgium are related to water and wastewater. This equaled over USD 200 million in products and services. Trends and best prospects for this sector are infrastructure projects to build wastewater treatment plants or more specifically small—scale "start to finish" wastewater treatment projects or water filtration systems for drinking water.

Solid Waste Disposal and Treatment

As Belgium faces numerous pollution problems, they realize that proper management of solid waste is a central pillar of forward-looking, sustainable environmental policies. As a result, it is attempting to figure out how to minimize the environmental impacts from waste treatment, while optimizing energy and material recovery and minimizing the costs.

In 2009 24% of U.S. environmental exports to Belgium were related to solid waste, recycling and soil remediation. This equaled USD 110 million in products and services. Compared to other EU countries, Belgium is at the forefront of solid waste disposal and treatment. For example, Belgium has a voluntary waste policy program. This means that municipalities, under certain agreements, can receive subsidies by achieving pre-specified residential solid waste targets. Also, through their advanced separate trash collection programs, the residual waste items in Flanders (Flemish speaking part of Belgium) have been reduced to about 160 kg per capita, per year whereas the European average for waste items is about 320 kg per capita. Best prospects for U.S. firms in this sector include but are not limited to plastic sorting technology, waste separation, selective collection systems, and waste-to-energy technologies.

It is also important to note that a trade and investment mission to Belgium does not preclude exposure and partnership opportunities with other European countries. On the contrary, groups from other countries operate a large part of the Belgian waste market, making Belgium an optimal choice for U.S. companies and communities to pursue trade and FDI opportunities.

Energy

The energy sector has long been one of Belgium's leading industries. Current shifts such as de-regulation and liberalization, the discussion on the phasing or non-phasing out of nuclear energy and the push for renewable energy creates a great export opportunity to U.S. companies to enter the market. Nuclear energy still accounts for more than 50% of Belgium's electricity production. However, under the efforts from the former "green" government to phase out nuclear energy between 2015 and 2025, there is major room for improvement on energy efficiency. A commission of experts concluded that phasing out nuclear energy should be compensated by the construction of gas plants, the exploitation of wind energy, biomass and cogeneration and a reduction in electricity consumption, or higher efficiency of electricity production. Each region actively promotes these new technologies through various financial incentives. The level of subsidies varies according to the type of enterprise and the introduction of new energy efficiency policies, particularly environmental. This drive towards clean energy provides a prime opportunity for U.S. cleantech regional innovation clusters to boost exports to Belgium.

Mission Goals

- Support the President's initiative to double exports during the next five years to support 2 million American jobs by connecting U.S. communities and companies with potential European trading partners.
- Promote the U.S. green economy by connecting representatives of U.S. regional innovation clusters focused on

cleantech with potential foreign investors and trading partners.

- Progress in addressing cleantech market access barriers to trade and investment between participating nations.
- Increase awareness of President Obama's priorities in promoting exports.
- Welcome foreign direct investment in the cleantech sector.
- Help companies gain valuable international business experience in the rapidly growing renewable energy and cleantech market.
- Help U.S. communities strengthen their engagement in the worldwide marketplace, which will lead to increased exports and FDI, and, in turn, job creation.

Mission Scenario

Participants will gain from operating on a two track mission: Export promotion and foreign direct investment attraction. Companies will promote their products and services while communities will promote the competitiveness of their economic regions as promising investment opportunities for foreign companies. U.S. companies and communities will benefit through open opportunities via matchmaking support to facilitate discussions with international firms at Pollutec in Lyon, and in networking forums in Brussels. ITA will be able to expand its trade mission model from a "U.S. company to foreign company" to "U.S. community to foreign company" format. As each U.S. community represents many companies, this format offers the potential for exponential growth in U.S. exports and of FDI in the U.S.

Timetable

- The proposed schedule allows for four days in Lyon and two days in Brussels.

Day of week	Date	Activity
Monday	Nov 29, Lyon	Clean technology site visit organized by ERAI (Rhone–Alps Economic Development Agency) TBC. Delegation Greeting Briefing by ERAI and U.S. Commercial Service. Social/networking mixer with ERAI TBC.
Tuesday	Nov 30, Lyon	Exhibition and Conference Opening ceremonies. U.S. Technology Country of Honor Networking Luncheon TBC Conference presentations. Evening Lyon City Hall Reception—500 guests (U.S. delegation as the guest of honor) TBC.
Wednesday	Dec 1, Lyon	Conference Presentations. One-on-One Matchmaking. U.S. Pavilion Exhibition activities.
Thursday	Dec 2, Lyon/Brussels	Conference Presentations. One-on-One Matchmaking. U.S. Pavilion Exhibition activities. U.S. Pavilion afternoon onsite reception. Depart for Brussels via train or air. U.S. Ambassador's Reception (TBC).
Friday	Dec 3, Brussels	Company Delegates Visit to Nike Logistics Center/Business Roundtable. Community Delegates hold Invest in America program at U.S. Commercial Service Offices. Combined business networking luncheon. NATO Visit to discuss cleantech needs for new NATO/HQ.
Saturday	Dec 4, Brussels	Depart.

Package Includes:

- Matchmaking and networking.
- Access to VIP lounge.
- Networking receptions and luncheon (TBC).
- U.S. Pavilion exposure including promotion through shared exhibit space (literature display) and meeting point.
- Access to Pollutec trade exhibition, conference, and presentations.
- Visit to cleantech cluster in Rhone-Alps region (TBC).

Participation Requirements

All parties interested in participating in the U.S. Cleantech Trade & Investment Mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A maximum of 20 companies and 20 community delegates will be considered for the mission.

I. *Fees and Expenses:* After a company or community delegate has been selected to participate on the mission, a participation fee paid to the U.S. Department of Commerce is required.

The participation fees are:

- Companies:
  - Large company (for one representative): $3588
  - Small or medium-sized (less than 500 employees) company (for one representative): $3395
- Community delegate (one person): $2195 [2]
- Additional representatives (company or community delegate): $400 per participant

Expenses for travel, including airfare, lodging, in-country transportation (except for airport transfers and bus transportation to/from group meetings), meals, and incidentals, will be the responsibility of each mission participant.

Companies and community delegates can also choose to separately purchase their own exhibit in the U.S. Pavilion. Hotels are at a premium and sell out quickly; an early commitment to Pollutec is highly recommended.

II. Conditions for Participation:

All Applicants, whether a company or a community delegate, must:

- Submit a completed and signed mission application, and, if selected, a signed Participation Agreement, and a completed Market Interest Questionnaire.

[2] The Department continues to review the fee for community delegate participation and options for direct financing of the economic development component mission expenses, which could lower the cost for community delegates. Please see the trade mission website at [insert web address] for the most current information.

- Certify that the products and services to be promoted through the mission are either produced in the United States or marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.
- If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

Companies must include adequate information on:

- The company's products and/or services, primary market objectives, and goals for participation, and previous company activities or initiatives participated in to advance regional economic development.

Community Delegates may be a:

- State or local government official,
- University official,
- Non-profit representative, or
- Representative of an EDA-recognized regional entity.

In addition, each *Community Delegate* must be

- The authorized representative of the governmental entity or entities responsible for implementing a regional, State, or local economic development strategy. At the time of application, a community delegate must demonstrate that they are the authorized representative by providing documentation as follows:
  - For delegates representing the entity responsible for implementing a regional plan and EDA-recognized regional entities, the delegate must provide either:
  - A letter from the director or governing body of the regional entity, or
  - A letter or resolution from each governmental entity that makes up a region (for example, a resolution passed by the county commission of each county that makes up a region),
  - For delegates representing a State, the delegate must provide a letter from the applicable Governor or the Governor's designated representative, and
  - For delegates representing a local government, the delegate must provide a resolution passed by or letter from the local government (for example, a letter from the city's mayor or a resolution passed by the county commission, as applicable).
- The Department of Commerce may consider applications from non-profit organizations that represent such communities on a national basis. Authorized representative documentation is not required for such organizations.
- *Community Delegates* must demonstrate at the time of application how their community's economic development strategy promotes increased exports and foreign direct investment in general, and the green economy in particular.
- Additional representatives accompanying community delegates must adhere to the selection criteria applicable to community delegates.

III. Selection Criteria for Participation: The following factors will be used to select participants:

- Companies:
  - Suitability of the company's products or services for the renewable energy and cleantech market,
  - Participation in coordinated economic development strategies for their community,
  - Potential for business in France and Belgium, including the likelihood of exports resulting from the mission,
  - Consistency of the applicant's goals and objectives with the stated scope of the mission.
- Community delegates:
  - Consistency of the community's economic strategic plan with the stated scope of this mission,
  - Broad U.S. geographic diversity,
  - Industry cluster representation related to advancing the green economy, and
  - Community economic distress levels.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, e-mail, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The ITA and EDA will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies. Recruitment for the mission will begin immediately and close on August 15, 2010 for community delegates and October 15, 2010 for companies. The staggered timeline allows for logistical flexibility for community delegates. Applications received after that time will be considered only if space and scheduling constraints permit.

Information can also be obtained by contacting the mission contacts listed below.

Contacts

Companies, please contact:

U.S. Commercial Service, Name: Teresa Yung, *E-mail: Teresa.Yung@trade.gov, Phone:* (202) 482–5496;

Community delegates, please contact:

Economic Development Administration, *Name:* Bryan Borlik, *E-mail: BBorlik@eda.doc.gov.*

Teresa Yung,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–17203 Filed 7–14–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[OMB Control Number 0704–0252]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 251, Contractor Use of Government Supply Sources

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the

proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through November 30, 2010. DoD proposes that OMB extend its approval for these collections to expire three years after the approval date.

DATES: DoD will consider all comments received by September 13, 2010.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0252, using any of the following methods:

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

○ *E-mail: dfars@acq.osd.mil.* Include OMB Control Number 0704–0252 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, 703–602–1302. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dp/dars/dfars.html.*

Paper copies are available from Ms. Meredith Murphy, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 251, Contractor Use of Government Supply Sources, and the associated clauses at DFARS 252.251–7000, Ordering from Government Supply Sources; and 252.251–7001, Use of Interagency Fleet Management System (IFMS) Vehicles and Related Services; OMB Control Number 0704–0252.

Needs and Uses: This information collection permits contractors to—

• Place orders under Federal Supply Schedule contracts and requirements contracts or for Government stock. The information enables DoD to evaluate whether a contractor is authorized to place such orders.

• Submit requests for use of Government vehicles under the Interagency Fleet Management System (IFMS) and obtain related services. The information submitted enables DoD to evaluate whether the contractor is authorized such use.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 5,250.

Number of Respondents: 3,500.

Responses per Respondent: approximately 3.

Annual Responses: 10,500.

Average Burden per Response: approximately 30 minutes.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.251–7000, Ordering from Government Supply Sources, requires a contractor to provide a copy of an authorization when placing an order under a Federal Supply Schedule, a Personal Property Rehabilitation Price Schedule, or an Enterprise Software Agreement.

The clause at DFARS 252.251–7001, Use of Interagency Fleet Management System Vehicles and Related Services, requires a contractor to submit a request for use of Government vehicles when the contractor is authorized to use such vehicles in the performance of Government contracts.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–17256 Filed 7–14–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement and Overseas Environmental Impact Statement for Navy Hawaii-Southern California Training and Testing and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508), and Executive Order 12114, the Department of the Navy (DON) announces its intent to prepare an Environmental Impact Statement (EIS) and Overseas EIS (OEIS) to evaluate the potential environmental effects associated with military readiness training and research, development, testing, and evaluation (RDT&E) activities (hereinafter referred to as "training and testing" activities) conducted within the Hawaii-Southern California Training and Testing (HSTT) study area. The HSTT study area combines the at-sea portions of the Hawaii Range Complex, the Southern California Range Complex (including the San Diego Bay); the Silver Strand Training Complex; areas where vessels transit between the Hawaii Range Complex and the Southern California Range Complex; and select Navy pierside locations. This EIS and OEIS is being prepared to renew and combine current regulatory permits and authorizations; address current training and testing not covered under existing permits and authorizations; and to obtain those permits and authorizations necessary to support force structure changes and emerging and future training and testing requirements.

The DON will invite the National Marine Fisheries Service to be a cooperating agency in preparation of this EIS and OEIS.

DATES AND ADDRESSES: Six public scoping meetings will be held between 4 p.m. and 8 p.m., unless otherwise stated, on the following dates and at the following locations:

1. Wednesday, August 4, 2010, 3:30 p.m. to 7:30 p.m., Point Loma/Hervey Branch Library, Community Room, 3701 Voltaire Street, San Diego, CA.

2. Thursday, August 5, 2010, Lakewood High School, Room 922/924, 4400 Briercrest Avenue, Lakewood, CA.

3. Tuesday, August 24, 2010, Kauai Community College Cafeteria, 3–1901 Kaumuali'i Highway, Lihue, HI.

4. Wednesday, August 25, 2010, Disabled American Veterans Hall, Weinberg Hall, 2685 North Nimitz Highway, Honolulu, HI.

5. Thursday, August 26, 2010, Hilo High School Cafeteria, 556 Waianuenue Avenue, Hilo, HI.

6. Friday, August 27, 2010, Maui Waena Intermediate School Cafeteria, 795 Onehee Avenue, Kahului, HI.

Each of the six scoping meetings will consist of an informal, open house session with informational stations staffed by DON representatives. Meeting details will be announced in local newspapers. Additional information concerning meeting times is available on the EIS and OEIS Web page located at: *http://www.HawaiiSOCALEIS.com.*

FOR FURTHER INFORMATION CONTACT: Kent Randall, Naval Facilities Engineering Command, Southwest. Attention: HSTT EIS/OEIS, 1220 Pacific Highway, Building 1, Floor 5, San Diego, CA

92132, or Meghan Byrne, Naval Facilities Engineering Command, Pacific. Attention: HSTT EIS/OEIS, 258 Makalapa Dr, Ste 100, Building 258, Floor 3, Room 258C210, Pearl Harbor, HI 96860–3134.

SUPPLEMENTARY INFORMATION: The DON's proposed action is to conduct training and testing activities that include the use of active sonar and explosives within the at-sea portions of existing DON training range complexes around the Hawaiian Islands and off the coast of Southern California (known as the HSTT study area). While the majority of these training and testing activities take place in operating and warning areas and/or on training and testing ranges, some training activities, such as sonar maintenance and gunnery exercises, are conducted concurrent with normal transits and may occur outside of DON operating and warning areas.

The HSTT study area combines the at-sea portions of the following range complexes: Hawaii Range Complex, Southern California Range Complex, and Silver Strand Training Complex. The existing western boundary of the Hawaii Range Complex is being expanded 60 miles to the west to the International Dateline. The HSTT study area also includes the transit route between Hawaii and Southern California as well as DON and commercial piers at Pearl Harbor, HI and San Diego, CA where sonar may be tested.

The proposed action is to conduct military training and testing activities in the HSTT study area. The purpose of the proposed action is to achieve and maintain Fleet Readiness to meet the requirements of Title 10 of the U.S. Code, which requires DON to "maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas." The proposed action would also allow DON to attain compliance with applicable environmental authorizations, consultations, and other associated environmental requirements, including those associated with new platforms and weapons systems, for example, the Low Frequency Anti-Submarine Warfare capability associated with the Littoral Combat Ship.

The alternatives that will be analyzed in the HSTT EIS and OEIS meet the purpose and need of the proposed action by providing the level of training that meets the requirements of Title 10, thereby ensuring that Sailors and Marines are properly prepared for operational success. Similarly, the level of RDT&E proposed for the HSTT study area is necessary to ensure that Sailors and Marines deployed overseas have the latest proven military equipment. Accordingly, the alternatives to be addressed in the HSTT EIS and OEIS are:

1. No Action—The No Action Alternative continues baseline training and testing activities and force structure requirements as defined by existing DON environmental planning documents. This documentation includes the Records of Decision for the Hawaii and Southern California range complexes and the Preferred Alternative for the Silver Strand Training Complex Draft EIS and OEIS.

2. Alternative 1—This alternative consists of the No Action alternative, plus expansion of the overall study area boundaries, and updates and/or adjustments to locations and tempo of training and testing activities. This alternative also includes changes to training and testing requirements necessary to accommodate force structure changes, and the development and introduction of new vessels, aircraft, and weapons systems.

3. Alternative 2—Alternative 2 consists of Alternative 1 with an increased tempo of training and testing activities. This alternative also allows for additional range enhancements and infrastructure requirements.

Resource areas that will be addressed because of the potential effects from the proposed action include, but are not limited to: Ocean and biological resources (including marine mammals and threatened and endangered species); air quality; airborne soundscape; cultural resources; transportation; regional economy; recreation; and public health and safety.

The scoping process will be used to identify community concerns and local issues to be addressed in the EIS and OEIS. Federal agencies, state agencies, local agencies, Native American Indian Tribes and Nations, the public, and interested persons are encouraged to provide comments to the DON to identify specific issues or topics of environmental concern that the commenter believes the DON should consider. All comments provided orally or in writing at the scoping meetings, will receive the same consideration during EIS and OEIS preparation. Written comments must be postmarked no later than September 14, 2010, and should be mailed to: Naval Facilities Engineering Command, Southwest, 2730 McKean Street, Building 291, San Diego, CA 92136–5198, Attention: Mr. Kent Randall—HSTT EIS/OEIS.

Dated: July 9, 2010.

D.J. Werner

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–17234 Filed 7–14–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement and Overseas Environmental Impact Statement for Navy Atlantic Fleet Training and Testing and To Announce Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508), and Executive Order 12114, the Department of the Navy (DON) announces its intent to prepare an Environmental Impact Statement (EIS) and Overseas EIS (OEIS) to evaluate the potential environmental effects associated with military readiness training and research, development, testing, and evaluation (RDT&E) activities (hereinafter referred to as "training and testing" activities) conducted within the Atlantic Fleet Training and Testing (AFTT) study area. The AFTT study area includes the western North Atlantic Ocean along the east coast of North America (including the area where the Undersea Warfare Training Range will be used), the Chesapeake Bay, and the Gulf of Mexico. Also included are select Navy pierside locations and channels. The AFTT study area does not include the Arctic. This EIS and OEIS is being prepared to renew and combine current regulatory permits and authorizations; address current training and testing not covered under existing permits and authorizations; and to obtain those permits and authorizations necessary to support force structure changes and emerging and future training and testing requirements.

The DON will invite the National Marine Fisheries Service to be a cooperating agency in preparation of this EIS and OEIS.

DATES AND ADDRESSES: Five public scoping meetings will be held between 4 p.m. and 8 p.m. on the following dates and at the following locations:

1. Monday, August 23, 2010, Hynes Convention Center, 900 Boylston Street, Boston, MA.

2. Wednesday, August 25, 2010, Virginia Beach Convention Center, 1000 19th Street, Virginia Beach, VA.

3. Thursday, August 26, 2010, Crystal Coast Civic Center, 3505 Arendell Street, Morehead City, NC.

4. Tuesday, August 31, 2010, Prime F. Osborn III Convention Center, 1000 Water Street, Jacksonville, FL.

5. Wednesday, September 1, 2010, Gulf Coast Community College, 5230 West Highway 98, Panama City, FL.

Each of the five scoping meetings will consist of an informal, open house session with informational stations staffed by DON representatives. Meeting details will be announced in local newspapers. Additional information concerning meeting times is available on the EIS and OEIS Web page located at: *http://www.AFTTEIS.com.*

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command, Code EV22LL (AFTT EIS/OEIS Project Manager), 6506 Hampton Boulevard, Norfolk, VA 23508–1278, telephone number 757–322–4645.

SUPPLEMENTARY INFORMATION: The DON's proposed action is to conduct training and testing activities that include the use of active sonar and explosives within the at-sea portions of existing range complexes and on RDT&E ranges within the AFTT study area (including the area where the Undersea Warfare Training Range will be used). The boundary of the AFTT study area begins seaward from the mean high water line and moves east to the 45 degree west longitude line, generally following the 2nd Fleet area of responsibility (except for the Arctic). The AFTT study area covers approximately 2.6 million square nautical miles of ocean area, which includes Navy operating areas (sea space) and warning areas (airspace). While the majority of Navy training and many testing activities take place within operating and warning areas and/or on RDT&E ranges, some activities, such as sonar maintenance and gunnery exercises, are conducted concurrent with normal transits and occur outside of operating and warning areas.

The following DON training range complexes fall within the AFTT study area: Northeast Range Complex, Virginia Capes (VACAPES) Range Complex, Navy Cherry Point Range Complex, Jacksonville Range Complex, Key West Range Complex, and Gulf of Mexico (GOMEX) Range Complex. The DON RDT&E ranges in the AFTT study area include: Naval Undersea Warfare Center Newport, Newport, RI; Naval Surface Warfare Center (NSWC) Panama City Division, FL; and NSWC Carderock Division South Florida Test Facility, FL. The piers and channels in the AFTT study area are located at the following Navy ports, Naval Shipyards, and Navy contractor shipyards: Bath Iron Works, ME; Portsmouth Naval Shipyard, ME; Electric Boat and Naval Base Groton, CT; Northrop Grumman Shipbuilding—Newport News, VA; Norfolk Naval Base, VA; Norfolk Naval Shipyard, VA; Naval Amphibious Base Little Creek, VA; Naval Base Kings Bay, GA; Naval Base Mayport, FL; Port Canaveral, FL; Northrop Grumman Shipbuilding—Avondale, LA; Northrop Grumman Shipbuilding—Ingalls, MS; and, Halter Moss Point Shipyard, MS.

The proposed action is to conduct military training and testing activities in the AFTT study area. The purpose of the proposed action is to achieve and maintain Fleet Readiness to meet the requirements of Title 10 of the U.S. Code, which requires the DON to "maintain, train, and equip combat-ready naval forces capable of winning wars, deterring aggression, and maintaining freedom of the seas." The proposed action would also allow the DON to attain compliance with applicable environmental authorizations, consultations, and other associated environmental requirements, including those associated with new platforms and weapons systems, for example, the Low Frequency Anti-Submarine Warfare capability associated with the Littoral Combat Ship.

The alternatives that will be analyzed in the AFTT EIS and OEIS meet the purpose and need of the proposed action by providing the level of training that meets the requirements of Title 10, thereby ensuring that Sailors and Marines are properly prepared for operational success. Similarly, the level of RDT&E proposed for the AFTT study area is necessary to ensure that Sailors and Marines deployed overseas have the latest proven military equipment. Accordingly, the alternatives to be addressed in the AFTT EIS and OEIS are:

1. No Action—The No Action Alternative continues baseline training and testing activities and force structure requirements as defined by existing DON environmental planning documents. This documentation includes the Records of Decision for Atlantic Fleet Active Sonar Training (AFAST), VACAPES, Navy Cherry Point, Jacksonville, and NSWC Panama City Division, and the Preferred Alternative for the GOMEX Draft EIS and OEIS.

2. Alternative 1—This alternative consists of the No Action alternative, plus expansion of the overall study area boundaries, and updates and/or adjustments to locations and tempo of training and testing activities. This alternative also includes changes to training and testing requirements necessary to accommodate force structure changes, and the development and introduction of new vessels, aircraft, and weapons systems.

3. Alternative 2—Alternative 2 consists of Alternative 1 with an increased tempo of training and testing activities. This alternative also allows for additional range enhancements and infrastructure requirements.

Resource areas that will be addressed due to the potential effects from the proposed action include, but are not limited to: Ocean and biological resources (including marine mammals and threatened and endangered species); air quality; airborne soundscape; cultural resources; transportation; regional economy; recreation; and public health and safety.

The scoping process will be used to identify community concerns and local issues to be addressed in the EIS and OEIS. Federal agencies, state agencies, local agencies, Native American Indian Tribes and Nations, the public, and interested persons are encouraged to provide comments to the DON to identify specific issues or topics of environmental concern that the commenter believes the DON should consider. All comments provided orally or in writing at the scoping meetings will receive the same consideration during EIS and OEIS preparation. Written comments must be postmarked no later than September 14, 2010, and should be mailed to: Naval Facilities Engineering Command, Atlantic, Code: EV22LL (AFTT EIS/OEIS Project Manager), 6506 Hampton Boulevard, Norfolk, VA, 23508–1278.

Dated: July 9, 2010.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–17237 Filed 7–14–10; 8:45 am]

BILLING CODE 3810–FF–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 16, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. 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 12, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Communications and Outreach

Type of Review: Revision.

Title of Collection: The State Education Agency Directory (SEAD).

OMB #: 1860–0508—(formerly 1800–0012).

Agency Form Number(s): N/A.

Frequency of Responses: On Occasion.

Affected Public: State, Local, or Tribal Government, State Educational Agencies (SEAs) or Local Educational Agencies (LEAs).

Estimated Number of Annual Responses: 1,800.

Estimated Annual Burden Hours: 373.

Abstract: The State Education Agency Directory (SEAD), formerly known as the Education Resource Organizations Directory (EROD), is an electronic directory of educational resource organizations and services available at the state, regional, and national level. The goal of this directory is to help individuals and organizations identify and contact organizational sources of information and assistance on a broad range of education-related topics. Users of the directory include diverse groups such as teachers, librarians, students, researchers, and parents.

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 4261. 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. 2010–17310 Filed 7–14–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. DOE invites public comment on the subject proposal: (a) Whether the proposed collection of information is necessary for the proper development of the study, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information to be collected; and (c) ways to minimize the burden of the collection of information on respondents, including through additional use of information technology.

DATES: Comments regarding this collection must be received on or before August 16, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

And to

Peter Whitman, Office of Policy and International Affairs, PI–42, Department of Energy, 1000 Independence Ave., SW., Washington DC 20585, 202–586–1010, fax 202–586–5391, *peter.whitman@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Whitman, 202–586–1010, *peter.whitman@hq.doe.gov*. The collection instrument may be found at *http://www.pi.energy.gov*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. New; (2) *Information Collection Request Title:* RFS2 Small Refinery Survey 2010; (3) *Type of Request:* New collection; (4) *Purpose:* The Department of Energy is preparing a study to determine if small refiners would suffer "disproportionate economic hardship" through compliance with the Renewable Fuel Standard (RFS). This optional survey allows respondents to submit data that will provide technical support for a determination of disproportionate economic hardship. Upon such a determination from DOE, EPA may extend the exemption from compliance with the RFS program for at least two years. (5) *Number of Respondents:* 50, this is a one-time collection; (6) *Estimated Number of Total Responses:* 50; (7) *Estimated Number of Burden*

Hours: 15; (8) *Estimated Reporting and Recordkeeping Cost Burden:* None.

Statutory Authority: Section 211(o)(9)(A)(ii) of the Clean Air Act, as amended by the Energy Policy Act of 2005 (EPACT 2005), requires that DOE conduct a study for the Administrator of the Environmental Protection Agency (EPA) assessing whether the renewable fuel standard (RFS) would impose a "disproportionate economic hardship" on small refineries. This survey will provide technical information to support the study.

Issued in Washington, DC on *July 8, 2010.*

Carmen Difiglio,

Deputy Assistant Secretary for Policy Analysis, Office of Policy and International Affairs.

[FR Doc. 2010–17288 Filed 7–14–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Electricity Delivery and Energy Reliability; Notice of Reestablishment of the Electricity Advisory Committee

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, 5 U.S.C., App., and in accordance with Title 41 of the Code of Federal Regulations, Section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Electricity Advisory Committee has been reestablished for a two-year period.

The Committee will provide advice to the Office of Electricity Delivery and Energy Reliability (DOE), on its programs to modernize the nation's electric power system. The Secretary of Energy has determined that reestablishment of the Electricity Advisory Committee is essential to the conduct of the Department's business and is in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issues in implementation of those Acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on July 12, 2010.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2010–17287 Filed 7–14–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Solicitation of Nominations for Appointment as a Member of the Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of solicitation of members.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2, the U.S. Department of Energy is soliciting nominations for candidates to fill vacancies on the Biomass Research and Development Technical Advisory Committee.

DATES: Deadline for Technical Advisory Committee member nominations is July 30, 2010.

ADDRESSES: The nominee's name, resume, biography, and any letters of support must be submitted via one of the following methods:

1. E-mail to *laura.mccann@ee.doe.gov* or *christina.fagerholm@ee.doe.gov.*
2. Facsimile to 202–586–1640, Attn: Laura McCann.
3. Overnight delivery service to the Designated Federal Official for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Stop EE–2E, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Laura McCann, Designated Federal Official for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766; e-mail: *laura.mccann@ee.doe.gov* or Christina Fagerholm at (202) 586–2933; e-mail: *christina.fagerholm@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The Biomass Research and Development Act of 2000 (Biomass Act) [Pub. L. 106–224] requires cooperation and coordination in biomass research and development (R&D) between the U.S. Department of Agriculture (USDA) and U.S. Department of Energy (DOE). The Biomass Act was repealed in June 2008 by section 9001 of the Food, Conservation and Energy Act of 2008 (FCEA) [Pub. L. 110–246, 122 Stat. 1651, enacted June 18, 2008, H.R. 6124].

FCEA section 9008(d) establishes the Biomass Research and Development Technical Advisory Committee (Committee) and lays forth its meetings, coordination, duties, terms and membership types. The Committee must meet quarterly and should not duplicate the efforts of other Federal advisory committees. The Committee advises the DOE and USDA points of contact with respect to the Biomass R&D Initiative (Initiative) and also makes written recommendations to the Biomass R&D Board (Board). Those recommendations regard whether: (A) Initiative funds are distributed and used consistent with Initiative objectives; (B) solicitations are open and competitive with awards made annually; (C) objectives and evaluation criteria of the solicitations are clear; and (D) the points of contact are funding proposals selected on the basis of merit, as determined by an independent panel of qualified peers.

The Committee members may serve up to two, three year terms and must include: (A) An individual affiliated with the biofuels industry; (B) an individual affiliated with the biobased industrial and commercial products industry; (C) an individual affiliated with an institution of higher education who has expertise in biofuels and biobased products; (D) 2 prominent engineers or scientists from government or academia who have expertise in biofuels and biobased products; (E) an individual affiliated with a commodity trade association; (F) 2 individuals affiliated with environmental or conservation organizations; (G) an individual associated with State government who has expertise in biofuels and biobased products; (H) an individual with expertise in energy and environmental analysis; (I) an individual with expertise in the economics of biofuels and biobased products; (J) an individual with expertise in agricultural economics; (K) an individual with expertise in plant biology and biomass feedstock development; (L) an individual with expertise in agronomy, crop science, or soil science; and (M) at the option of the points of contact, other members (REF: FCEA 2008 section 9008(d)(2)(A)). All nominees will be carefully reviewed for their expertise, leadership, and relevance to an expertise. Appointments will be made for three-year terms as dictated by the legislation.

Nominations this year are being accepted only for the following categories in order to address the Committee's needs: (C) An individual affiliated with an institution of higher education who has expertise in biofuels and biobased products; (D) 2 prominent engineers or scientists from government or academia who have expertise in biofuels and biobased products; (H) an individual with expertise in energy and environmental analysis; and (M) at the option of the points of contact, other members.

Nominations are solicited from organizations, associations, societies,

councils, federations, groups, universities and companies that represent a wide variety of biomass research and development interests throughout the country. Nominations for one individual who fits several of the categories listed above *or* for more than one person who fits one category will be accepted. In your nomination letter, please indicate the specific membership category for each nominee. Each nominee must submit their resume and biography along with any letters of support by the deadline above. All nominees will be vetted before selection.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Technical Advisory Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. Please note, however, that registered lobbyists and individuals already serving on another Federal Advisory Committee are ineligible for nomination.

Appointments to the Biomass Research and Development Technical Advisory Committee will be made by the Secretary of Energy and the Secretary of Agriculture.

Issued at Washington, DC, on July 12, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–17285 Filed 7–14–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. DW–004]

Energy Conservation Program for Consumer Products: Notice of Petition for Waiver of Whirlpool Corporation From the Department of Energy Residential Dishwasher Test Procedure, and Grant of Interim Waiver

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, notice of grant of interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes the Whirlpool Corporation (Whirlpool) petition for waiver (hereafter, "petition") from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of dishwashers. Today's notice also grants an interim waiver of the dishwasher test procedure. Through this notice, DOE also solicits comments with respect to the Whirlpool petition.

DATES: DOE will accept comments, data, and information with respect to the Whirlpool petition until, but no later than August 16, 2010.

ADDRESSES: You may submit comments, identified by case number DW–004, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include either the case number [Case No. DW–004], and/or "Whirlpool Petition" in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/ 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Instructions: All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

Any person submitting written comments must also send a copy to the petitioner, pursuant to 10 CFR 431.401(d). The contact information for the petitioner is: Mr. J.B. Hoyt, Director, Government Relations, Whirlpool Corporation, 2000 M 63, Mail Drop 3005, Benton Harbor, MI 49022, Phone: (269) 923–4647, E-mail: *j.b.hoyt@whirlpool.com.*

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC, 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE waivers and rulemakings regarding similar dishwasher products. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act ("EPCA") sets forth a variety of provisions concerning energy efficiency. Part A of Title III provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Part A includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part A authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for dishwashers is contained in 10 CFR part 430, subpart B, appendix C.

The regulations set forth in 10 CFR part 430.27 contain provisions that

enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR part 430.27(l). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR part 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR part 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR part 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 10 CFR part 430.27(a)(2) An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner. An interim waiver may be extended for an additional 180 days. 10 CFR part 430.27(h)

II. Petition for Waiver

On March 16, 2010, Whirlpool filed a petition for waiver and application for interim waiver from the test procedure applicable to dishwashers set forth in 10 CFR part 430, subpart B, appendix C. Whirlpool claims that water softeners can prevent consumer behaviors that consume additional energy and water. Whirlpool also claims that a dishwasher equipped with a water softener will minimize pre-rinsing and rewashing, and that consumers will have less reason to periodically run their dishwasher through a clean-up cycle.

Whirlpool also claims that the amount of water consumed by the regeneration operation of a water softener in a dishwasher is very small, but that it varies significantly depending on the adjustment of the softener. The regeneration operation takes place infrequently, and the frequency is related to the level of water hardness. Including this water use in the measurement of water consumption during an individual energy test cycle could overstate water use by as much as 12 percent, and energy use by as much as 6 percent, according to Whirlpool. In view of the small amount of water consumed during softener regeneration and the relative infrequency of the regeneration operation, Whirlpool is requesting approval to measure water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. This is the approach used in European Standard EN 50242, "Electric Dishwashers for Household Use—Methods for Measuring the Performance."

III. Application for Interim Waiver

Whirlpool also requests an interim waiver for particular basic models with integrated water softeners. An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. (10 CFR part 430.27(g)).

DOE determined that Whirlpool's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Whirlpool might experience absent a favorable determination on its application for interim waiver. DOE understands, however, that the current test procedure may not predict accurately the water and energy consumption of its line of dishwashers with a built-in water softener. The test procedure will only register water consumption from softener regeneration in a small fraction of test runs, producing variable results. As a result, and based on the information provided by Whirlpool, DOE determined that the test results may provide materially inaccurate comparative data.

Whirlpool provided the European Standard EN 50242, "Electric Dishwashers for Household Use—Methods for Measuring the Performance," as an alternate test procedure. This standard excludes water use due to softener regeneration from its water use efficiency measure. DOE notes that if water consumption of a regeneration operation is to be apportioned across all cycles of operation, then manufacturers would need to make calculations regarding average water hardness and average water consumption due to regeneration operations that are not currently provided for or allowed by the test procedure. DOE is considering development of an averaging procedure for use as an alternate test procedure in the decision and order on the Whirlpool waiver, and welcomes comments and data in support of such a procedure. In the meantime, use of EN 50242 would provide repeatable results, but would slightly underestimate the energy and water use of these models. In its petition, Whirlpool estimated that, on average, 23 gallons/year of water and 4 kWh/year would be consumed in softener regeneration. These values are based on internal testing conducted by Whirlpool. Therefore, in the interim waiver, DOE is adding these constant values to the energy consumption measured by appendix C.

Based on the likelihood of granting the petition for waiver, DOE grants Whirlpool's application for interim waiver. Therefore, Whirlpool shall not be required to test its dishwasher models:

KitchenAid brand:

KUDE60SXSS
KUDS30SXSS

Kenmore brand:

14052K01
14053K01
14059K01
14062K01
14063K01
14069K01

according to the existing DOE test procedure, which is found in 10 CFR 430, subpart B, appendix C, but shall be required to test and rate such products according to the alternate test procedure as set forth below.

Under appendix C, the water energy consumption, W or Wg, is calculated based on the water consumption as set forth in Sect. 4.3:

§ 4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix.

Where the regeneration of the water softener depends on demand and water hardness, and does not take place on every cycle, Whirlpool shall measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. If a regeneration operation takes place within the test, the water consumed by the regeneration operation shall be disregarded when declaring

water and energy consumption, but constant values of 23 gallons/year of water and 4 kWh/year of energy shall be added to the values measured by appendix C.

IV. Summary and Request for Comments

Through today's notice, DOE announces receipt of Whirlpool's petition for waiver from certain parts of the test procedure that apply to dishwashers. DOE is publishing Whirlpool's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information. The petition includes a suggested alternate test procedure which is to measure the water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. DOE is interested in receiving comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and any alternate test procedure. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy to the petitioner, whose contact information is included in the **ADDRESSES** section above.

Issued in Washington, DC, on July 8, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

J.B. Hoyt
Director, Government Relations
May 26, 2010
Via e-mail *(cathy.zoi@ee.doe.gov)* and Overnight Mail
The Honorable Catherine Zoi
Assistant Secretary, Energy Efficiency and Renewable Energy
U.S. Department of Energy
Mail Station EE–10
1000 Independence Avenue SW
Washington, DC 20585

A. Re: Amended Petition For Waiver and Application for Interim Waiver Under 10 CFR 430.27 for Dishwasher: With Integrated Water Softener

Dear Assistant Secretary Zoi:

Whirlpool Corporation (Whirlpool) respectfully submits this Amended Petition For Waiver and Application for Interim waiver, pursuant to 10 CFR 430.27, to the U.S. Department of Energy (DOE) regarding the test procedure specified in 10 CFR Part 430, Subpt. B, App. C (Test Procedure) for measuring the energy consumption of dishwashers. This Petition is being amended, pursuant to the request of the Department, for purposes of identifying specific model numbers of affected dishwashers in Section 2 (below).

This Amended Petition For Waiver and Application for Interim Waiver is directed to dishwashers containing a built-in or integrated water softener. 10 CFR 430.27(a)(1) provides that a manufacturer may submit a Petition to waive a requirement of § 430.23 upon grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Additionally, 10 CFR 430.27(b)(2) allows an applicant to request an Interim Waiver if economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver.

For the reasons set forth below, Whirlpool submits that the testing of dishwashers equipped with water softeners under the Test Procedure will lead to results that may be materially inaccurate and mislead consumers.

1. Petitioner.

Whirlpool Corporation is the world's leading manufacturer and marketer of major home appliances, with annual sales of approximately $17 billion in 2009, 67,000 employees, and 67 manufacturing and technology research centers around the world. The company markets *Whirlpool, Maytag, KitchenAid, Jenn-Air, Amana, Brastemp, Consul, Bauknecht* and other major brand names to consumers in nearly every country around the world.

2. Identification of Basic Models.

This Amended Petition For Waiver and Application for Interim Waiver is made with respect to all basic models of dishwashers that incorporate an integrated water softener ("Basic Models"). The Basic Model numbers are identified as follows:

KitchenAid brand:

KUDE60SXSS
KUDS30SXSS

Kenmore brand:

14052K01
14053K01
14059K01
14062K01
14063K01
14069K01

The design characteristic that is common among the Basic Models is an integrated automatic water softener which is designed to periodically regenerate. During the regeneration operation water is flushed through the water softener. The regeneration operation occurs infrequently and depends on the adjustment of the softener. Water used during the regeneration operation is in addition to the water used by the dishwasher during a dishwasher "normal" cycle.

3. Background.

A water softener reduces water hardness. Hard water is water that has high mineral content (in contrast with soft water). Hard water minerals primarily consist of calcium (Ca^{2+}), and magnesium (Mg^{2+}) metal cations, and sometimes other dissolved compounds such as bicarbonates and sulfates. Water hardness varies throughout the United States. Based on information provided by the U.S. Geological Survey, the mean water hardness within the U.S. is 217 mg/liter (milligrams per liter), which is the equivalent of 12.6 grains/gallon. See http://water.usgs.gov/owq/hardness-alkalinity.html

Hard water reduces the effectiveness of detergent leading to the need for additional detergent. The amount of rinse aid use is also affected by water hardness; more rinse aid is necessary to achieve good results with hard water. As a result, high water hardness can contribute to filming on dishwasher items, leading to consumer behaviors such as increased pre-rinsing and, in some cases, rewashing of dishes either by hand or by subsequent dishwasher cycles. Further, hard water can lead to the presence of scale build-up within the dishwasher requiring periodic dishwasher cleaning (clean-up).

Accordingly, systems that reduce water hardness can prevent behaviors that consume additional energy and water. Specifically, a dishwasher equipped with a water softener will minimize pre-rinsing and rewashing. Further, consumers will have less reason to periodically run their dishwasher through a clean-up cycle.

Under common water softener technology, water passing through a resin tank loses positively charged calcium and magnesium ions to negatively charged plastic beads. The water is softened in this manner till the plastic beads no longer can supply a negative charge. A brine tank is provided and holds a salt solution that periodically flushes and regenerates the resin tank, replacing calcium and magnesium ions with sodium. The water softening regeneration process requires water for both regeneration and for back-rinsing processes. For the purposes of this Waiver, both water

usages are combined and used under the term "regeneration."

In a dishwasher equipped with a consumer adjustable water softener, water softener regeneration does not take place during every cycle. Rather, regeneration takes place as a function of home water supply water hardness, determined by a customer adjustable dishwasher water hardness level setting. For a conventional dishwasher in a home with the mean water hardness of 12.6 grains per gallon, water softener regeneration may take place approximately every six to eight cycles. However, regeneration may vary significantly, depending on customer adjusted hardness level setting. As indicated by the U.S. Geological Survey information, water hardness within the U.S. varies significantly. For a significant population of U.S. consumers, their water hardness is such that no water softener operation is required.

The amount of water used for softener regeneration, when apportioned evenly across all dishwasher cycles, is very small. For conventional dishwashers, Whirlpool estimates that the typical water use during regeneration ranges between two to three (2–3) liters (0.5–0.8 gallons). If this amount is apportioned across six cycles (a reasonable average regeneration frequency rate), the water usage due to regeneration is approximately 0.41 liters/cycle (0.11 gallons/cycle). Based upon 215 dishwasher cycles per year [1], the estimated annual water and energy consumption, due to water softener regeneration, will be approximately 23 gallons/year of water and 4 kWh/year, respectively. This is less than 1.5% of the total energy use of the average dishwasher.

Providing a dishwasher with a water softener is not new. Most dishwashers manufactured and sold in European countries contain water softeners. Under the European Standard EN 50242 "Electric Dishwashers for Household Use—Methods for Measuring the Performance," water usage and energy associated with water softeners is not included.

§ 8.2.1 of EN 50242 is set forth below:

§ 8.2.1 Regeneration operations

For dishwashers, where the regeneration of the water softener depends on demand and water hardness, and does not take place on every cycle; when calculating the arithmetical mean value of the energy, water consumption and time, *if a regeneration operation takes place, within the test procedure, it shall be disregarded when declaring energy, water and time values.* (Emphasis added)

Note: The frequency of the regeneration operations in some machines is not predictable and depends on the adjustment of the softener and the water hardness of the water used by the laboratories.

In the test report, it shall be stated whether regeneration(s) occurred during the five (or more) test cycles.

European Standard EN 50242 recognizes that including the water used during a regeneration operation would evaluate the tested dishwasher in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. Based on the infrequency of the regeneration operation, including the water used during a regeneration operation in the measurement of water consumption during an individual energy test cycle could lead to overstating the water use by as much as 12%, and overstating the energy use by as much as 6%.[2]

4. Requirements Sought To Be Waived.

The Basic Models are subject to the provisions of 10 CFR Part 430, Subpt. B, App. C of the Test Procedure, which specifies the calculation of water energy consumption for non-soil-sensing and soil-sensing dishwashers using electrically or gas/oil heated water. Under the Test Procedure, the water energy consumption, W or Wg, are calculated based on the water consumption as set forth in 10 CFR Part 430, Subpt. B, App. C, Sect. 4.3:

§ 4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix.

Whirlpool is requesting approval to measure water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. Similar to the European standard EN 50242, Whirlpool is proposing that if a regeneration operation takes place within the test procedure, the water consumed by the regeneration operation shall be disregarded when declaring water and energy consumption.

5. Grounds For Waiver and Interim Waiver.

10 CFR 430.27(a)(1) provides that a Petition to waive a requirement of § 430.23 may be submitted upon grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

As noted above, the inclusion of a water softener in a dishwasher is likely to lead to water and energy savings due to enhanced effectiveness of the dishwasher. This advance in technology offers consumers a new benefit that should not be discouraged by the Test Procedure. Additionally, the amount of water consumed by the regeneration operation of a water softener in a dishwasher is very small and varies significantly depending on the adjustment of the softener.

In view of the small amount of water consumed during softener regeneration and the relative infrequency of the regeneration operation, Whirlpool is requesting approval to measure water consumption of dishwashers having water softeners without including the water consumed by the dishwasher during softener regeneration. If this Waiver and Interim Waiver are not granted, there will be significant uncertainty in the method for measuring water consumption for dishwashers with water softeners. If water consumption due to water softeners is measured during an energy cycle, without any apportionment of this water across all cycles, energy use for a dishwasher could be overstated by a significant amount. If water consumption of a regeneration operation is to be apportioned across all cycles of operation, then manufacturers would need to make calculations regarding average water hardness and average water consumptions due to regeneration operations that are not currently provided for or allowed by the Test Procedure.

6. Justification for Whirlpool's Interim Waiver Application.

Granting of an Interim Waiver is justified in this case because Whirlpool has provided strong evidence that demonstrates the likelihood of the granting of the Amended Petition for Waiver.

[1] The annual dishwasher usage set forth in the Test Procedure.

[2] Under energy testing of a soil-sensing dishwasher, energy consumption is derived from normal cycle operation at a low, medium and high soil sensor response. The 6% estimate is the potential additional energy consumption that may occur if a regeneration operation occurs during the light sensor response dishwasher cycle. 10 CFR Part 430, Subpt. B, App. C, § 5.3.2.

Additionally, Whirlpool will suffer significant economic hardship and competitive disadvantage if this Interim Waiver Application is not granted and there are strong public policy justifications to issue an Interim Waiver to help promote uniform interpretation and application of the Test Procedure to dishwashers with water softeners. As discussed above, if this Interim Waiver is not granted, there will be significant uncertainty in how to measure water consumption for dishwashers with water softeners. This will cause economic hardship and competitive disadvantage for Whirlpool. There are long lead times and significant expenses associated with the design and manufacture of dishwashers. Compliance with federally mandated energy consumption standards and ENERGY STAR criteria is a critical design factor for dishwashers. Any delay in obtaining clarity on this issue will cause Whirlpool economic hardship and competitive disadvantage.

7. Manufacturers of Similar Products and Affected Manufacturers.

We believe that at least two dishwasher manufacturers, BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH) and Miele Inc., are currently selling in the U.S. dishwashers with an integrated water softener.

The manufacturers that sell dishwashers in the United States include ASKO Appliances, Inc., BSH Home Appliances Corp. (Bosch-Siemens Hausgerate GmbH), Electrolux North America, Inc., Fisher & Paykel Appliances, GE Appliances and Lighting, Haier America, Indesit Company Sa, LG Electronics USA, Miele, Inc., Samsung Electronics Co., and Viking Range Corporation. The Association of Home Appliances Manufacturers is also generally interested in energy efficiency requirements for appliances, including dishwashers. Whirlpool will notify all these entities as set forth in the Department's rules and provide them with a version of this Amended Petition and Application.

8. Conclusion.

Whirlpool respectfully submits that by granting this Amended Waiver Petition and Application for Interim Waiver, the Department will ensure that advancements in technology and consumer beneficial innovations are not hindered by regulations, and that similar products are tested and rated for energy consumption on a comparable basis. This waiver should continue until the Test Procedure can be formally amended to exclude the water and energy consumed during a water softener regeneration operation.

Whirlpool certifies that all manufacturers of domestically marketed dishwashers identified above have been notified by letter of this Amended Petition and application. Copies of such letter and related certification are attached hereto.

Sincerely,

/s/J.B. Hoyt

J.B. Hoyt
Director, Government Relations
Whirlpool Corporation

[FR Doc. 2010–17295 Filed 7–14–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0911; FRL–9176–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Mobile Air Conditioner Retrofitting Program (Renewal); EPA ICR No. 1774.05, OMB Control No. 2060–0350

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 16, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2009–0911 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 Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Yaidi Cancel, Stratospheric Protection Division, Office of Air and Radiation, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9512; fax number: (202) 343–2338; e-mail address: *Cancel.Yaidi@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 February 22, 2010 (75 FR 7584), 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–2009–0911, 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: Mobile Air Conditioner Retrofitting Program (Renewal)

ICR numbers: EPA ICR No. 1774.05, OMB Control No. 2060–0350.

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 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: EPA's Significant New Alternatives Policy (SNAP) program implements Section 612 of the 1990 Clean Air Act (CAA) Amendments which authorized the Agency to establish regulatory requirements to ensure that ozone-depleting substances (ODS) are replaced by alternatives that reduce overall risks to human health and the environment, and to promote an expedited transition to safe substitutes. To promote this transition, CAA specified that EPA establish an information clearinghouse of available alternatives, and coordinate with other Federal agencies and the public on research, procurement practices, and information and technology transfers.

Since the program's inception in 1994, SNAP has reviewed over 400 new chemicals and alternative manufacturing processes for a wide range of consumer, industrial, space exploration, and national security applications. Roughly 90% of alternatives submitted to EPA for review have been listed as acceptable for a specific use, typically with some condition or limit to minimize risks to human health and the environment.

Regulations promulgated under SNAP require that Motor Vehicle Air Conditioners (MVACs) retrofitted to use a SNAP substitute refrigerant include basic information on a label to be affixed to the MVAC. The label includes the name of the substitute refrigerant, when and by whom the retrofit was performed, environmental and safety information about the substitute refrigerant, and other information. This information is needed so that subsequent technicians working on the MVAC will be able to service the equipment properly, decreasing the likelihood of significant refrigerant cross-contamination and potential failure of air conditioning systems and recovery/recycling equipment.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 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: new and used car dealers, gas service stations, top and body repair shops, general automotive repair shops, automotive repair shops not elsewhere classified, including air conditioning and radiator specialty shops.

Estimated Number of Respondents: 6,500.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 1,500.

Estimated Total Annual Cost: $106,833, includes $105,000 in labor costs and $1,833 in annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 26,278 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is because the number of cars that could be retrofitted to use a SNAP substitute refrigerant is decreasing significantly. New cars sold before 1994 contain CFC–12 air conditioning systems and the number of those cars in operation has decreased since this last ICR renewal. (New cars sold after 1994 contain a SNAP substitute refrigerant and do not need to be retrofitted.) With fewer CFC–12 MVACs on the road (pre-1994 cars), there will be fewer retrofits to new SNAP approved refrigerants and subject to this ICR.

Dated: July 9, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–17280 Filed 7–14–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0544; FRL–9176–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Stationary Combustion Turbines (Renewal), EPA ICR Number 1967.04, OMB Control Number 2060–0540

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 16, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0544, to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Compliance, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7021; fax number: (202) 564–0050; e-mail address: *marshall.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 30, 2009 (74 FR 38005), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number

EPA–HQ–OECA–2009–0544, 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: NESHAP for Stationary Combustion Turbines (Renewal).

ICR Numbers: EPA ICR Number 1967.04, OMB Control Number 2060–0540.

ICR Status: This ICR is scheduled to expire on September 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart YYYY. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to 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 8 hours (rounded) 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: Stationary combustion turbines.

Estimated Number of Respondents: 31.

Frequency of Response: Semiannually.

Estimated Total Annual Hour Burden: 435.

Estimated Total Annual Cost: $42,652, which includes $41,152 in labor costs, $1,500 in capital/startup costs and no operation and maintenance costs.

Changes in the Estimates: There is no change in the labor hours to respondents in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent. Therefore, the labor hours in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR.

The increase in cost to the respondents and the Agency is due to labor rate adjustments to reflect the most recent available estimates.

Dated: July 9, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–17278 Filed 7–14–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0560; FRL–9175–9]

Call for Information: Information on Greenhouse Gas Emissions Associated With Bioenergy and Other Biogenic Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Call for Information.

SUMMARY: EPA is publishing this Call for Information to solicit information and viewpoints from interested parties on approaches to accounting for greenhouse gas emissions from bioenergy and other biogenic sources. The purpose of this Call is to request comment on developing an approach for such emissions under the Prevention of Significant Deterioration (PSD) and Title V Programs as well as to receive data submissions about these sources and their emissions, general technical comments on accounting for these emissions, and comments on the underlying science that should inform possible accounting appoaches.

DATES: Information and comments must be received on or before September 13, 2010.

ADDRESSES: Submit your information, identified by Docket ID No. EPA–HQ–OAR–2010–0560, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: GHGBiogenic@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* EPA Docket Center, Attention Docket OAR–2010–0560, Mail code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, Room 3334, EPA West Building, Attention Docket OAR–2010–0560, 1301 Constitution Avenue, NW., Washington, DC 20004. 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 information and comments to Docket ID No. EPA–HQ–OAR–2010–0560. EPA's policy is that all information 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 information 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.* 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 or any form of encryption, and should 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 EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The 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:

Jennifer Jenkins, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9361; fax number: (202) 343–2359; e-mail address: *jenkins.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Information

A. What is today's action?

On June 3, 2010, EPA published the final *Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule* (known hence forth as the Tailoring Rule) (75 FR 31514). In that Rule, EPA did not take action on a request from commenters to exclude CO_2 emissions from biogenic fuels [1]. Instead, EPA explained that the legal basis for the Rule, reflecting specifically the overwhelming permitting burdens that would be created under the statutory emissions thresholds, does not itself provide a rationale for excluding all emissions of CO_2 from combustion of a particular fuel, even a biogenic one. The fact that the Tailoring Rule did not take final action one way or another concerning such an exclusion does not mean that EPA has decided there is no basis for treating biomass CO_2 emissions differently from fossil fuel CO_2 emissions under the Clean Air Act's PSD and Title V Programs. Further, in finalizing the Tailoring Rule, the Agency did not have sufficient information to address the issue of the carbon neutrality of biogenic energy in any event.

This Call for Information serves as a first step for EPA in considering options for addressing emissions of biogenic CO_2 under the PSD and Title V programs as indicated above.

Given the broad and complex nature of this issue, EPA also welcomes stakeholders to respond to this Call for Information by providing data submissions about these sources and their emissions and technical comments on approaches generally to accounting for GHG emissions from bioenergy and other biogenic sources. EPA requests that stakeholders provide relevant information on the underlying science that should inform possible accounting approaches.

In response to this Call for Information, interested parties are invited to assist EPA in the following: (1) Surveying and assessing the science by submitting research studies or other relevant information, and (2) evaluating different accounting approaches and options by providing policy analyses, proposed or published methodologies, or other relevant information. Interested parties are also invited to submit data or other relevant information about the current and projected scope of GHG emissions from bioenergy and other biogenic sources.

B. What additional background information is EPA making available?

National-level GHG inventories are a common starting point for evaluations and discussions of approaches to accounting for GHG emissions from bioenergy sources. EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks (the Inventory) [2] is an impartial, policy-neutral report that tracks annual GHG emissions including carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). The United States has submitted the Inventory to the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) under its obligation as a Party to the Convention every year since 1993. The UNFCCC, ratified by the United States in 1992, defines the overall framework for intergovernmental efforts to tackle the challenge posed by climate change. The Inventory submitted by the United States is consistent with national inventory data submitted by other UNFCCC Parties, and uses internationally accepted methodologies established by the Intergovernmental Panel on Climate Change (IPCC).

The Revised 1996 IPCC Guidelines (IPCC Guidelines) [3] provide methodologies for estimating all anthropogenic sources and sinks of GHG emissions at the national scale, classified into six broad sectors: Energy, Industrial Processes, Solvents and Other Product Uses, Agriculture, Land-Use Change and Forestry (LUCF), and Waste. The Energy Sector includes all GHGs

[1] GHG emissions from bioenergy and other biogenic sources are generated during the combustion or decomposition of biologically-based material, and include sources such as, but not limited to, utilization of forest or agricultural products for energy, wastewater treatment and livestock management facilities, landfills, and fermentation processes for ethanol production.

[2] US EPA. 2010. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2008. U.S. EPA #430–R–10–06. Available in Docket at EPA–HQ–OAR–2010–0560.

[3] Intergovernmental Panel on Climate Change (IPCC). 1996. Revised 1996 IPCC Guidelines for National Greenhouse Gas Inventories, Prepared by the National Greenhouse Gas Inventories Programme. Published: IGES, Japan. 3 Volumes. Available in Docket at EPA–HQ–OAR–2010–0560.

emitted during the production, transformation, handling and consumption of energy commodities, including fuel combustion. The LUCF Sector includes emissions and sequestration resulting from human activities which change the way land is used or which affect the amount of biomass in existing biomass stocks. According to the IPCC Guidelines, CO_2 emissions from biomass combustion

"* * * should not be included in national CO_2 emissions from fuel combustion. If energy use, or any other factor, is causing a long term decline in the total carbon embodied in standing biomass (*e.g.* forests), this net release of carbon should be evident in the calculation of CO_2 emissions described in the Land Use Change and Forestry chapter."[4]

Thus, at the national level, these CO_2 emissions are not included in the estimate of emissions from a country's Energy Sector, even though the emissions physically occur at the time and place in which useful energy is being generated (*i.e.,* power plant or automobile). The purpose of this accounting convention is to avoid double-counting that would provide a misleading characterization of a country's contribution to global GHG emissions (*i.e.,* to avoid having CO_2 emissions accounted both in the Energy Sector and the LUCF Sector). Carbon dioxide emissions from bioenergy sources are still reported as information items in the Energy Sector of the Inventory, but are not included in national fuel-combustion totals to avoid this double-counting at the national scale.[5]

The IPCC Guidelines for National Greenhouse Gas Inventories are relevant to today's Call for Information because they have influenced subsequent reporting systems, such as the World Resources Institute/World Business Council for Sustainable Development (WRI/WBCSD) protocols.[6] Additionally, some stakeholders have identified the IPCC Guidelines and the Inventory as providing a foundational methodology for accounting for GHG emissions from bioenergy.[7]

Separately, to assist interested parties in considering the broader issues pertaining to this Call for Information, EPA has assembled and placed into the docket a set of documents relevant to the topic of today's action. This collection of documents is not intended to represent a complete or exhaustive set of materials, but rather serves as a starting point to provide further background information to interested parties regarding key concepts and scientific research. For example, the Docket includes for review the following information:

- U.S. EPA. 2010. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2008. U.S. EPA #430–R–10–06.
- Intergovernmental Panel on Climate Change (IPCC). 1996. Revised 1996 IPCC Guidelines for National Greenhouse Gas Inventories, Prepared by the National Greenhouse Gas Inventories Programme. Published: IGES, Japan.
- IPCC. 2000. Special Report on Land Use, Land-Use Change, and Forestry. Watson, R., Noble, I., Bolin, B., Ravindranath, N., Verardo, D., and Dokken, D. (eds.). Cambridge: Cambridge University Press.
- IPCC. 2000. Good Practice Guidance and Uncertainty Management in National Greenhouse Gas Inventories, Prepared by the National Greenhouse Gas Inventories Programme. Published: IGES, Japan.
- IPCC. 2003. Good Practice Guidance for Land Use, Land-Use Change and Forestry. Prepared by the National Greenhouse Gas Inventories Programme. Penman, J., Gytarsky, M., Krug, T., Kruger, D., Pipatti, R., Buendia, L., Miwa, K., Ngara, T., Tanabe, K. and Wagner, F. (eds.). Published: IGES, Japan.
- IPCC. 2006. 2006 IPCC Guidelines for National Greenhouse Gas Inventories, Prepared by the National Greenhouse Gas Inventories Programme. Eggleston, H.S., Buendia, L., Miwa, K., Ngara, T. and Tanabe, K. (eds.). Published: IGES, Japan.
- World Resources Institute/World Business Council on Sustainable Development. 2004. A Corporate Accounting and Reporting Standard.
- Letter from Mr. Daniel S. Fulton, President and CEO, Weyerhaeuser Corporation to Administrator Lisa P. Jackson. May 24, 2010.
- Response from Assistant Administrator Gina McCarthy to Mr. Fulton. June 2, 2010.
- Interim Phase I Report of the Climate Change Work Group of the Permits, New Source Review and Toxics Subcommittee, Clean Air Act Advisory Committee. February 3, 2010.
- Manomet Center for Conservation Sciences. 2010. Massachusetts Biomass Sustainability and Carbon Policy Study: Report to the Commonwealth of Massachusetts Department of Energy Resources. Walker, T. (Ed.). Contributors: Cardellichio, P., Colnes, A., Gunn, J., Kittler, B., Recchia, C., Saah, D., and Walker, T. Natural Capital Initiative Report NCI–2010–03. Brunswick, Maine.
- USDA Forest Service, Pacific Southwest Research Station. 2009. Biomass to Energy: Forest Management for Wildfire Reduction, Energy Production, and Other Benefits. California Energy Commission, Public Interest Energy Research (PIER) Program. CEC–500–2009–080.
- Searchinger, T., Hamburg, S., Melillo, J., Chameides, W., Havlik, P., Kammen, D., Likens, G., Lubowski, R., Obersteiner, M., Oppenheimer, W., Robertson, G.P., Schlesinger, W., Tilman, G.D. 2009. Fixing a critical climate accounting error. Science 326: 527–528.
- Meridian Institute. 2010. Summary of Bioenergy Greenhouse Gas Accounting Stakeholder Group Discussions. May 13, 2010. Washington, DC.

C. Where can I get the information?

All of the information can be obtained through the Air Docket and at *http://www.regulations.gov* (see **ADDRESSES** section above for docket contact information).

D. What specific information is EPA seeking?

As described in Section I.A, EPA is requesting two types of submissions via this Call for Information: (1) Technical comments and data submissions related to the accounting for GHG emissions from bioenergy and other biogenic sources with respect specifically to the PSD and Title V Programs, and (2) more general technical comments and data submissions related to accounting for GHG emissions from bioenergy and other biogenic sources without reference to specific rulemaking efforts.

EPA is soliciting from interested parties information and views on topics and questions including, but not limited to the following:

- Biomass under PSD/BACT. What criteria might be used to consider biomass fuels differently with regard to the Best Available Control Technology (BACT) review process under PSD? How could the process of determining BACT under the PSD program allow for

[4] Ibid., Reference Manual (Vol. 3), Page 1.10.

[5] Emissions of methane and nitrous oxide from the combustion of biomass for energy are included in the Energy Sector, however, because their magnitude is dependent on the specific way in which the fuel is burned (i.e., combustion technology and operating conditions), which cannot be known by analyzing the changes in the amount of carbon in standing biomass.

[6] World Resources Institute/World Business Council on Sustainable Development. 2004. A Corporate Accounting and Reporting Standard. Available in Docket at EPA–HQ–OAR–2010–0560.

[7] Letter from Mr. Daniel Fulton, President and CEO, Weyerhaeuser Corporation to Administrator Jackson, May 24, 2010. Available in Docket at EPA–HQ–OAR–2010–0560.

adequate consideration of the impacts and benefits of using biomass fuels?

• National-scale carbon neutrality in the IPCC Guidelines. In the IPCC accounting approach described in Section I.B, at the national scale emissions from combustion for bioenergy are included in the LUCF Sector rather than the Energy Sector. To what extent does this approach suggest that biomass consumption for energy is "neutral" with respect to net fluxes of CO_2?

• Smaller-scale accounting approaches. The Clear Air Act (CAA) provisions typically apply at the unit, process, or facility scale, whereas the IPCC Guidance on accounting for GHG emissions from bioenergy sources was written to be applicable at the national scale. EPA is interested in understanding the strengths and limitations of applying the national-scale IPCC approach to assess the net impact (i.e. accounting for both emissions and sequestration) on the atmosphere of GHG emissions from specific biogenic sources, facilities, fuels, or practices. To what extent is the accounting procedure in the IPCC Guidelines applicable or sufficient for such specific assessments?

• Alternative accounting approaches. Both a default assumption of carbon neutrality and a default assumption that the greenhouse gas impact of bioenergy is equivalent to that of fossil fuels may be insufficient because they oversimplify a complex issue. If this is the case, what alternative approaches or additional analytical tools are available for determining the net impact on the atmosphere of CO_2 emissions associated with bioenergy? Please comment specifically on how these approaches address:

—The time interval required for production and consumption of biological feedstocks and bioenergy products. For example, the concept of "carbon debt" has been proposed as the length of time required for a regrowing forest to "pay back" the carbon emitted to the atmosphere when biomass is burned for energy.

—The appropriate spatial/geographic scale for conducting this determination. For example, the question of spatial scale has legal complications under the CAA, but may be relevant for some of the suggested approaches.

• Comparison with fossil energy. EPA is interested in approaches for assessing the impact on the atmosphere of emissions from bioenergy relative to emissions from fossil fuels such as coal, oil, and gas. What bases or metrics are appropriate for such a comparison?

• Comparison among bioenergy sources. EPA is also interested in comments on accounting methods that might be appropriate for different types of biological feedstocks and bioenergy sources. What bases or metrics are appropriate for such a comparison among sources? In other words, are all biological feedstocks (e.g. corn stover, logging residues, whole trees) the same, and how do we know?

• Renewable or sustainable feedstocks. Specifically with respect to bioenergy sources (especially forest feedstocks), if it is appropriate to make a distinction between biomass feedstocks that are and are not classified as "renewable" or "sustainable," what specific indicators would be useful in making such a determination?

• Other biogenic sources of CO_2. Other biogenic sources of CO_2 (i.e., sources not related to energy production and consumption) such as landfills, manure management, wastewater treatment, livestock respiration, fermentation processes in ethanol production, and combustion of biogas not resulting in energy production (e.g., flaring of collected landfill gas) may be covered under certain provisions of the CAA, and guidance will be needed about exactly how to estimate them. How should these "other" biogenic CO_2 emission sources be considered and quantified? In what ways are these sources similar to and different from bioenergy sources?

• Additional technical information. EPA is also interested in receiving quantitative data and qualitative information relevant to biogenic greenhouse gas emissions, including but not limited to the following topics:

—Current and projected utilization of biomass feedstocks for energy.

—Economic, technological, and land-management drivers for projected changes in biomass utilization rates.

—Current and projected levels of GHG emissions from bioenergy and other biogenic sources.

—Economic, technological and land-management drivers for projected changes in emissions.

—Current and projected C sequestration rates in lands used to produce bioenergy feedstocks.

—Economic, technological and land-management drivers for projected changes in sequestration rates.

—The types of processes that generate or are expected to generate emissions from bioenergy and other biogenic sources.

—The number of facilities that generate or are expected to generate such emissions.

—Emission factor information, particularly for the biogenic CO_2 source categories of wastewater treatment, livestock management, and ethanol fermentation processes.

—Potential impacts on specific industries and particular facilities of various methods of accounting for biogenic GHG emissions.

—Potential impacts of GHG emissions from bioenergy and other biogenic sources on other resources such as water availability and site nutrient quality.

—Potential impacts of GHG emissions from bioenergy and other biogenic sources on other air pollutants such as VOCs, other criteria pollutants, and particulate matter.

E. What should I consider as I prepare information for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information or data you used that support your views.
4. Provide specific examples to illustrate your concerns, suggestions, and recommendations.
5. Offer alternatives, if possible, if a particular approach is criticized.
6. Make sure to submit your information by the deadline identified.
7. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

F. Submitting Confidential Business Information (CBI).

Do not submit information you are claiming as CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part of the information that you claim to be CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. 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.

Dated: July 9, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2010–17266 Filed 7–14–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2010–0280; FRL–9173–9]

Protection of Stratospheric Ozone: Request for Methyl Bromide Critical Use Exemption Applications for 2013

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of solicitation of applications and information on alternatives.

SUMMARY: EPA is soliciting applications for the critical use exemption from the phaseout of methyl bromide for 2013. Critical use exemptions last only one year. All entities interested in obtaining a critical use exemption for 2013 must provide EPA with technical and economic information to support a "critical use" claim and must do so by the deadline specified in this notice even if they have applied for an exemption in a previous year. Today's notice also invites interested parties to provide EPA with new data on the technical and economic feasibility of methyl bromide alternatives. The U.S. critical use exemption program has cushioned the U.S. transition in an important way. Thus far, EPA has allocated critical use methyl bromide through rulemaking for each of the six years (2005–2010) since the U.S. phaseout, and plans to do so for another four years (2011–2014). Critical use nominations must be approved each year at the international level by the Parties to the Montreal Protocol, and the U.S. is one of five remaining developed countries requesting such exemptions; several of these countries have announced final dates for all or part of their requests in the years between now and 2015, the year that developing countries are required to phase out methyl bromide. While EPA with this notice is seeking applications for 2013 and will likely request applications for 2014, EPA believes it is appropriate at this time to consider a year in which the Agency will stop requesting applications for critical use exemptions. EPA will seek comment on this issue in the proposed rule for the 2011 critical use exemption.

DATES: Applications for the 2013 critical use exemption must be postmarked on or before September 13, 2010.

ADDRESSES: EPA encourages users to submit their applications electronically to Jeremy Arling, Stratospheric Protection Division, at *arling.jeremy@epa.gov.* If the application is submitted electronically, applicants must fax a signed copy of Worksheet 1 to 202–343–9055 by the application deadline. Applications for the methyl bromide critical use exemption can also be submitted by mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Team, Mail Code 6205J, 1200 Pennsylvania Ave, NW., Washington, DC 20460 or by courier delivery (other than U.S. Post Office overnight) to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Review Team, 1310 L St., NW., Room 1047E, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT:

General Information: U.S. EPA Stratospheric Ozone Information Hotline, 1–800–296–1996; also *http://www.epa.gov/ozone/mbr.*

Technical Information: Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 703–308–8136. *E-mail: chism.bill@epa.gov.*

Regulatory Information: Jeremy Arling, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC 20460, 202–343–9055. *E-mail: arling.jeremy@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What do I need to know to respond to this request for applications?

A. Who can respond to this request for information?

Entities interested in obtaining a critical use exemption must complete the application form available at *http://www.epa.gov/ozone/mbr.* The application may be submitted either by a consortium representing multiple users who have similar circumstances or by individual users who anticipate needing methyl bromide in 2013 and have evaluated alternatives and as a result of that evaluation, believe they have no technically and economically feasible alternatives. EPA encourages groups of users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application). In some instances, state agencies will assist users with the application process (*see* discussion of voluntary state involvement in Part I.B. below).

In addition to requesting information from applicants for the critical use exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (*e.g.,* technical and/or economic feasibility research).

B. Who can I contact to find out whether a consortium is submitting an application for my methyl bromide use?

You should contact your local, state, regional, or national commodity association to find out whether it plans to submit an application on behalf of your commodity group.

Additionally, you should contact your state regulatory agency (generally this will be the state's agriculture or environmental protection agency) to receive information about its involvement in the process. If your state agency has chosen to participate, EPA recommends that you first submit your application to the state agency, which will then forward applications to EPA. The National Pesticide Information Center Web site identifies the lead pesticide agency in each state *(http://npic.orst.edu/state1.htm).*

C. How do I obtain an application form for the methyl bromide critical use exemption?

An application form for the methyl bromide critical use exemption can be obtained either in electronic or hard-copy form. EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format and Microsoft Excel at EPA's Web site: *http://www.epa.gov/ozone/mbr/cueinfo.html;*
2. Hard copy ordered through the Stratospheric Ozone Protection Hotline at 1–800–296–1996;
3. Hard-copy format at DOCKET ID No. EPA–HQ–OAR–2010–0280. The docket can be accessed at the *http://www.regulations.gov* site. To obtain copies of materials in hard copy, please e-mail the EPA Docket Center: *a-and-r-docket@epa.gov.*

D. Which alternatives must applicants address when applying for a critical use exemption?

To support the assertion that a specific use of methyl bromide is "critical," applicants are expected to demonstrate that there are no technically and economically feasible alternatives available for that use. The Parties to the Montreal Protocol have developed an "International Index" of methyl bromide alternatives, which lists chemical and non-chemical alternatives by crop. In 2009, the United States submitted an index of alternatives, which includes the current registration status of available and potential alternatives, that is available on the Ozone Secretariat Web site: *http://ozone.unep.org/Exemption_Information/Critical_use_nominations_for_methyl_bromide/methyl bromide_Submissions/USA-Alternatives-Ex4-1-2008.pdf.*

Applicants must address technical, regulatory, and economic issues that limit the adoption of "chemical alternatives" and combinations of "chemical" and "non-chemical alternatives" listed for their crop or use within the "U.S. Index" of Methyl Bromide Alternatives.

E. What portions of the applications will be considered confidential business information?

You may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." You should clearly identify the allegedly confidential portions of otherwise non-confidential documents, and you may submit them separately to facilitate identification and handling by EPA. If you desire confidential treatment only until a certain date or until the occurrence of a certain event, your notice should state that. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR part 2 subpart B; 41 FR 36752, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when EPA receives it, EPA may make it available to the public without further notice.

If you are asserting a business confidentiality claim covering part or all of the information in the application, please submit a non-confidential version that EPA can place in the public docket for reference by other interested parties. Do not include on the "Worksheet Six: Application Summary" page of the application any information that you wish to claim as confidential business information. Any information on Worksheet 6 shall not be considered confidential and will not be treated as such by the Agency. EPA will place a copy of Worksheet 6 in the public domain. Please note, claiming business confidentiality may delay EPA's ability to review your application.

F. What if I submit an incomplete application?

EPA will not accept any applications postmarked after September 13, 2010. If the application is postmarked by the deadline but is incomplete or missing any data elements, EPA will not accept the application and will not include the application in the U.S. nomination submitted for international consideration. If the application is substantially complete with only minor errors, corrections will be accepted. EPA reviewers may also call an applicant for further clarification of an application, even if it is complete.

All consortia or users who did not apply to EPA for the 2009 control period (calendar year 2009) must submit an entire completed application with all Worksheets.

G. What if I applied for a critical use exemption in a previous year?

Critical use exemptions are valid for only one year and do not renew automatically. Users desiring to obtain an exemption for 2013 must apply to EPA. However, if a user group submitted a complete application to EPA in 2009, the user is only required to submit revised copies of the Worksheets listed below, though the entire application with all Worksheets must be on file with EPA. You must submit Worksheets 1, 2B, 2C, 2D, 4, 5, and 6 in full regardless of whether you submitted an application in 2009. You need only complete the remaining worksheets if any information has changed since 2009. If you submitted a critical use exemption application to EPA in 2002 through 2008 but did not submit an application in 2009, then you must submit all of the worksheets in the application again in their entirety.

II. What is the legal authority for the critical use exemption?

A. What is the Clean Air Act (CAA) authority for the critical use exemption?

In October 1998, Congress amended the Clean Air Act to require EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries and to allow EPA to provide a critical use exemption. These amendments were codified in Section 604 of the Clean Air Act, 42 U.S.C. 7671c. Under EPA implementing regulations, methyl bromide production and consumption were phased out as of January 1, 2005. Section 604(d)(6), as added in 1998, allows EPA to exempt the production and import of methyl bromide from the phaseout for critical uses, to the extent consistent with the Montreal Protocol.

B. What is the Montreal Protocol authority for the critical use exemption?

The Montreal Protocol provides that the Parties may exempt "the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses" (Art. 2H para 5). The Parties to the Protocol included this language in the treaty's methyl bromide phaseout provisions in recognition that alternatives might not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be "critical uses."

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a "critical use" determination and an exemption from the production and consumption phaseout:

(a) That a use of methyl bromide should qualify as "critical" only if the nominating Party determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or

substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination. * * * Non-Article 5 Parties [*e.g.,* developed countries, including the U.S.] must demonstrate that research programs are in place to develop and deploy alternatives and substitutes. * * *

EPA has defined "critical use" in its regulations at 40 CFR 82.3 in a manner similar to Decision IX/6 paragraph (a).

III. How will the U.S. implement the critical use exemption in 2013 and beyond?

EPA regulations at 40 CFR 82.4 prohibit the production and import of methyl bromide in excess of the amount of unexpended critical use allowances held by the producer or importer, unless authorized under a separate exemption. Methyl bromide produced or imported by expending critical use allowances may be used only for the appropriate category of approved critical uses as listed in Appendix L to the regulations (40 CFR 82.4(p)(2)). The use of methyl bromide that was produced or imported through the expenditure of production or consumption allowances prior to 2005 is not confined to critical uses under EPA's phaseout regulations; however, other restrictions may apply.

A. What is the timing for applications for the 2013 control period?

There is both a domestic and international component to the critical use exemption process. The following outline projects a timeline for the process for the 2013 critical use exemption.

July 15, 2010: Solicit applications for the methyl bromide critical use exemption for 2013.

September 13, 2010: Deadline for submitting critical use exemption applications to EPA.

Fall 2010: U.S. Government (through EPA, Department of State, U.S. Department of Agriculture, and other interested Federal agencies) prepares U.S. Critical Use Nomination package.

January 24, 2011: Deadline for U.S. Government to submit U.S. nomination package to the Protocol Parties.

Early 2011: Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC) reviews Parties' nominations for critical use exemptions.

Mid 2011: Parties consider TEAP/MBTOC recommendations.

November 2011: Parties decide whether to authorize critical use exemptions for methyl bromide for production and consumption in 2013.

Mid 2012: EPA publishes proposed rule for allocating critical use exemptions in the U.S. for 2013.

Late 2012: EPA publishes final rule allocating critical use exemptions in the U.S. for 2013.

January 1, 2013: Critical use exemption permits the limited production and import of methyl bromide for specified uses for the 2013 control period.

B. How might EPA implement the critical use exemption after the 2013 control period?

U.S. consumption of methyl bromide in the U.S. has declined significantly over the last 20 years. Production and import was phased out in 2005 in the U.S. and all other developed countries under the Montreal Protocol. Since then, consumption by developed country Parties has been subject to limited annual exceptions for critical uses, which have declined steadily from year to year. In 1991, the baseline year, the U.S. consumption was approximately 25,500 metric tons of methyl bromide. In 2010, the amount authorized for critical uses declined to approximately 3,000 metric tons; for 2012, the U.S. nominated only approximately 1,200 metric tons. This transition from methyl bromide—formerly one of the most commonly used pesticides in the U.S.—to ozone-safe alternatives has been a remarkable achievement for U.S. agriculture.

The critical use exemption program has, thus far, provided U.S. manufacturers and growers six additional years (2005–2010) beyond the January 1, 2005, phaseout date to develop and market alternatives and implement practices that reduce the need for fumigants in general. The Parties have already approved a U.S. critical use amount for 2011, and the U.S. submitted a nomination for 2012 this January. EPA expects that the U.S. will submit a nomination for 2013 based on applications received in response to this notice. However, the international context for consideration of critical use exemption requests from developed country Parties is an important consideration for the program's future, since annual approval by the Parties is required for any additional production and consumption of otherwise banned ozone depleting substances. In 2006, there were 20 countries with approved CUEs. In 2010, that number has decreased to five: the United States, Australia, Canada, Israel, and Japan. Israel has announced that 2011 will be its last year of CUE methyl bromide use and Japan has indicated that 2013 will be the last year for which it will seek a critical use exemption authorization for soil fumigation. Australia and Canada each use only 1 percent of CUE MeBr.

Further, developing countries face their own phaseout deadline for methyl bromide under the Montreal Protocol in 2015. While the Protocol contains a provision allowing the Parties to permit critical use exemptions for developing countries, the extent to which developing countries will request such exemptions is not yet known. By 2008, the last year for which data are available, developing countries had already reduced methyl bromide consumption for soil and post-harvest uses by 66% relative to their baselines. Furthermore, of the 86 developing countries that have baselines, only 34 continued to use methyl bromide as of 2008.

Given this international context and that the critical use exemption process for a particular control period takes three years, as shown in the schedule in Section III.A above, EPA believes it is appropriate at this time to consider a year in which the U.S. Government will stop requesting applications for critical use exemptions. EPA is not making a final decision at this time whether to accept applications for subsequent control periods. EPA will seek comment on this issue in the proposed rule for the 2011 critical use exemption.

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

Dated: July 1, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2010–17151 Filed 7–14–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Wednesday, July 14, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, July 15, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2010–09: Club for Growth, by its counsel, Carol A. Laham, Esq., and D. Mark Renaud, Esq., of Wiley Rein LLP.

Draft Advisory Opinion 2010–10: National Right to Life Political Action Committee, by its counsel, Barry A. Bostrom, Esq., James Bopp, Jr., Esq., and Zachary S. Kester, Esq., of Bopp, Coleson & Bostrom.

Draft Advisory Opinion 2010–11: Commonsense Ten, by its counsel, Marc E. Elias, Esq., and Ezra Reese, Esq., of Perkins Coie LLP.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Darlene Harris, Deputy Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2010–17052 Filed 7–14–10; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–10]

Notice of Order: Revisions to Enterprise Public Use Database

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of order.

SUMMARY: Section 1323(a)(1) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended, requires the Federal Housing Finance Agency (FHFA) to make available to the public the non-proprietary single-family and multifamily loan-level mortgage data elements submitted to FHFA by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) in their mortgage reports required under their charter acts. This responsibility to maintain a public use database (PUDB) for such mortgage data was transferred to FHFA from the U.S. Department of Housing and Urban Development (HUD) pursuant to sections 1122, 1126 and 1127 of the Housing and Economic Recovery Act of 2008 (HERA), and was expanded to include data elements required to be reported under the Home Mortgage Disclosure Act of 1975 (HMDA).

Specifically, section 1126 of HERA amended section 1323 of the Safety and Soundness Act by requiring that the Enterprises' mortgage reports include the data elements required to be reported under HMDA at the census tract level, and that such data elements be disclosed to the public. In addition, section 1127 of HERA amended section 1326 of the Safety and Soundness Act by requiring that, subject to privacy considerations as described in section 304(j) of HMDA, the Director of FHFA shall, by regulation or order, provide that certain information relating to single-family mortgage data of the Enterprises shall be disclosed to the public in order to make available to the public—(1) the same data from the Enterprises that is required of insured depository institutions under HMDA; and (2) information collected by the Director of FHFA under section 1324(b)(6) of the Safety and Soundness Act, as amended, for the purpose of comparing the characteristics of high-cost securitized loans.

FHFA provided each Enterprise with an opportunity to review and comment on FHFA's proposed revisions to the single-family and multifamily PUDB matrices which describe the data fields provided in the PUDB. FHFA has taken the Enterprises' comments into consideration, and has adopted an Order that implements certain changes required by HERA to the Enterprises' mortgage loan data reporting and the disclosure of such data in the PUDB. The Order also makes technical changes to the single-family and multifamily data matrices of the PUDB to conform the data fields to long-standing PUDB data reporting practice, to provide greater clarity, or to conform to the new statutory requirements. The Notice of Order sets forth FHFA's Order with accompanying Appendix containing the revised matrices, and describes the changes made to the data fields in the matrices. Changes to the PUDB matrices required by HERA relating to high-cost securitized loans, as well as the Enterprise housing goals for 2010 and beyond, will be implemented by the issuance of subsequent Orders.

DATES: *Effective Date of the Order:* The Order with accompanying Appendix is effective on July 1, 2010.

FOR FURTHER INFORMATION CONTACT: For questions on data or methodology, contact Paul Manchester, Principal Economist, Office of Housing Mission and Goals, Quantitative Analysis and Goals, 1625 Eye Street, NW., Washington, DC 20006, (202) 408–2946, *Paul.Manchester@fhfa.gov*; or Ian Keith, Program Analyst, 1625 Eye Street, NW., Washington, DC 20006, (202) 408–2949, *Ian.Keith@fhfa.gov*. For legal questions, contact Sharon Like, Associate General Counsel, OGC–Housing Mission and Goals, 1700 G Street, NW., Washington, DC 20552, (202) 414–8950, *Sharon.Like@fhfa.gov*. (These are not toll-free numbers.) The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Establishment of FHFA

Effective July 30, 2008, Division A of HERA, Public Law 110–289, 122 Stat. 2654 (2008), amended the Safety and Soundness Act and created FHFA as an independent agency of the Federal Government. HERA transferred the safety and soundness supervisory and oversight responsibilities over the Enterprises, the Federal Home Loan Banks (Banks), and the Office of Finance from the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board, respectively, to FHFA. HERA also transferred the charter compliance authority, the responsibility to establish, monitor and enforce the affordable housing goals, the responsibility to maintain the PUDB, and the responsibility to oversee Enterprise data reporting, from HUD to FHFA.

FHFA is responsible for ensuring that the Enterprises operate in a safe and sound manner, including maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient,

competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See* 12 U.S.C. 4513.

The Enterprises are government-sponsored enterprises (GSEs) chartered by Congress for the purpose of establishing secondary market facilities for residential mortgages. *See* 12 U.S.C. 1716 *et seq.;* 12 U.S.C. 1451 *et seq.* Specifically, Congress established the Enterprises to provide stability in the secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential mortgages, and promote access to mortgage credit throughout the nation. *Id.*

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises in accordance with the Safety and Soundness Act, as amended by HERA, to maintain the Enterprises in a safe and sound financial condition and to help assure performance of their public mission. The Enterprises remain under conservatorship at this time.

B. Statutory Requirements

Section 1323(a)(1) of the Safety and Soundness Act, as amended, 12 U.S.C. 4543(a)(1), requires the Director of FHFA (Director) to make available to the public the non-proprietary data submitted by Fannie Mae and Freddie Mac in their mortgage reports required under section 309(m) of the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. 1723a(m), and section 307(e) of the Federal Home Loan Mortgage Corporation Act, as amended, 12 U.S.C. 1456(e), respectively (hereafter, Charter Acts). The Enterprises are required to collect, maintain and provide to FHFA in these mortgage reports data relating to their single-family and multifamily mortgage purchases (*e.g.,* income, census tract location, race and gender of mortgagors). The responsibility to maintain a PUDB for mortgage data was transferred from HUD to FHFA pursuant to sections 1122, 1126, and 1127 of HERA.

Section 1126 of HERA also amended section 1323 of the Safety and Soundness Act by adding a new paragraph (a)(2) which requires that such data submitted by the Enterprises in their mortgage reports shall include the data elements required to be reported under HMDA, 12 U.S.C. 2801 *et seq.,* at the census tract level. 12 U.S.C. 4543(a)(2). FHFA construes this language in section 1323(a)(2) to require the Enterprises to submit for inclusion in the PUDB HMDA mortgage data elements that the Enterprises are currently collecting as part of their established mortgage-purchasing activities. Section 1323(a) does not contain a mandate that the Enterprises modify their seller-servicer agreements to collect additional data solely for the purpose of populating the PUDB. While it might be within the scope of statutory discretion for the agency to administer this provision in that way, the Enterprises are currently operating in conservatorship and it would not further the purposes of their conservatorship to do so.

Section 1323(b)(1) states that, except as provided in paragraph (b)(2), the Director may not make available to the public Enterprise data that the Director determines under section 1326 are proprietary. Section 1323(b)(2), as amended, provides that the Director shall not restrict public access to the data in the Enterprise reports related to income, census tract location, race, and gender of single-family mortgagors, or to the data required to be reported under HMDA at the census tract level. *See* 12 U.S.C. 4543(b)(1), 4543(b)(2), 4546. Consistent with the amendments to section 1323, section 1127 of HERA amended section 1326 of the Safety and Soundness Act by adding a new paragraph (d) which states that, subject to the privacy restrictions described in section 304(j) of HMDA,[1] the Director shall make public certain information relating to single-family mortgage data of the Enterprises: (1) the same data from the Enterprises that is required of insured depository institutions under HMDA; and (2) information collected by the Director under section 1324(b)(6). *See* 12 U.S.C. 4544(b)(6), 4546(d). Section 1324(b)(6), in turn, part of a section describing the contents of FHFA's Annual Housing Activities Report (AHAR) to Congress, requires FHFA to compare "the characteristics of high-cost loans purchased and securitized by each Enterprise where such securities are not held on portfolio, to loans purchased and securitized where such securities are either retained on portfolio or repurchased by the Enterprise, including such characteristics as—(A) The purchase price of the property that secures the mortgage; (B) the loan-to-value ratio of the mortgage, which shall reflect any secondary liens on the relevant property; (C) the terms of the mortgage; (D) the creditworthiness of the borrower; and (E) any other relevant data, as determined by the Director." FHFA is continuing to assess the mortgage data elements that are needed to implement section 1324(b)(6), and will issue a subsequent Order, applicable to the PUDB for 2009, that implements this section after it has completed its analysis.[2]

Section 1323, as amended, also includes a new paragraph (d) which states that data submitted under this section by an Enterprise shall be made publicly available no later than September 30 of the year following the year to which the data relates. 12 U.S.C. 4543(d).[3]

C. Description of Enterprise Reporting and PUDB Matrices

From 1993 to 2005, HUD took a number of regulatory and administrative actions to establish and maintain a PUDB, and to withhold from disclosure in the PUDB certain Enterprise mortgage data that HUD had determined to be proprietary information and to release to the public Enterprise mortgage data that HUD had determined to be non-proprietary. FHFA's revisions discussed in this Notice of Order have been made to the PUDB matrices as set forth in HUD's October 4, 2004 Final Order. *See* 69 FR 59476. The PUDB matrices are data dictionaries, attached as an Appendix to this Notice of Order, which describe the data fields provided in the public release of the data in the PUDB.

The PUDB contains Enterprise single-family and multifamily mortgage loan-level data, including data elements that have been determined to lose their proprietary character when categorized in ranges or otherwise adjusted or recoded. For single-family mortgage data, there are three separate files: a Census Tract File that identifies the census tract location of the mortgaged properties; a National File A containing loan-level data on owner-occupied one-unit properties but without census tract identifiers; and a National File B containing unit-level data on all single-family properties without census tract

[1] Section 304(j) of HMDA addresses Loan Application Register (LAR) information and describes, among other things, the manner in which an applicant's privacy interests are to be protected in response to a request for disclosure from the public, including removal of the applicant's name and identification number, the date of the application, and the date of any determination by the institution with respect to such application. In addition, the disclosure of information must ensure that depository institutions are protected from liability under any Federal or State privacy laws.

[2] HERA also revised the Enterprises' housing goals for 2010 and subsequent years. FHFA will issue a subsequent Order, applicable to the PUDB for 2010, that revises the applicable data fields in the PUDB matrices to reflect HERA's changes to the Enterprise housing goals.

[3] The release of the 2008 PUDB was delayed due to the transfer of authority to release the data to the public from HUD to FHFA and technical and operational issues raised by the new HERA data reporting requirements.

identifiers. For multifamily data, there are two separate files: a Census Tract File that identifies the census tract location of the mortgaged properties; and a National File that does not identify the location of the mortgaged properties but contains mortgage-level data and unit class-level data on all multifamily properties.

II. Proposed Revisions to the PUDB Matrices

To determine the appropriate treatment of the newly required data elements for purposes of the PUDB, FHFA asked each Enterprise to indicate whether it is collecting the following mortgage purchase data and, if so, to provide such data to FHFA for inclusion in the PUDB: (1) Single-family property type; (2) multifamily lien status; (3) multifamily borrower race or national origin 1–5; (4) multifamily co-borrower race or national origin 1–5; (5) multifamily borrower ethnicity; (6) multifamily co-borrower ethnicity; (7) multifamily borrower gender; (8) multifamily co-borrower gender; (9) multifamily rate spread; and (10) multifamily HOEPA status.[4] In response to FHFA's request, the Enterprises provided FHFA with single-family property type and multifamily lien status data. The Enterprises did not provide the other information requested, which they stated they do not collect.

FHFA also provided both Enterprises with an opportunity to review and comment on FHFA's proposed revisions to the single-family and multifamily PUDB matrices. In addition, FHFA stated that it would consider any assertions by the Enterprises that the release of a specific data field would result in the release of their proprietary data, and would make a determination on this matter in accordance with applicable statutory and regulatory requirements. However, data fields that are required to be reported under HMDA at the census tract level, pursuant to section 1323(a)(2) of the Safety and Soundness Act, as amended, are not subject to regulatory and statutory processes for proprietary determinations that might otherwise apply to the release of such data since the disclosure of these data is explicitly required by statute.

Both Enterprises provided comments on a number of the proposed data field revisions, which are discussed in Sections IV. and V. below under the applicable data fields. Certain data fields that FHFA originally considered including in the PUDB, but which it has subsequently decided to omit, are discussed in Section V.

III. Summary of Order's Treatment of HMDA and Other Data Elements in the PUDB

Following is a summary of the changes made to the PUDB matrices to conform to the HMDA data elements, and other technical changes made to data elements in the PUDB matrices, as provided in FHFA's Order. The changes take into account FHFA's analysis of the applicable statutory provisions and FHFA's determinations with respect to the Enterprises' comments on the proposed revisions to the matrices. A more detailed discussion of the changes is contained in Section IV. below.

A. Expanded Values or Changes in Descriptions of Data Fields in the PUDB Matrices

To conform to HMDA reporting requirements, FHFA has expanded the values (*i.e.,* codes) or changed the descriptions of the following data fields in the PUDB matrices: single-family and multifamily Enterprise flag; single-family and multifamily purpose of loan; and single-family and multifamily Federal guarantee.

B. New Data Fields in the PUDB Matrices

As discussed above, FHFA construes section 1323(a)(2) to require the Enterprises to submit for inclusion in the PUDB HMDA mortgage data elements that the Enterprises are currently collecting. Accordingly, FHFA has added new data fields for these HMDA data elements as separate data fields in the PUDB matrices. In addition, as previously noted, FHFA currently is reviewing the data reporting requirements in connection with the high-cost securitized loans analysis that the Director is required to conduct, and upon completion of that review, will issue a new Order requiring the Enterprises to submit such data, as specified by FHFA, for inclusion in the PUDB for 2009.

Specifically, FHFA has added the following new data fields in the PUDB matrices for HMDA data elements that are currently collected and reported by the Enterprises but which had been coded differently in the PUDB: single-family borrower race or national origin 1–5; single-family co-borrower race or national origin 1–5; single-family borrower ethnicity; single-family co-borrower ethnicity; and single-family lien status.

FHFA has added the following new data fields in the PUDB matrices for HMDA data elements that are currently collected and reported by the Enterprises but which had not previously been included in the PUDB: single-family rate spread; single-family HOEPA status; and multifamily lien status (previously reported by Freddie Mac only).

FHFA has also added a new data field for single-family property type, which is currently collected but which had not previously been reported by the Enterprises.

C. HMDA Data Elements Not Incorporated in the PUDB Pursuant to HMDA Section 304(j)

Consistent with section 304(j) of HMDA, the PUDB does not disclose personally identifiable information (PII) contained in loan data reported by the Enterprises to FHFA. FHFA does not receive the applicant's name, identification number, or date of loan application from the Enterprises. FHFA does receive the date of the mortgage note, which is equivalent to the HMDA "action date" for an originated loan, but FHFA does not release this information in the PUDB files with the exception of single-family National File B where it is released in data field 20 in an aggregated form to protect PII.

D. HMDA Data Elements Not Incorporated in the PUDB as Inapplicable

The following HMDA data elements have not been incorporated in the PUDB because they are inapplicable to Enterprise mortgage purchases: as of year; preapproval; action type; purchaser type; denial reason 1–3; edit status; application date prior 2004 flag; multifamily occupancy; and multifamily type of property.

E. Technical Revisions to Data Elements in the PUDB Matrices

FHFA has made technical revisions to the following data fields in the PUDB matrices to conform the data fields to long-standing PUDB data reporting practice or provide greater clarity: loan number; MSA code; county-2000 census; census tract-2000 Census; 2000 census tract-percent minority; 2000 census tract-median income; 2000 local area median income; area median family income; borrower income ratio; "special affordable, seasoned loan: are proceeds recycled?"; single-family Federal guarantee; type of seller institution; and acquisition type.

FHFA has made technical revisions to the following data fields and references in the PUDB matrices to conform to the

[4] A HOEPA mortgage is a mortgage covered by section 103(aa) of the Home Ownership Equity Protection Act (HOEPA) (15 U.S.C. 1602(aa)), as implemented by the Board of Governors of the Federal Reserve System.

new statutory requirements: borrower's (or borrowers') annual income; and single-family and multifamily acquisition unpaid principal balance (UPB).

F. Proposed Data Elements Not Included in the PUDB

The following data elements are not currently collected by the Enterprises, and FHFA is not requiring that they be collected and reported for inclusion in the PUDB: multifamily borrower and co-borrower race or national origin; multifamily borrower and co-borrower ethnicity; multifamily borrower and co-borrower gender; multifamily rate spread; multifamily HOEPA status; respondent ID; and agency code.

IV. Discussion of Revisions to PUDB Matrices

To implement the HERA amendments to sections 1323 and 1326 of the Safety and Soundness Act, FHFA has adopted an Order that revises the PUDB matrices to incorporate the HMDA data elements as applicable and requires the Enterprises to submit data in accordance with the revised matrices. The Order also makes a number of technical revisions to existing data fields in the PUDB matrices to conform the data fields to long-standing PUDB data reporting practice, to provide greater clarity, or to conform to the new statutory requirements. The revised matrices are included in an Appendix to the Order. Both the Order and Appendix are set forth at the end of this Notice of Order. Single-family and multifamily PUDB Data Dictionaries that further describe the data fields will be made available on FHFA's public Web site at *http://www.fhfa.gov/Default.aspx?Page=137.*

FHFA's changes to the single-family and multifamily matrices are further described below.

A. Expanded Values or Changed Descriptions

To conform to HMDA reporting requirements, FHFA has expanded the values (or codes) or changed the descriptions of certain data fields in the PUDB matrices, as further discussed below.

1. Single-family and Multifamily Data Field 0: Enterprise Flag

This data field designates whether the mortgage was purchased by Fannie Mae or Freddie Mac. FHFA has changed the name of this data field from "agency flag" to "Enterprise flag" to avoid confusing this data field with HMDA's "agency code" data field (which is the originating lender's regulatory agency code).

2. Single-family Data Field 22: Purpose of Loan

This data field designates the purpose of the mortgage acquired by the Enterprise (*e.g.,* purchase, refinancing, rehabilitation). HMDA requires the reporting of the purpose of a mortgage, with one of the purpose codes being for home improvement loans. Data field 22 included a code for "rehabilitation" loans, which FHFA believes are substantially equivalent to home improvement loans. Accordingly, to conform to HMDA reporting requirements, FHFA has changed the code name in this data field from "rehabilitation" loan to "home improvement/rehabilitation" loan. In addition, to conform to HMDA reporting requirements, FHFA has added codes in this data field in the single-family Census Tract File to reflect HMDA's additional purpose of loan codes. (*See* the expanded codes in the single-family matrix in the Appendix.) FHFA has preserved the prior PUDB recoding in this data field in the single-family National File B. FHFA also has expanded the codes in this data field to enable the Enterprises to report second mortgages and home improvement/rehabilitation mortgages as purchase money mortgages where applicable, which allow the Enterprises to claim appropriate credit under the 2005–2009 home purchase subgoals. Second mortgages and home improvement/rehabilitation mortgages identified as purchase money mortgages will be coded as "1=purchase" for the PUDB.

Fannie Mae asked whether a mortgage with a "value of 4" = home improvement/rehabilitation (purchase mortgage) under the "purpose of loan" data field would be disclosed in the PUDB as a "1 = purchase", or a "4 = home improvement/rehabilitation" mortgage. FHFA is clarifying in this Notice of Order that a mortgage with a "value of 4" will be disclosed in the PUDB as a "purchase" mortgage in the single-family files.

3. Multifamily Data Field 21: Purpose of Loan

This data field designates the purpose of the mortgage acquired by the Enterprise (*e.g.,* purchase, refinancing, rehabilitation). For the reasons discussed above for single-family data field 22, FHFA has changed the "rehabilitation" loan purpose code in this data field in the multifamily matrix to "home improvement/rehabilitation" loan. To conform to HMDA reporting requirements, FHFA has also added codes in this data field in the multifamily Census Tract File to reflect HMDA's additional purpose of loan codes (*see* the expanded codes in the multifamily matrix in the Appendix), while recoding non-HMDA values as "not applicable/not available/other" for the multifamily Census Tract File.

Fannie Mae commented that multifamily loan purpose currently is collected through one of four acquisition systems, depending on the transaction structure (*e.g.,* acquisition, refinance, equity, and conversion). Fannie Mae indicated that when it delivers this information to FHFA, it identifies the loan purpose as purchase, refinance, new construction, rehabilitation or not applicable/not available based on the loan purpose provided by the seller, special feature codes, and other information. Fannie Mae stated that this process of reporting the multifamily "purpose of loan" data might cause some confusion for users trying to align the HMDA data with the PUDB data. Accordingly, users of the PUDB and HMDA data should be aware of the potential reporting discrepancy in the purpose of loan data field in these two databases.

4. Single-family Data Field 27 and Multifamily Data Field 34: Federal Guarantee

This data field identifies the source of the Federal guarantee or insurance of the loan acquired by the Enterprise. Since 2001, the Enterprises have been reporting loans insured or guaranteed by the Federal Housing Administration, Department of Veterans Affairs, and Rural Housing Service using an expanded set of values. To conform to HMDA reporting requirements, FHFA has expanded the codes in the single-family and multifamily Census Tract Files to reflect HMDA's additional Federal loan guarantee or insurance sources. (*See* the expanded codes in the single-family and multifamily matrices in the Appendix.) For single-family National File A, single-family National File B, and the multifamily National File, FHFA has preserved the prior PUDB recoding. The description for data field 34 in the multifamily matrix has also been changed from "Government Insurance" to "Federal Guarantee" to be consistent with the description in data field 27 of the single-family matrix. A technical revision has also been made to this data field, as discussed under Section IV.E. below.

B. New Data Fields

1. Data Elements Currently Collected and Reported But Previously Coded Differently in the PUDB

To conform to HMDA reporting requirements, FHFA has added the following new data fields to the PUDB matrices for data elements that are currently collected and reported by the Enterprises but which had been coded differently in the PUDB.

a. Single-family Data Fields 41a–41e: Borrower Race or National Origin 1–5

These data fields identify the race or national origin of the borrower of the loan acquired by the Enterprise. Since 2004, the Enterprises have been reporting single-family borrower race or national origin in accordance with five defined fields—borrower race1- borrower race5—but the data was included in a single race or national origin field in the PUDB. The Enterprises did not comment on these data fields.

To conform to HMDA reporting requirements, FHFA has incorporated these five fields in the single-family Census Tract File to reflect HMDA's borrower race or national origin fields. (*See* the single-family matrix in the Appendix for the specific codes that apply to these data fields.) FHFA is continuing to include the data as a single data field in National Files A and B, using an algorithm for collapsing the five borrower race or national origin fields and borrower ethnicity field to the single field. The single data field in National Files A and B is constructed as follows:

i. If the borrower ethnicity field indicates that the borrower is Hispanic or Latino, then the single field's value indicates the value for "Hispanic or Latino" regardless of race (consistent with reporting prior to 2004);

ii. Otherwise, if a unique value within borrower race1- borrower race5 indicates that the borrower is American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or White, then the single field's value is that unique value (this includes multiple selections of that unique value);

iii. Otherwise, if the values within borrower race1- borrower race5 indicate that the borrower has selected more than one of American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or White, then the single field's value indicates "Two or more races";

iv. Otherwise, the single field's value indicates "not available/not applicable" (*i.e.,* no indication of race or ethnicity provided).

b. Single-family Data Field 41f: Borrower Ethnicity

This new data field identifies the ethnicity of the borrower of the loan acquired by the Enterprise. The Enterprises have been reporting single-family borrower ethnicity to FHFA, but these data were previously included under code 7 (Hispanic or Latino) in data field 41 in the single-family PUDB files and not as a separate data field. The Enterprises did not comment on this data field.

To conform to HMDA reporting requirements for borrower ethnicity, FHFA has added this data element as new data field 41f in the single-family Census Tract File. (*See* the single-family matrix in the Appendix for the specific codes that apply to this data field.)

c. Single-family Data Fields 42a–42e: Co-Borrower Race or National Origin 1–5

These data fields identify the race or national origin of the co-borrower of the loan acquired by the Enterprise. Since 2004, the Enterprises have been reporting single-family co-borrower race or national origin to FHFA in accordance with five defined fields—co-borrower race1- co-borrower race5—but the data was included in a single race or national origin field in the PUDB. The Enterprises did not comment on these data fields.

To conform to HMDA reporting requirements, FHFA has incorporated these five fields in the single-family Census Tract File to reflect HMDA's co-borrower race or national origin fields. (*See* the single-family matrix in the Appendix for the specific codes that apply to these data fields.) FHFA is continuing to include the data as a single data field in single-family National Files A and B, and the algorithm used for collapsing the five co-borrower race or national origin fields and co-borrower ethnicity field to the single data field is the same as that used for the five borrower race or national origin fields and borrower ethnicity field discussed under single-family data fields 41a-41e above.

d. Single-Family Data Field 42f: Co-Borrower Ethnicity

This new data field identifies the ethnicity of the co-borrower of the loan acquired by the Enterprise. The Enterprises have been reporting single-family co-borrower ethnicity to FHFA, but the data was previously included under code 7 (Hispanic or Latino) in data field 42 in the single-family PUDB files, and not as a separate data field. The Enterprises did not comment on this data field.

To conform to HMDA reporting requirements for co-borrower ethnicity, FHFA has added this data element as new data field 42f in the single-family Census Tract File. (*See* the single-family matrix in the Appendix for the specific codes that apply.)

e. Single-Family Data Field 59: Lien Status

This new data field identifies the lien status of the single-family loans acquired by the Enterprises. The Enterprises have been reporting single-family lien status under the "purpose of loan" data field. Freddie Mac confirmed that it collects single-family lien status data when it purchases mortgage loans and currently provides this data to FHFA. Freddie Mac stated that the single-family lien status data field should be identified in the PUDB as "not applicable" because of the Enterprises' status as loan purchasers, asserting that the HMDA instructions specifically differentiate between the reporting requirements and data element coding for originated versus purchased loans. Fannie Mae did not comment on single-family lien status.

The HMDA instructions do distinguish, for purposes of some data elements, between insured depository institutions that are loan purchasers and those that are loan originators. Fannie Mae and Freddie Mac, because they are not insured depository institutions, do not have any status under HMDA, either as originators or as purchasers. But they are, as a result of their activities, in possession of HMDA data elements for the loans that they purchase. In its role as the agency charged with administering the Safety and Soundness Act, FHFA, by this Order, is identifying the data elements that must be reported and included in the PUDB. Since the Enterprises have been collecting and reporting single-family lien status data, FHFA is requiring the Enterprises to continue reporting that data for inclusion in new data field 59 for lien status in the single-family Census Tract File. FHFA has populated the data field using the lien status data reported for data field 22 (purpose of loan), and will do the same for subsequent years.

2. Data Elements Currently Collected and Reported But Not Previously Included in the PUDB

a. Single-Family Data Field 56: Rate Spread

This new data field designates the difference between the annual

percentage rate (APR) and the applicable Treasury rate (*see* the Truth in Lending regulations at 12 CFR part 226 (Regulation Z)) for single-family mortgages purchased by the Enterprises. The Enterprises have been reporting rate spread data for single-family mortgages, but this data was not previously included in the PUDB. Fannie Mae requested that the PUDB include "not applicable" as an allowable value for the single-family rate spread data field, on the basis that HMDA does not require the disclosure of rate spread information for single-family rate spreads falling below specified thresholds (equal to or greater than 3 percentage points for first lien loans, or 5 percentage points for subordinate lien loans). In addition, Fannie Mae stated that HMDA does not require purchasers to disclose rate spread information. Freddie Mac expressed similar views.

Since the Enterprises have been collecting and reporting rate spread data for single-family mortgages, FHFA is requiring the Enterprises to continue reporting that data, which will be included in new data field 56 in the single-family Census Tract File.

For 2008, HMDA requires the reporting of values for rate spread of 3.0 and greater for first liens, and 5.0 and greater for subordinate liens. For 2009 and subsequent years, HMDA requires the reporting of values for rate spread of 1.5 and 3.5, respectively. Values below these thresholds, including values that would be identified as "not applicable," will be reported as a numeric zero ("0") because the PUDB is released as a numeric-only database.

b. Single-Family Data field 57: HOEPA Status

This new data field designates whether a single-family loan acquired by the Enterprise is subject to HOEPA, as implemented in Regulation Z, 12 CFR 226.32, because the APR or the points and fees on the loan exceed the HOEPA triggers.[5] The Enterprises have been collecting and reporting the HOEPA status of single-family loans to FHFA, but this data was not previously included in the PUDB. Fannie Mae commented that, under its business policies, single-family mortgages that are subject to HOEPA are not eligible for sale to Fannie Mae. However, such loans can be purchased inadvertently by the Enterprises. Freddie Mac did not comment on single-family HOEPA status.

Accordingly, to conform to HMDA reporting requirements for HOEPA status, FHFA has added this data element as new data field 57 in the single-family Census Tract File.

c. Multifamily Data Field 50: Lien Status

This new data field identifies the lien status of the multifamily loans acquired by the Enterprises. Unlike single-family lien status, multifamily lien status is not currently included in the "purpose of loan" data field in the multifamily matrix. Fannie Mae has collected but not reported this data in the past. Freddie Mac confirmed that it collects multifamily lien status data when it purchases mortgage loans and currently provides this data to FHFA for housing goals purposes.

In response to FHFA's request, Freddie Mac and Fannie Mae provided FHFA with the multifamily lien status data necessary to populate the new multifamily lien status data field for the PUDB. However, Freddie Mac stated that the multifamily lien status data field should be identified in the PUDB as "not applicable" because of the Enterprises' status as loan purchasers, making the argument (already addressed above) that the HMDA instructions differentiate between the reporting requirements and data element coding for originated versus purchased loans.

Since the Enterprises have been collecting multifamily lien status data, FHFA is requiring the Enterprises to report that data for inclusion in new data field 50 for lien status in the multifamily Census Tract File.

3. Data Element Currently Collected But Not Previously Reported—Single-Family Data Field 58: Property Type

This new data field identifies the type of property securing the loan acquired by the Enterprises. HMDA reporting requirements differentiate the single-family property type data element as single-family or manufactured housing. The Enterprises have not previously been required to distinguish between single-family and manufactured housing in their data reporting to FHFA.

In response to FHFA's request, Fannie Mae and Freddie Mac provided FHFA with the requested single-family property type data. Fannie Mae commented that it collects and reports manufactured housing data in a manner different from that of HMDA reporters. Specifically, Fannie Mae stated that the HMDA definition of "manufactured home" incorporates the definition used by HUD and includes modular homes, while Fannie Mae requires that manufactured housing be built on a permanent chassis that is attached to a permanent foundation.

Subsequent discussions with Fannie Mae revealed that it distinguishes between modular homes that are "on-frame" (*i.e.,* built on a permanent chassis and ready for occupancy upon leaving the factory but not subject to HUD code standards) and "off-frame" (*i.e.,* housing that is not ready for occupancy upon leaving the factory but must be constructed on-site). Fannie Mae indicated that it does not purchase any loans relating to "on-frame" modular homes. Accordingly, it appears that the types of loans that Fannie Mae purchases are secured by manufactured homes that meet both the HMDA and HUD code standards.

Fannie Mae does purchase loans secured by off-frame modular homes that need to be constructed on-site. However, these modular homes would not qualify as "manufactured homes" under either HMDA's or HUD's standards since they are not ready for occupancy upon leaving the factory. These homes would be designated as single-family homes.

Fannie Mae also asserted that there are timing discrepancies with regard to the reporting of data for the PUDB and HMDA. It stated that lenders report to HMDA those loans that are purchased or originated in the reporting year, while Fannie Mae reports to FHFA all mortgages purchased in a year—whether originated in the current year or seasoned loans. FHFA recognizes that because of these differences in the nature of the PUDB and HMDA, timing differences in the reporting of single-family property data are inevitable. Nevertheless, since this is a HMDA-required data field (*see* 12 CFR 203.4(a)(4)), FHFA is required to obtain such data from the Enterprises.

Accordingly, to conform to HMDA reporting requirements for property type, FHFA has added property type, without modification, as new data field 58 in the single-family Census Tract File.

C. HMDA Data Elements Not Incorporated in the PUDB, Consistent With Section 304(j) of HMDA

Section 1326(d) of the Safety and Soundness Act, as amended, provides that the information related to loan applicants' privacy interests as described in section 304(j) of HMDA shall not be disclosed to the public. Section 304(j) requires specifically that the following PII not be disclosed to the public:

(1) The applicant's name and identification number;

[5] HOEPA applies to a "consumer credit transaction that is secured by the consumer's principal dwelling" in which either the APR, or the total points and fees payable by the consumer at or before loan closing, exceed certain specified amounts.

(2) The date of the loan application; and

(3) The date of any determination by the lending institution with respect to the application.

In addition, section 304(j) requires that any disclosure of information must ensure that depository institutions are protected from liability under any Federal or State privacy laws.

Consistent with section 304(j) of HMDA, the PUDB does not disclose PII contained in loan data reported by the Enterprises to FHFA. FHFA does not receive the loan applicant's name, identification number, or date of loan application from the Enterprises. FHFA does receive the date of the mortgage note, which is equivalent to the HMDA "action date" for an originated loan, but FHFA does not release this information in the PUDB files with the exception of single-family National File B where it is released in data field 20 using the following recoded values to protect PII: 1 = originated same calendar year as acquired; 2 = originated prior to calendar year of acquisition; or 9 = missing.

D. HMDA Data Elements Not Incorporated in the PUDB as Inapplicable

The HMDA data fields discussed below have not been incorporated in the PUDB because they are inapplicable to Enterprise mortgage purchases.

1. As of Year

This data field indicates the calendar year in which the HMDA data are being released, and is created by the Federal Financial Institutions Examination Council (FFIEC) in developing the publicly-released HMDA database. Since it is not a data element required to be reported by HMDA-reporting institutions, FHFA has not added this data field to the PUDB.

2. Preapproval

This HMDA data element indicates whether the loan involved a request by a household to the HMDA-reporting lender for preapproval of a loan. FHFA has not added this data field to the PUDB because all loans in the PUDB had to have been originated in order to be acquired by the Enterprises.

3. Action Type

This HMDA data element indicates the type of action taken on the loan by the HMDA-reporting lender, *e.g.,* loan originated, application approved but not accepted, application denied, application withdrawn, or other specified reasons. FHFA has not added this data field to the PUDB as all loans in the PUDB had to have been originated in order to be acquired by the Enterprises.

4. Purchaser Type

This HMDA data element indicates the type of entity that purchased the loan from the HMDA-reporting lender. FHFA has not added this data field to the PUDB because the Enterprises are always the purchasers of the loans disclosed in the PUDB and this data is released in data field 0, "Enterprise flag" (formerly called "agency flag").

5. Denial Reason 1–3

This HMDA data element indicates the reasons a loan was denied by the HMDA-reporting lender. FHFA has not added this data field to the PUDB because all of the loans in the PUDB had to have been originated in order to be acquired by the Enterprises and, therefore, could not have been denied.

6. Edit Status

This data field indicates the validity and/or quality status of the data reported by the HMDA-reporting institution. The data field is created by FFIEC in developing the publicly-released HMDA database. Since the data field is not required to be reported by HMDA-reporting institutions, and the data released to FHFA for inclusion in the PUDB is certified as accurate by the Enterprises, FHFA has not added this data field to the PUDB.

7. Application Date Prior 2004 Flag

This HMDA data field indicates why certain fields added to HMDA reporting in 2004 were reported under pre-2004 reporting standards, *e.g.,* the expanded race/ethnicity fields. The data field was created by FFIEC in developing the publicly-released HMDA database, and is based on the date of the loan application reported by HMDA-reporting lenders. The date of the loan application is private applicant information under section 304(j) of HMDA, and the flag is now essentially moot as there currently are few, if any, pre-2004 loan applications reported in the HMDA database. Accordingly, FHFA has not added this data field to the PUDB.

8. Multifamily: Occupancy

This HMDA data element identifies whether the property to which the loan relates is to be owner-occupied as a principal residence. This data field is not relevant to the PUDB multifamily Census Tract File because the PUDB reports data for single-family and multifamily loans in separate files, and multifamily properties, by definition, are occupied by renters and thus not owner-occupied.

9. Multifamily: Type of Property

This HMDA data element identifies the type of property securing the loan made by the HMDA-reporting lender. This data element is not relevant to the Enterprise PUDB multifamily Census Tract File because the PUDB reports data for single-family and multifamily loans in separate files and, therefore, all loans in the multifamily files are, by definition, secured by multifamily properties.

E. Technical Revisions to Data Fields in the PUDB Matrices

1. Conforming to Long-Standing PUDB Reporting Practice or Providing Greater Clarity

FHFA has made technical revisions to certain data fields in the PUDB matrices to conform the data fields to long-standing PUDB data reporting practice or provide greater clarity, as further discussed below.

a. Single-Family and Multifamily Data Field 1: Loan Number

This data field designates the sequence number assigned by FHFA in the PUDB files that corresponds to the loan number assigned by the Enterprise. FHFA has changed the description of this data field to conform the description to the long-standing practice of using randomly generated sequence numbers (and not random numbers as the previous description suggested) to identify Enterprise mortgage loan purchases in the PUDB. Each loan record is assigned a different sequence number that is randomly generated within each file. Thus, the first loan record in the Census Tract File is not also the first loan record in the National File A or National File B with a very high degree of probability. A similar change to the description of this data element has been made in data field 1 of the multifamily matrix.

b. Single-Family and Multifamily Data Field 4: MSA Code

This data field designates the Metropolitan Statistical Area (MSA) Code for the location of the property securing the Enterprise mortgage loan. Consistent with long-standing PUDB data reporting practice, FHFA has revised this data field in the single-family and multifamily Census Tract Files to include a value "99999" for properties located outside of an MSA (*e.g.,* rural locations or micropolitan statistical areas). In addition, consistent with long-standing PUDB data reporting practice, FHFA has added in the matrix

for the Census Tract File a value entitled "Other" for properties located in a specific MSA, which would be applicable to any 5-digit number other than 00000 (for missing property location) or 99999.

c. Single-Family and Multifamily Data Field 6: County—2000 Census

This data field designates the county location of the property securing the Enterprise mortgage loan. FHFA has renamed the data field from "County—1990 Census" to "County—2000 Census," as the Enterprises have reported 2000 Census geography since 2003. The reference in this and other data fields to the 2000 Census will be updated to refer to the 2010 Census when applicable to a future PUDB.

d. Single-Family and Multifamily Data Field 7: Census Tract—2000 Census

This data field designates the census tract location of the property securing the Enterprise mortgage loan. FHFA has renamed the data field from "Census Tract/BNA—1990 Census" to "Census Tract—2000 Census," as the Enterprises have reported 2000 Census geography since 2003, and Block Numbering Areas (BNAs) were phased out after the 1990 Census.[6]

e. Single-Family and Multifamily Data Field 11: 2000 Census Tract—Percent Minority

This data field designates the percentage of the population that belongs to all minority groups in the census tract location of the property securing the Enterprise mortgage. FHFA has renamed this data field from "1990 Census Tract—Percent Minority" to "2000 Census Tract—Percent Minority," as the Enterprises have used 2000 census tract demographic data since 2005.

f. Single-Family and Multifamily Data Field 12: 2000 Census Tract—Median Income

This data field designates the family area median income (AMI) of the census tract location of the property securing the Enterprise mortgage. FHFA has renamed this data field from "1990 Census Tract—Median Income" to "2000 Census Tract—Median Income," as the Enterprises have used 2000 census tract data since 2005.

g. Single-Family and Multifamily Data Field 13: 2000 Local Area Median Income

This data field designates the AMI for the location of the property securing the Enterprise mortgage, which is: The MSA for properties located in an MSA; or the county or State non-metropolitan area for properties located outside an MSA, whichever is greater. FHFA has renamed this data element from "1990 Local Area Median Income" to "2000 Local Area Median Income," as the Enterprises have used 2000 census tract data since 2005.

h. Single-Family Data Field 16: Area Median Family Income

This data field designates the AMI for the location of the property securing the Enterprise mortgage for the reporting year (*i.e.,* year of mortgage acquisition by the Enterprise), which is: The MSA for properties located in an MSA; or the county or State non-metropolitan area for properties located outside an MSA, whichever is greater. FHFA has eliminated the incorrect reference in the data field to "withheld as proprietary," as this data field has always been non-proprietary in the single-family database.

i. Single-Family Data Field 17: Borrower Income Ratio

This data field identifies the ratio of the borrower's annual income to the AMI (data field 16). FHFA has eliminated the incorrect reference in the data field to "withheld as proprietary," as this data field has always been non-proprietary (*i.e.,* only coded 9999 when borrower income or AMI is unknown) in the single-family database.

j. Single-Family Data Field 25 and Multifamily Data Field 24: "Special Affordable, Seasoned Loan: Are Proceeds Recycled?"

This data field identifies the specific reasons in accordance with 12 CFR 1282.14(e) for an Enterprise claiming Special Affordable Housing Goal credit for the Enterprise's purchase of loans that originated more than one year prior to the date of acquisition. FHFA has expanded the reporting codes for this data field to include additional reasons set forth under 12 CFR 1282.14(e), as the Enterprises have reported their mortgage data using these expanded codes since 2001.

k. Single-Family Data Field 27: Federal Guarantee

This data field identifies the source of the Federal guarantee or insurance of the loan acquired by the Enterprise. The single-family loan matrix previously included a code 4 for the purchase of a mortgage that assists in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts. The code is not applicable to single-family transactions and already appears in the multifamily loan matrix. Accordingly, FHFA has deleted this code from the single-family loan matrix.

l. Single-Family Data Field 34 and Multifamily Data Field 33: Type of Seller Institution

This data field identifies the type of seller of the loan to the Enterprise. FHFA has expanded the reporting codes for this data field to include additional types of sellers, as the Enterprises have reported their mortgage data using these expanded codes since 2001. For single-family National File B and the multifamily Census Tract File, FHFA is preserving the prior PUDB data field recoding, which is: 1 = Mortgage Company; 2 = SAIF Insured Depository Institution; 3 = BIF Insured Depository Institution; 4 = NCUA Insured Credit Union; 5 = Other. The prior PUDB data field recoding is also preserved for the multifamily National File.

m. Single-Family Data Field 38 and Multifamily Data Field 36: Acquisition Type

This data field identifies the type of acquisition by the Enterprise (*e.g.,* credit enhancement, purchase of State or local mortgage revenue bond). FHFA has expanded the reporting codes for this data field to include additional acquisition types, as the Enterprises have reported their mortgage data using these expanded codes since 2003. Fannie Mae noted that the proposed addition of the acquisition type code of "61 = asset management refinance" is not applicable to single-family transactions and already appears in the multifamily loan matrix. FHFA agrees with this comment and, as a result, has not included this code in the single-family matrix.

2. Conforming to New Statutory Requirements

FHFA has made technical revisions to certain data fields and references in the PUDB matrices to conform to the new HERA requirements, as further discussed below.

a. Single-Family Data Field 15: Borrower's (or Borrowers') Annual Income

This data field identifies the borrower's or borrowers' annual income, which is the numerator of the borrower income ratio reported in data field 17. To be consistent with HMDA reporting requirements, FHFA is now rounding the values reported for this data field to the nearest $1,000 (where values of $500 or more are rounded up) of the

[6] *http://www.census.gov/geo/www/cen_tract.html.*

borrower's annual income, in addition to the current practice of recoding in terms of dollars for year of acquisition.

b. Single-Family Data Field 18 and Multifamily Data Field 17: Acquisition UPB

Consistent with section 1323(b)(2) of the Safety and Soundness Act, as amended,[7] FHFA is not applying the same methods that previously were used to mask loan acquisition UPB data, *i.e.,* FHFA has removed the topcoding and the use of categories in reporting acquisition UPB that previously were applied to this data field as described in the single-family matrix. The loan acquisition UPB is rounded to the nearest $1,000 (where values of $500 or more are rounded up), consistent with HMDA reporting requirements. Similarly, the multifamily loan acquisition UPB data is rounded to the nearest $1,000 (where values of $500 or more are rounded up) to conform to HMDA reporting practice.

The Enterprises collect two values of UPB, both of which correspond to the HMDA data field "loan amount": Acquisition UPB and origination UPB. Historically, they have reported, and the PUDB has included, acquisition UPB. Because this HMDA data element is rounded to the nearest $1000, and because the majority of loans acquired by the Enterprises are current-year originations for which there is a negligible amount of amortization between origination and acquisition, there is no difference between the values in most cases. FHFA will continue to include acquisition UPB in the PUDB.

c. References to "Enterprises" and Regulatory Cites

To reflect revisions in terminology as a result of the enactment of HERA, FHFA has changed the references to "GSEs" in the PUDB matrices to "Enterprises." The PUDB is applicable only to loan data submitted by the Enterprises, *i.e.,* Fannie Mae and Freddie Mac. The PUDB is not applicable to loan data submitted by the Banks, which are also GSEs but are subject to separate PUDB reporting requirements. The regulatory cites in the PUDB matrices have also been revised, as the applicable regulatory provisions are now located in Title 12 of the Code of Federal Regulations.

[7] Section 1323(b)(2) prohibits the Director from restricting public access to the data elements required to be reported under HMDA at the census tract level.

V. Proposed Data Elements Not Currently Collected That Will Not Be Included in the PUDB

FHFA had originally considered requiring the reporting and public release of data fields for multifamily borrower and co-borrower race or national origin, multifamily borrower and co-borrower ethnicity, multifamily borrower and co-borrower gender, multifamily rate spread, multifamily HOEPA status, respondent ID and agency code. After considering the Enterprises' comments, and upon further review of the statutory requirements, as discussed in Section I.B. above, FHFA has determined that the Enterprises are not required under HERA to report these data elements as they do not currently collect these data. The Enterprises presented additional arguments for why they should not be required to collect and report these data, which are discussed below.

A. Multifamily Borrower and Co-Borrower Race or National Origin; Multifamily Borrower and Co-Borrower Ethnicity; and Multifamily Borrower and Co-Borrower Gender

FHFA considered adding new HMDA data fields to the PUDB that would have identified multifamily borrower and co-borrower race or national origin, multifamily borrower and co-borrower ethnicity, and multifamily borrower and co-borrower gender. Both Fannie Mae and Freddie Mac commented that they do not collect race, national origin, ethnicity, or gender for their multifamily loan purchases since the vast majority of their multifamily mortgage business involves non-natural persons (*e.g.,* limited liability companies, corporations). Freddie Mac stated that HMDA does not require these data elements to be reported for loans involving a borrower or applicant that is not a natural person (citing to 12 CFR part 203, App. A at I.D.1), or by secondary market loan purchasers (citing to 12 CFR 203.4(b)(2)). In addition, both Fannie Mae and Freddie Mac claimed that collecting such data would involve considerable expense and significant additional work and resources. Freddie Mac requested that FHFA consider these data elements to be optional and reportable as "not applicable" in accordance with HMDA reporting requirements for purchased loans.

Since the Enterprises are not currently collecting these data, and the data point is not a HMDA data element for the great majority of multifamily loans that the Enterprises purchase, as to which the borrowers are non-natural persons, and collecting the data would impose a substantial additional burden on the Enterprises while they are in conservatorship, FHFA is not requiring the Enterprises to collect and report these data for inclusion in the PUDB.

B. Multifamily Rate Spread

FHFA considered adding a new HMDA data field to the PUDB that would have designated the difference between the APR and the applicable Treasury rate for multifamily mortgages acquired by the Enterprise. Both Enterprises commented that they do not collect multifamily rate spread, and maintained that this data field is not applicable to multifamily lending under Regulation Z (12 CFR 226.1(c), which implements the Truth in Lending Act) and HOEPA. Fannie Mae contended that, for loans subject to Regulation Z, the reporting entity is required to provide information on certain "high-priced mortgage loans," but stated that Regulation Z does not apply to extensions of credit to non-natural persons (citing to 12 CFR 226.3(a)(2)). Freddie Mac asserted that HMDA does not require the collection and reporting of data for purchased loans, and both Enterprises stated that requiring the collection of this data would involve considerable expense and impose a significant regulatory burden.

Since the Enterprises are not currently collecting this data, and the data point is not a HMDA data element for the great majority of multifamily loans that the Enterprises purchase, as to which the borrowers are non-natural persons, and collecting the data would impose a substantial additional burden on the Enterprises while they are in conservatorship, FHFA is not requiring the Enterprises to collect and report this data for inclusion in the PUDB.

C. Multifamily HOEPA Status

FHFA considered adding a new HMDA data field to the PUDB that would have designated whether the multifamily loan acquired by the Enterprise is subject to HOEPA because the APR or the points and fees on the loan exceed the HOEPA triggers. Both Enterprises stated that they do not collect multifamily HOEPA status and, for the reasons discussed under the multifamily rate spread discussion above, maintained that this data field is also not applicable to multifamily lending under Regulation Z and HOEPA. Fannie Mae also stated that HOEPA applies "to a consumer credit transaction that is secured by the consumer's principal dwelling" and does not apply to multifamily properties.

For the reasons stated with respect to the multifamily data elements discussed above, FHFA is not requiring the Enterprises to collect and report this data for inclusion in the PUDB.

D. Single-Family and Multifamily Respondent ID and Agency Code

FHFA considered adding new HMDA data fields to the PUDB that would have designated the identification number (respondent ID) assigned by a HMDA-reporting lender's regulatory agency to the institution that reported the loan, and the code of the regulatory agency (agency code) for the HMDA-reporting lender that provided the loan to the borrower. The Enterprises have not been collecting respondent IDs and agency codes for their single-family or multifamily loan purchases.

Fannie Mae and Freddie Mac opposed inclusion in the PUDB of the respondent ID and agency code data fields, claiming that these are not required HMDA data fields, as described in Regulation C (citing to 12 CFR 203.4(a)) and, therefore, they are not data elements required to be reported in the PUDB under HERA.

Freddie Mac also asserted that even if respondent ID and agency code constitute data elements under HMDA, HMDA reporters that are purchasers are not required to report from whom they purchased a loan (whether from the originator or from another entity). Fannie Mae also stated that currently it collects and reports to FHFA the type of institution that sold the loan to Fannie Mae (single-family data field 34 and multifamily data field 33), and this data is disclosed in the PUDB and provides a more specific description than revealed by agency code of the type of institution from which Fannie Mae purchases its loans.

In addition, Fannie Mae asserted that if FHFA concludes that respondent ID is a HMDA data element, it would request proprietary treatment under 24 CFR 81.74(b) to prevent the public release of this data, which Fannie Mae believes will result in competitive harm.

Since the Enterprises are not collecting these data, and doing so would impose a substantial additional burden on them while they are in conservatorship, FHFA is not requiring the Enterprises to collect and report these data for inclusion in the PUDB. In particular, it would be burdensome, expensive and time-consuming for the Enterprises to make the necessary changes to their seller-servicer guidelines and infrastructure to collect such data.

For the convenience of the affected parties, the Order is recited below in its entirety. You may access this Order from FHFA's Web site at *http://www.fhfa.gov/Default.aspx?Page=43*. The Order will be available for public inspection and copying at the Federal Housing Finance Agency, Fourth Floor, 1700 G St., NW., Washington, DC 20552. To make an appointment, call (202) 414–6924.

VI. Order

Public Use Database for Enterprise Mortgage Purchases

Whereas, section 1323(a)(1) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), as amended, 12 U.S.C. 4543(a)(1), requires the Director of the Federal Housing Finance Agency (FHFA) to make available to the public the non-proprietary single-family and multifamily loan-level mortgage data elements submitted to FHFA by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) in their mortgage reports;

Whereas, the responsibility to maintain a public use database (PUDB) for such mortgage data was transferred to FHFA from the U.S. Department of Housing and Urban Development (HUD) pursuant to sections 1122, 1126 and 1127 of the Housing and Economic Recovery Act of 2008 (HERA), Public. Law 110–289 (July 30, 2008), *see* 12 U.S.C. 4543(a)(2);

Whereas, the mortgage data submitted by Fannie Mae and Freddie Mac are contained in their reports required under section 309(m) of the Federal National Mortgage Association Charter Act, as amended, 12 U.S.C. 1723a(m), and section 307(e) of the Federal Home Loan Mortgage Corporation Act, as amended, 12 U.S.C. 1456(e), respectively (hereafter, Charter Acts), and include mortgage data characteristics of single-family and multifamily mortgagors and data on the Enterprises' single-family and multifamily mortgage purchases;

Whereas, section 1126 of HERA amended section 1323 of the Safety and Soundness Act by requiring that such data submitted by the Enterprises in their mortgage reports shall include the data elements required to be reported under the Home Mortgage Disclosure Act of 1975 (HMDA), 12 U.S.C. 2801 *et seq.,* at the census tract level, and that such data elements be disclosed to the public, *see* 12 U.S.C. 4543;

Whereas, to comply with sections 1323 and 1326 of the Safety and Soundness Act, as amended, it is necessary to make changes to the data fields in FHFA's single-family and multifamily matrices of the PUDB to incorporate the data elements required thereunder and to reflect HMDA reporting practices;

Whereas, FHFA has determined that certain technical revisions to the data elements in the single-family and multifamily matrices of the PUDB should also be made to conform the data fields to long-standing PUDB data reporting practice, to provide greater clarity, or to conform to the new statutory requirements;

Whereas, the Enterprises were provided with an opportunity to review and comment on proposed revisions to the data fields in the single-family and multifamily matrices of the PUDB, and FHFA has taken the Enterprises' comments into consideration in adopting this Order;

Whereas, FHFA requested that the Enterprises provide it with specific new mortgage data for inclusion in the PUDB in accordance with the requirements of HERA, and the Enterprises provided the specific data that they currently collect;

Now, therefore, it is hereby ordered as follows:

1. The data fields in the single-family and multifamily matrices of the PUDB are revised as set forth in the attached Appendix which is incorporated herein by reference;

2. The Enterprises shall provide FHFA with the mortgage data required to populate the data fields described in the single-family and multifamily matrices in the Appendix; and

3. This Order supersedes the HUD Final Order of October 4, 2004 (69 FR 59476) and shall be effective until such time as FHFA determines that it is necessary and/or appropriate to withdraw or modify it.

Signed at Washington, DC, this 1st day of July 2010.

Wanda DeLeo,

Acting Deputy Director for Housing Mission and Goals By delegation.

Dated: July 8, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

BILLING CODE 8070–01–P

APPENDIX

ENTERPRISE MORTGAGE DATA AND AHAR INFORMATION: PROPRIETARY INFORMATION/PUBLIC-USE DATA

Notes: The following matrices distinguish proprietary from public-use mortgage data elements. A "YES" designation indicates that the data element is proprietary and not included in the public use data base in the format indicated. A "NO", "NO, Added field", "Yes, but recode", and "YES, but redefine and recode as" indicate that the data element is included in the public use data base. Certain data are coded as missing or not available either because the data was not submitted or because the data is proprietary.

Enterprise Single-Family Mortgage Data
Owner- and Renter-Occupied 1- to 4-Unit Properties
Proprietary Information/Public-Use Data

The "Census Tract File" contains mortgage-level data on all single-family properties.
The "National File A" contains mortgage-level data on owner-occupied 1-unit properties.
The "National File B" contains unit-level data on all single-family properties.

#	Field Description	Values	Census Tract File	National File A	National File B
0	Enterprise Flag	1=Fannie Mae 2=Freddie Mac	NO	NO	NO
1	Loan Number		Yes, but recode as a Sequential Number (1)	Yes, but recode as a Sequential Number (1)	Yes, but recode as a Sequential Number (1)
2	US Postal State	00=Missing	NO	YES	YES
3	US Postal Zip Code		YES	YES	YES
4	MSA Code	00000=Missing 99999=non-metropolitan area other=specific metropolitan area	NO	YES but recode as: 1= metropolitan area 0=non-metropolitan area	YES but recode as: 1= metropolitan area 0=non-metropolitan area
5	Place Code - FIPS		YES	YES	YES
6	County - 2000 Census	000=Missing	NO	YES	YES
7	Census Tract - 2000 Census	000000=Missing	NO	YES	YES
8 (2)	Census Tract Geographic Designation	1=Tract Entirely Within Central City 2=Tract Entirely Outside Central City 3=Central City Split Tract 9=Not Able To Code	NO	YES	YES
9 (2)	Central City Flag 1	9999=Not Able To Code	NO	YES	YES
10 (2)	Central City Flag 2	9998=Not Available 9999=Not Applicable	NO	YES	YES
11	2000 Census Tract - Percent Minority	9999=Not Available	NO	YES, but recode as: 1=0- <10% 2=10- <30% 3=30- 100% 9=Missing	YES, but recode as: 1=0-<10% 2=10- <30% 3=30- 100% 9=Missing
12	2000 Census Tract - Median Income	999999=Not Available	NO	YES	YES
13	2000 Local Area Median Income	999999=Not Available	NO	YES	YES
14	Tract Income Ratio	9999=Not Applicable	NO	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing
15	Borrower's (or Borrowers') Annual Income	9999999=Not Available	YES, but recode in terms of dollars for year of acquisition. and round to nearest $1,000.	YES	YES
16	Area Median Family Income	999999=Not Available	YES, but recode in terms of dollars for year of acquisition.	YES	YES

#	Field Description	Values	Census Tract File	National File A	National File B
17 (3)	Borrower Income Ratio	9999=Not Applicable or Not Available	NO	YES, but recode as:	YES, but redefine and recode as: (3)
				1=0- <=60%	1=0- <=60%
				2=60 - <=100%	2=60- <=100%
				3= >100	3= >100
				9=Not Applicable	9=Not Applicable
18	Acquisition UPB		YES, but recode as: actual values rounded to nearest $1,000	YES	YES
19	LTV at Origination	999=Not Applicable	YES	YES, but recode as:	YES
				1=0- <=60%	
				2=60- <=80%	
				3=80- <=90%	
				4=90- <=95%	
				5= > 95%	
				9=Missing	
20	Date of Mortgage Note		YES	YES	YES, but recode as: 1=Originated same calendar year as acquired 2=Originated prior to calendar year of acquisition 9=Missing
21	Date of Acquisition		YES	YES	YES
22	Purpose of Loan	1=Purchase	YES but recode as:	YES but recode as:	YES but recode as:
		2=Refinancing	1=Purchase	1=Purchase	1=Purchase
		3=Second Mortgage (Purchase Mortgage)	2=Refinancing	8=Other	2=Refinancing
		4=Home Improvement/Rehabilitation (Purchase Mortgage)	4=Home Improvement/Rehabilitation	9=Not Applicable/Not Available	3=Second Mortgage
		5=Second Mortgage (not Purchase Mortgage)	9=Not Applicable/Not Available		4=Home Improvement/Rehabilitation
		6=Home Improvement/Rehabilitation (not Purchase Mortgage)			9=Not Applicable/Not Available
		9=Not Applicable/Not Available			
23	Cooperative Unit Mortgage	1=Yes	YES	YES	YES
		2=No			
		8=Not Available			
		9=Not Applicable			
24 (2)	Refinancing Loan from Own Portfolio	1=Yes	YES	YES	YES
		2=No			
		9=Not Applicable			
25 (7)	Special Affordable, Seasoned Loan: Are Proceeds Recycled?	1=a state housing finance agency, 12 CFR 1282.14(e)(4)(vii)	YES	YES	YES
		2=an affordable housing loan consortium, 12 CFR 1282.14(e)(4)(vii)			
		3=a qualifying Federally insured credit union, 12 CFR 1282.14(e)(4)(vii)(A)			
		4=a community development financial institution, public loan fund, or non-profit mortgage lender, 12 CFR 1282.14(e)(4)(vii)(B)			
		5=a member of another class of mortgage lenders determined by FHFA to qualify, 12 CFR 1282.14(e)(4)(vii)(B)			
		6=a qualifying BIF- or SAIF-insured depository institution with a satisfactory performance evaluation rating under the Community Reinvestment Act, 12 CFR 1282.14(e)(4)(vi)			
		7=an institution which the Enterprise has determined to meet the requirements in 12 U.S.C. 4563(b)(1)(B) in accordance with 12 CFR 1282.14(e)(4)(i)-(iv)			
		8=the mortgage is a federally related mortgage where the Enterprise has provided documentation to FHFA that supports eligibility to count toward the special affordable housing goal, 12 CFR 1282.14(e)(3)			
		9=the mortgage is a federally related mortgage which is eligible to count toward the special affordable housing goal, 12 CFR 1282.14(e)(2) and 12 U.S.C. 4563(b)(1)			
		0=the mortgage is not eligible to count toward the special affordable housing goal under any of the above provisions.			

#	Field Description	Values	Census Tract File	National File A	National File B
26	Product Type	01=Fixed Rate	YES	YES	YES
		02=ARM			
		03=Balloon			
		04=GPM/GEM			
		05=Reverse Annuity Mortgage			
		06=Other			
		07...98=List Other Distinct Products			
		99=Not Available			
27 (7)	Federal Guarantee	1=originated under HUD's Home Equity Conversion Mortgage (HECM)	YES, but	YES, but	YES, but
		Insurance Program, 12 CFR 1282.16(b)(3)(ii)	recode as:	recode as:	recode as:
		2=covered under the Rural Housing Service's Guaranteed Rural Housing	1=Conventional/Other	1=FHA/VA	1=FHA/VA
		Loan Program, 12 CFR 1282.16(b)(3)(ii)	2=FHA-Insured	2=FSA/RHS-Guaranteed	2=FSA/RHS-Guaranteed
		3=on a property on a tribal land and insured under FHA's Section 248	3=VA-Guaranteed	3=HECMs	3=HECMs
		program, HUD's Section 184 program, or the Title VI program,	4=FSA/RHS-Guaranteed	4=No Federal Guarantee	4=No Federal Guarantee
		12 CFR 1282.16(b)(3)(ii)		5=Title 1-FHA	5=Title 1-FHA
		5=involves Federal guarantees, insurance or other Federal obligation, where			
		the Enterprise has submitted supporting documentation to FHFA,			
		12 CFR 1282.16(b)(3)(iii)			
		6=the mortgage is awarded half credit toward the special affordable housing			
		goal because it is insured under HUD's Title I program, 12 CFR 1282.14(f)			
		7=it otherwise has a federal guarantee from the Federal Housing			
		Administration (FHA)			
		8=it otherwise has a federal guarantee from the Department of Veterans			
		Affairs (VA)			
		9=it has some other type of federal guarantee			
		0=the mortgage has no federal guarantee			
28	RTC/FDIC	1=Yes	YES	YES	YES
		2=No			
29	Term of Mortgage at Origination		YES	YES	YES
30	Amortization Term	998=Non-Amortizing Loan	YES	YES	YES
		999=Not Available			
31 (4)	Lender Institution Name		YES	YES	YES
32 (4)	Lender City		YES	YES	YES
33 (4)	Lender State		YES	YES	YES
34	Type of Seller Institution	1=Mortgage Company	YES	YES	YES, but
		2=SAIF Insured Depository Institution			recode as:
		3=BIF Insured Depository Institution			1=Mortgage Company
		4=NCUA Insured Credit Union			2=SAIF Insured Depository Institution
		5=Life insurance company			3=BIF Insured Depository Institution
		6=State or local housing finance agency			4=NCUA Insured Credit Union
		7,8=other type of lender			5=Other
		9=unknown			
35	Number of Borrowers	99=Missing	NO	YES	YES
36	First-Time Home Buyer	1=Yes	NO	YES	YES
		2=No			
		9=Not Available			
37	Mortgage Purchased under Enterprise's	1=FNMA's Community Homebuyer Program	YES	YES	YES
	Community Lending Program	2=FNMA's Community Lending Other			
		3=FNMA's Other Housing Impact Programs			
		OR			
		1=FHLMC's Affordable Gold			
		2=FHLMC's Alternative Qualifying			
		9=Not Applicable (either Enterprise)			

#	Field Description	Values	Census Tract File	National File A	National File B
38	Acquisition Type	11=credit enhancement of a State or local mortgage revenue bond	YES	YES	YES
		12=credit enhancement of all or portion of a Real Estate			
		Mortgage Investment Conduit (REMIC) security			
		13=credit enhancement of all or portion of a Financial Asset			
		Securitization Investment Trust (FASIT) security			
		14=credit enhancement of an obligation issued by a Real			
		Estate Investment Trust (REIT)			
		15-29=credit enhancement of another type of financing activity			
		31=mortgage acquisition under a risk-sharing arrangement			
		with a federal agency			
		41=purchase of a State or local mortgage revenue bond			
		42=purchase of all or a portion of an Asset Backed			
		Security (ABS)			
		43=purchase of all or a portion of a Commercial Mortgage			
		Backed Security (CMBS)			
		44=purchase of all or a portion of a Real Estate Mortgage			
		Investment Conduit (REMIC) security			
		45=purchase of all or a portion of a Financial Asset			
		Securitization Investment Trust (FASIT) security			
		46-59=other purchase of a security			
		62=seasoned mortgage purchase for cash			
		63=current year mortgage purchase for cash			
		64=seasoned swap purchase			
		65=current year swap purchase			
39	Enterprise Real Estate Owned	1=Yes	YES	YES	YES
		2=No			
		3=Not Available			
40 (2)	Public Subsidy Programs	1=Federal only	YES	YES	YES
		2=State or Local only			
		3=Other/Private Subsidy only			
		4=Federal and State or Local			
		5=Federal and Other			
		6=State or Local and Other			
		7=Federal, State or Local and Other			
		9=Data Not Provided			
41a-41e (6)	Borrower Race or National Origin 1-5	1=American Indian or Alaskan Native	NO	YES, but recode fields	YES, but recode fields
		2=Asian		41a-41f as a single field 41 as:	41a-41f as a single field 41 as:
		3=Black or African American		1=American Indian or Alaskan Native	1=American Indian or Alaskan Native
		4=Native Hawaiian or Other Pacific Islander		2=Asian	2=Asian
		5=White		3=Black or African American	3=Black or African American
		6=Information Not Provided by Applicant		4=Native Hawaiian or Other Pacific Islander	4=Native Hawaiian or Other Pacific Islander
		in Mail, Internet, or Telephone Application		5=White	5=White
		7=Not Applicable		6=Two or more races	6=Two or more races
		9=Not Available		7=Hispanic or Latino	7=Hispanic or Latino
				9=Not available/not applicable	9=Not available/not applicable
41f (6)	Borrower Ethnicity	1=Hispanic or Latino	NO	YES	YES
		2=not Hispanic or Latino			
		3=Information Not Provided by Applicant			
		in Mail, Internet, or Telephone Application			
		4=Not Applicable			
		9=Not Available			

#	Field Description	Values	Census Tract File	National File A	National File B
42a-42e (6)	Co-Borrower Race or National	1=American Indian or Alaskan Native	NO	YES, but recode fields	YES, but recode fields
	Origin 1-5	2=Asian		42a-42f as a single field 42 as:	42a-42f as a single field 42 as:
		3=Black or African American		1=American Indian or Alaskan Native	1=American Indian or Alaskan Native
		4=Native Hawaiian or Other Pacific Islander		2=Asian	2=Asian
		5=White		3=Black or African American	3=Black or African American
		6=Information Not Provided by Applicant		4=Native Hawaiian or Other Pacific Islander	4=Native Hawaiian or Other Pacific Islander
		in Mail, Internet, or Telephone Application		5=White	5=White
		7=Not Applicable		6=Two or more races	6=Two or more races
		8=No co-borrower		7=Hispanic or Latino	7=Hispanic or Latino
		9=Not Available		9=Not available/not applicable	9=Not available/not applicable
42f (6)	Co-Borrower Ethnicity	1=Hispanic or Latino	NO	YES	YES
		2=not Hispanic or Latino			
		3=Information Not Provided by Applicant			
		in Mail, Internet, or Telephone Application			
		4=Not Applicable			
		5=No co-borrower			
		9=Not Available			
43	Borrower Gender	1=Male	NO	NO	NO
		2=Female			
		3=Information Not Provided by Applicant			
		in Mail, Internet, or Telephone Application			
		4=Not Applicable			
		9=Not Available			
44	Co-Borrower Gender	1=Male	NO	NO	NO
		2=Female			
		3=Information Not Provided by Applicant			
		in Mail, Internet, or Telephone Application			
		4=Not Applicable			
		9=Not Available			
45	Age of Borrower	999=Data Not Provided	NO	YES	YES
46	Age of Co-Borrower	999=Data Not Provided	NO	YES	YES
47 (5)	Occupancy Code	1=Principal Residence/Owner-Occupied	YES, but redefine and	YES	YES, but redefine and
		2=Second Home	recode as:		recode as:
		3=Investment Property (Rental)	1=Owner-Occupied property		1=Owner-Occupied
		9=Not Available	2=Investment Property		2=Rental Unit in an Owner-Occupied Property
			9=Not Available		3=Investment Property (Rental)
					9=Not Available
48	Number of Units		YES	NO	NO
49	Unit - Number of Bedrooms	99=Data Not Provided	YES	YES	YES
50	Unit - Owner Occupied	1=Yes	YES	YES	NO
		2=No			
51	Unit - Affordability Category	1=Low-Income Family (but not Very	YES	NO	NO
		Low-Income) in a Low-Income Area			
		2=Very Low-Income Family, in a Low-Income Area			
		3=Very Low-Income Family, Not in a Low-Income Area			
		4=Other			
		9=Not Available			
		0=Missing			
52	Unit - Reported Rent Level	99999=Not Applicable	YES	YES	YES
53	Unit - Reported Rent Plus Utilities	99999=Not Applicable	YES	YES	YES
54 (2)	Fannie Mae Exclusions	1=Excluded from Goal Reporting	YES	YES	YES
55 (4)	Geographically Targeted Indicator	1=Yes	NO, Added Field	NO, Added Field	NO, Added Field
		2=No			
		9=Not Applicable			

#	Field Description	Values	Census Tract File	National File A	National File B
56 (6)	Rate Spread	0 = Not applicable, not reported, or less than 3.0 for 1st liens	NO	YES	YES
		(or less than 5.0 for subordinate liens)			
		(for 2009 the thresholds are 1.5 and 3.5 respectively)			
57 (6)	HOEPA Status	1 = Yes	NO	YES	YES
		2 = No			
		9 = Not available, not applicable			
58 (6)	Property Type	1 = One to four-family (other than manufactured housing)	NO	YES	YES
		2 = manufactured housing			
		9 = unknown			
59 (6)	Lien Status	1 = secured by a first lien	NO	YES	YES
		2 = secured by a subordinate lien			
		3 = not secured by a lien			
		4 = not applicable			
	Notes:				
	(1) The sequential number is randomized between each of the tract and national files.				
	(2) Not applicable to 1996 and beyond data sets. Central city is as defined by the Office of Management and Budget.				
	(3) The borrower income ratio field is defined for rental units in National File B to reflect the affordability of units based on rent data submitted by the Enterprises.				
	(4) Not applicable to 1993-1995 data sets.				
	(5) National File B is recoded so that rental and owner-occupied units of 2-4 unit properties can be distinguished.				
	(6) Not applicable to 1993-2007 data sets.				
	(7) The Housing and Economic Recovery Act of 2008 revised the Enterprises' housing goals effective for 2010 and beyond. See Pub. L. No. 110-289, 122 Stat. 2654 (2008).				
	Accordingly, the legal citations for the values for this data field will no longer be in effect for 2010 data.				

Enterprise Multifamily Mortgage Data
Property Level
Proprietary Information/Public-Use Data

The "Census Tract File" contains mortgage-level data on all multifamily properties.
The "National File" consists of two parts: one part contains mortgage level data and the other consists of unit-class-level data for all multifamily properties.

#	Field Description	Values	Census Tract File	National File
0	Enterprise Flag	1=Fannie Mae 2=Freddie Mac	NO	NO
1	Loan Number		Yes, but recode as a Sequential Number (1)	Yes, but recode as a Sequential Number (1)
2	US Postal State	00=Missing	NO	YES
3	US Postal Zip Code		YES	YES
4	MSA Code	00000=Missing 99999=non-metropolitan area other=specific metropolitan area	NO	YES
5	Place Code - FIPS		YES	YES
6	County - 2000 Census	000=Missing	NO	YES
7	Census Tract - 2000 Census	000000=Missing	NO	YES
8 (2)	Census Tract Geographic Designation	1=Tract Entirely Within Central City 2=Tract Entirely Outside Central City 3=Central City Split Tract 9=Not Able To Code	NO	YES
9 (2)	Central City Flag 1	9999=Not Able To Code	NO	YES
10 (2)	Central City Flag 2	9998=Not Available 9999=Not Applicable	NO	YES
11	2000 Census Tract - Percent Minority	9999=Not Available	NO	YES, but recode as: 1=0-<10% 2=10- <30% 3=30- 100% 9=Missing
12	2000 Census Tract - Median Income	999999=Not Available	NO	YES
13	2000 Local Area Median Income	999999=Not Available	NO	YES
14	Tract Income Ratio	9999=Not Applicable	NO	YES, but recode as: 1=0-<=80% 2=80-<=120% 3= >120% 9=Missing
15	Area Median Family Income	999999=Not Available	NO	YES
16	Affordability Category	1= >=20% are especially-low-income <40% are very-low-income 2= <20% & >=40% 3= >=20% & >=40% 4= <20% & <40% 8=Not Available 9=Not Eligible 0=Missing	YES	NO

#	Field Description	Values	Census Tract File	National File
17	Acquisition UPB		YES, but recode as:	YES
			actual values rounded to nearest $1,000	
18	Participation Percent		YES	YES
19	Date of Mortgage Note		YES	YES, but recode as:
				1=Originated same calendar year as acquired
				2=Originated prior to calendar year of acquisition
				9=Missing
20	Date of Acquisition		YES	YES
21	Purpose of Loan	1=Purchase	YES, but recode as:	NO
		2=Refinancing	1=Purchase	
		3=New Construction	2=Refinancing	
		4=Home Improvement/Rehabilitation	4=Home Improvement/Rehabilitation	
		9=Not Applicable/Not Available	9=Not Applicable/Not Available/Other	
22	Cooperative Project Loan	1=Yes	YES	YES
		2=No		
		8=Not Available		
		9=Not Applicable		
23 (2)	Refinancing Loan from Own Portfolio	1=Yes	YES	YES
		2=No		
		9=Not Applicable		
24 (5)	Special Affordable, Seasoned Loan:	1=a state housing finance agency, 12 CFR 1282.14(e)(4)(vii)	YES	YES
	Are Proceeds Recycled?	2=an affordable housing loan consortium, 12 CFR 1282.14(e)(4)(vii)		
		3=a qualifying Federally insured credit union, 12 CFR 1282.14(e)(4)(vii)(A)		
		4=a community development financial institution, public loan fund,		
		or non-profit mortgage lender, 12 CFR 1282.14(e)(4)(vii)(B)		
		5=a member of another class of mortgage lenders determined by FHFA to		
		qualify, 12 CFR 1282.14(e)(4)(vii)(B)		
		6=a qualifying BIF- or SAIF-insured depository institution with a satisfactory		
		performance evaluation rating under the Community Reinvestment Act,		
		12 CFR 1282.14(e)(4)(vi)		
		7=an institution which the Enterprise has determined to meet the requirements		
		in 12 U.S.C. 4563(b)(1)(B) in accordance with 12 CFR 1282.14(e)(4)(i)-(iv)		
		8=the mortgage is a federally related mortgage where the Enterprise has		
		provided documentation to FHFA that supports eligibility to count		
		toward the special affordable housing goal, 12 CFR 1282.14(e)(3)		
		9=the mortgage is a federally related mortgage which is eligible to count		
		toward the special affordable housing goal, 12 CFR 1282.14(e)(2)		
		and 12 U.S.C. 4563(b)(1)		
		0=the mortgage is not eligible to count toward the special affordable		
		housing goal under any of the above provisions.		
25	Mortgagor Type	1=Individual	YES	YES
		2=For Profit Entity		
		3=Nonprofit Entity		
		4=Public Entity		
		5=Other		
26	Term of Mortgage at Origination		YES	YES
27	Loan Type	1=Fixed Rate	YES	YES
		2=ARM		
		3=GPM		

#	Field Description	Values	Census Tract File	National File
28	Construction Loan	1=Yes	YES	YES
		2=No		
29	Amortization Term	998=Non-Amortizing Loan	YES	YES
		999=Not Available		
30 (3)	Lender Institution		YES	YES
31 (3)	Lender City		YES	YES
32 (3)	Lender State		YES	YES
33	Type of Seller Institution	1=Mortgage Company	YES but recode as:	YES but recode as:
		2=SAIF Insured Depository Institution	1=Mortgage Company	1=Mortgage Company
		3=BIF Insured Depository Institution	2=SAIF Insured Depository Institution	2=SAIF- or BIF-Insured
		4=NCUA Insured Credit Union	3=BIF Insured Depository Institution	depository institution
		5=Life insurance company	4=NCUA Insured Credit Union	3=NCUA Insured Credit Union
		6=State or local housing finance agency	5=Other	4=Other
		7,8=other type of lender		
		9=unknown		
34 (5)	Federal Guarantee	1=originated under HUD's Home Equity Conversion Mortgage (HECM)	YES but recode as:	YES but recode as:
		Insurance Program, 12 CFR 1282.16(b)(3)(ii)	1=Conventional/Other	1=Yes
		2=covered under the Rural Housing Service's Guaranteed Rural Housing	2=FHA-Insured	2=No
		Loan Program, 12 CFR 1282.16(b)(3)(ii)	3=VA-Guaranteed	3=FHA Risk Sharing
		3=on a property on a tribal land and insured under FHA's Section 248	4=FSA/RHS-Guaranteed	9=Not Available
		program, HUD's Section 184 program, or the Title VI program,		
		12 CFR 1282.16(b)(3)(ii)		
		4=its purchase by the Enterprise assists in maintaining the affordability of		
		assisted units in eligible multifamily housing projects with expiring		
		contracts, 12 CFR 1282.16(b)(3)(ii) and 1282.16(c)(9)		
		5=involves Federal guarantees, insurance or other Federal obligation, where		
		the Enterprise has submitted supporting documentation to FHFA,		
		12 CFR 1282.16(b)(3)(iii)		
		6=the mortgage is awarded half credit toward the special affordable housing		
		goal because it is insured under HUD's Title I program, 12 CFR 1282.14(f)		
		7=it otherwise has a federal guarantee from the Federal Housing		
		Administration (FHA)		
		8=it otherwise has a federal guarantee from the Department of Veterans		
		Affairs (VA)		
		9=it has some other type of federal guarantee		
		0=the mortgage has no federal guarantee		
35	FHA Risk Share Percent		YES	YES

#	Field Description	Values	Census Tract File	National File
36	Acquisition Type	11=credit enhancement of a State or local mortgage revenue bond	YES	YES
		12=credit enhancement of all or portion of a Real Estate Mortgage Investment Conduit (REMIC) security		
		13=credit enhancement of all or portion of a Financial Asset Securitization Investment Trust (FASIT) security		
		14=credit enhancement of an obligation issued by a Real Estate Investment Trust (REIT)		
		15-29=credit enhancement of another type of financing activity		
		31=mortgage acquisition under a risk-sharing arrangement with a federal agency		
		41=purchase of a State or local mortgage revenue bond		
		42=purchase of all or a portion of an Asset Backed Security (ABS)		
		43=purchase of all or a portion of a Commercial Mortgage Backed Security (CMBS)		
		44=purchase of all or a portion of a Real Estate Mortgage Investment Conduit (REMIC) security		
		45=purchase of all or a portion of a Financial Asset Securitization Investment Trust (FASIT) security		
		46-59=other purchase of a security		
		61=asset management refinance		
		62=seasoned mortgage purchase for cash		
		63=current year mortgage purchase for cash		
		64=seasoned swap purchase		
		65=current year swap purchase		
37	Enterprise Real Estate Owned	1=Yes	YES	YES
		2=No		
		3=Not Available		
38	Public Subsidy Program	1=Federal only	YES	YES
		2=State or Local only		
		3=Other/Private Subsidy only		
		4=Federal and State or Local		
		5=Federal and Other		
		6=State or Local and Other		
		7=Federal, State or Local and Other		
		9=Data Not Provided		
39	Total Number of Units		YES	NO
40 (2)	Special Affordable - 45 Percent	0=Missing or Not Applicable	YES	NO
41 (2)	Special Affordable - 55 Percent	0=Missing or Not Applicable	YES	NO
42 (2)	Fannie Mae Exclusions	1=Excluded from Goal Reporting	YES	YES
43 (3)	Geographically Targeted Indicator	1=Yes	NO, Added Field	NO, Added Field
		2=No		
		9=Not Applicable		

#	Field Description	Values	Census Tract File	National File
50 (4)	Lien Status	1 = secured by a first lien	NO	YES
		2 = secured by a subordinate lien		
		3 = not secured by a lien		
		4 = not applicable		
	Notes:			
	(1) The sequential number is randomized between the tract and national files.			
	(2) Not applicable to 1996 and beyond data sets. Central city is as defined by the Office of Management and Budget.			
	(3) Not applicable to 1993-1995 data sets.			
	(4) Not applicable to 1993-2007 data sets.			
	(5) The Housing and Economic Recovery Act of 2008 revised the Enterprises' housing goals effective for 2010 and beyond. See Pub. L. No. 110-289, 122 Stat. 2654 (2008).			
	Accordingly, the legal citations for the values for this data field will no longer be in effect for 2010 data.			
	Enterprise Multifamily Mortgage Data			
	Unit Class Level			
	Proprietary Information/Public-Use Data			
0	Enterprise Flag	1=Fannie Mae	YES	NO
		2=Freddie Mac		
1	Loan Number		YES	Yes, but recode as a
				Sequential Number (6)
44	Unit Type XX-Number of Bedrooms		YES	YES, but recode as:
				1=0-1 Bedroom
				2= 2 or more Bedrooms
45	Unit Type XX-Number of Units		YES	NO
46	Unit Type XX-Average Rent Level		YES	YES
47	Unit Type XX-Average Rent Plus		YES	YES
	Utilities			
48	Unit Type XX-Affordability Level		YES	YES, but recode as:
				1=0- <=50%
				2=50- <=60%
				3=60- <=80%
				4=80- <=100%
				5= > 100%
				9=Not Available
49	Unit Type XX-Tenant Income Indicator	0=No or Not Provided	YES	NO
		1=Yes		
	Notes:			
	(6) This number will match the property level sequential number in the national file.			

[FR Doc. 2010–17119 Filed 7–14–10; 8:45 am]
BILLING CODE 8070–01–C

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 9, 2010.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. CapGen Capital Group VI LLC, and CapGen Capital Group VI LP, both of New York, New York; to become bank holding companies by acquiring up to 49.9 percent of the voting shares of Hampton Roads Bankshares, Inc., and Bank of Hampton Roads, both of Norfolk, Virginia, and Shore Bank, Onley, Virginia.

Board of Governors of the Federal Reserve System, July 12, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–17286 Filed 7–14–10; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
.			
01–JUN–10	20100246	G	Francisco Partners, L.P.
		G	Inovis International, Inc.
		G	Inovis International, Inc.
	20100657	G	AMETEK, Inc.
		G	Pfingsten Executive QP Fund III, L.P.
		G	TSE Acquisition Corporation.
	20100692	G	Hewlett-Packard Company.
		G	Palm, Inc.
		G	Palm, Inc.
	20100718	G	Industrial Growth Partners III, L.P.
		G	Fred H. Stubblefield, III.
		G	Controls Southeast, Inc.
	20100720	G	Veraz Networks, Inc.
		G	Dialogic Corporation.
		G	Dialogic Corporation.
	20100722	G	Mill Road Capital, L.P.
		G	Rubio's Restaurants, Inc.
		G	Rubio's Restaurants, Inc.
	20100723	G	Thomas H. Lee Equity Fund VI, L.P.
		G	inVentiv Health, Inc.
		G	inVentiv Health, Inc.
	20100727	G	Leonard A, Lauder.
		G	SBX, LLC.
		G	SBX Holding Company.
	20100728	G	NRG Energy, Inc.
		G	Pinnacle West Capital Corporation.
		G	Northwind Phoenix, LLC.
	20100730	G	Providence Equity Partners VI, L.P.
		G	Virtual Radiologic Corporation.
		G	Virtual Radiologic Corporation.
03–JUN–10	20100702	G	LifePoint Hospitals, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Sumner Regional Health Systems, Inc.
		G	Frank T. Rutherford Memorial Hospital, Inc.
		G	Sumner Homecare and Hospice, LLC.
		G	Trousdale Medical Center, Inc.
		G	SRHS Holdings, LLC.
		G	Family Wellness Group of Middle Tennessee, LLC.
		G	Wellness, Inc.
		G	SST Community Health, LLC.
		G	ClinicCare, LLC.
		G	Patient Partners, LLC.
	20100735	G	Lexmark International, Inc.
		G	Perceptive Software Inc.
		G	Perceptive Software Inc.
04–JUN–10	20100689	G	Blue Point Capital Partners II, L.P.
		G	Jeffrey A. Kaiser.
		G	Kaiser Contract Cleaning Specialist, Inc.
		G	Canadian Contract Cleaning Specialists, Inc.
07–JUN–10	20100724	G	Boralex Inc.
		G	Boralex Power Income Fund.
		G	Boralex Power Income Fund.
	20100729	G	Annand and Divvyani A. Sarnaaik.
		G	DecisionOne Corporation.
		G	DecisionOne Corporation.
	20100736	G	ArcLight Energy Partners Fund III, L.P.
		G	KGen Power Corporation.
		G	KGen Sandersville LLC.
	20100737	G	Cerberus Institutional Partners, L.P.
		G	Caritas Christi.
		G	Caritas Christi.
	20100743	G	Discovery Communications, Inc.
		G	Oprah Winfrey.
		G	Harpo, Inc.
	20100745	G	Xerox Corporation.
		G	Hewlett Packard Company.
		G	ExcellerateHRO LLP.
	20100747	G	Harvest Partners V, L.P.
		G	H.I.G. Capital Partners IV, L.P.
		G	IG Staffing Holdings, Inc.
	20100751	G	Alliance Data Systems Corporation.
		G	Equifax Inc.
		G	Equifax Inc.
09–JUN–10	20100759	G	Genstar Capital Partners V, L.P.
		G	NT Investor Holdings Inc.
		G	NT Investor Holdings, Inc.
11–JUN–10	20100744	G	Cisco Systems, Inc.
		G	CoreOptics, Inc.
		G	CoreOptics, Inc.
	20100765	G	Kettering Adventist HealthCare dba Kettering Health Network.
		G	Fort Hamilton Hospital Holding Company.
		G	Fort Hamilton Hospital.
	20100775	G	The Hearst Family Trust.
		G	iCrossing, Inc.
		G	iCrossing, Inc.
	20100778	G	Agfa-Gevaert N.V.
		G	Harold M. Pitman Company.
		G	Harold M. Pitman Company.
	20100786	G	Sunoco Logistics Partners L.P.
		G	Texon Holding II LP.
		G	Texon Butane Blending LLC.
14–JUN–10	20100749	G	Harmonic Inc.
		G	G Omneon, Inc.
		G	Omneon, Inc.
	20100773	G	Rakuten, Inc.
		G	Scott A. Blum.
		G	Buy.com Inc.
15–JUN–10	20100757	G	Koch Industries, Inc.
		G	George F. Landegger.
		G	Alabama Pine Pulp Company, Inc.
		G	Alabama River Group, Inc.
		G	Alabama River Pulp Company, Inc.
		G	Alabama River Woodlands, Inc.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Alabama River Crude Tall Oil, Inc.
		G	Alabama Pine Investments, Inc.
		G	Independence Renewable Energy Corp.
		G	Alabama River Chip Mills, Inc.
	20100787	G	Terteling Holding Company.
		G	Halton Co.
		G	Halton Co.
	20100789	G	Doyle Family Limited Partnership.
		G	Halton Co.
		G	Halton Co.
	20100792	G	Warburg Pincus Private Equity X, L.P.
		G	Sterling Financial Corporation.
		G	Sterling Financial Corporation.
	20100794	G	TOTAL S.A.
		G	Amyris Biotechnologies, Inc.
		G	Amyris Biotechnologies, Inc.
16–JUN–10	20100712	G	Xcel Energy Inc.
		G	Calpine Corporation.
		G	Blue Spruce Energy Center, LLC.
		G	Rocky Mountain Energy Center, LLC.
	20100748	G	MFI Holding Corporation.
		G	Thomas H. Lee Equity Fund V, L.P.
		G	M-Foods Holdings, Inc.
	20100753	G	St. Jude Medical, Inc.
		G	Goodman Co., Ltd.
		G	LightLab Imaging, Inc.
	20100758	G	Thoma Cressey Fund VIII, L.P.
		G	Double-Take Software, Inc.
		G	Double-Take Software, Inc.
	20100763	G	Alfred C. Liggins, III.
		G	TVOne,LLC.
		G	TVOne,LLC.
	20100779	G	Edward S. Lampert.
		G	AutoNation, Inc.
		G	AutoNation, Inc.
	20100780	G	Edward S. Lampert.
		G	Sears Holdings Corp.
		G	Sears Holdings Corp.
	20100781	G	Edward S. Lampert,
		G	AutoZone, Inc.
		G	AutoZone, Inc.
	20100782	G	Apollo Investment Fund V, L.P.
		G	JPMorgan Chase & Co.
		G	Connexions Loyalty Travel Solutions, LLC.
		G	OEP TAG Holdings, LLC.
		G	Loyalty Travel Agency, LLC.
17–JUN–10	20100750	G	C. R. Bard, Inc.
		G	SenoRx, Inc.
		G	SenoRx, Inc.
18–JUN–10	20100790	G	Merit Medical Systems, Inc.
		G	BioSphere Medical, Inc.
		G	BioSphere Medical, Inc.
	20100795	G	Carlyle Global Financial Services Partners, LP.
		G	Hampton Roads Bankshares, Inc.
		G	Hampton Roads Bankshares, Inc.
	20100804	G	BM&FBOVESPA S.A.-Bolsa de Valores, Mecadorias.
		G	e Futuros.
		G	CME Group Inc.
		G	CME Group Inc.
	20100809	G	Centrica plc.
		G	Clockwork Home Services, Inc.
		G	Clockwork Home Services, Inc.
	20100813	G	ConocoPhillips.
		G	Energy Spectrum Partners IV LP.
		G	CERITAS Gathering Company, LP.
	20100814	G	Spectra Energy Corp.
		G	Energy Spectrum Partners IV LP.
		G	CERITAS Gathering Company, LP.
	20100817	G	TPG Vienna Holdings, LLC.
		G	Heliman & Friedman Capital Partners V, L.P.
		G	VF Holding Corp.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
21–JUN–10	20100822	G	Thoma Bravo Fund IX, L.P.
		G	SonicWALL, Inc.
		G	SonicWALL, Inc.
22–JUN–10	20100770	G	BAE Systems plc.
		G	JFL–AMH Co-Invest Partners, L.P.
		G	Atlantic Marine Holding Company.
24–JUN–10	20100799	G	JANA Offshore Partners, Ltd.
		G	Charles River Laboratories International, Inc.
		G	Charles River Laboratories International, Inc.
	20100800	G	Markit Group Holdings Limited.
		G	The Goldman Sachs Group, Inc.
		G	WSOD Holding Corporation.
	20100801	G	British Airways Plc.
		G	Iberia, Lineas Aereas de Espana, S.A.
		G	Iberia, Lineas Aereas de Espana, S.A.
	20100802	G	Iberia, Lineas Aereas de Espana, S.A.
		G	British Airways Plc.
		G	British Airways Plc.
	20100805	G	Endo Pharmaceuticals Holdings Inc.
		G	HealthTronics, Inc.
		G	HealthTronics, Inc.
	20100808	G	OCP Trust.
		G	Logibec Groupe Informatique Ltee.
		G	Logibec Groupe Informatique Ltee.
	20100812	G	Primo Water Corporation.
		G	Clayton, Dubilier & Rice Fund VI, L.P.
		G	Culligan Store Soiutions, LLC.
	20100816	G	FS Equity Partners VI, L.P.
		G	Behrman Capital II L.P.
		G	BECO Holding Company, Inc.
	20100819	G	R3 Treatment Holdings Inc.
		G	Blue Sage Capital, L.P.
		G	Controlled Recovery, Inc.
		G	CRI Holdings, LLC.
25–JUN–10	20100764	G	ConAgra Foods, Inc.
		G	American Pie Holding Co.
		G	American Pie LLC.
	20100774	G	United Technologies Corporation.
		G	Sorenson Capital Partners, L.P.
		G	LifePort Holding Corporation.
	20100791	G	ABB Ltd.
		G	K–TEK Holding Corp.
		G	K–TEK Holding Corp.
	20100796	G	Noam Gottesman.
		G	Man Group plc.
		G	Man Group plc.
	20100797	G	ARYZTA AG.
		G	Lindsay Goldberg & Bessemer L.P.
		G	FSB Global Holdings, Inc.
	20100829	G	Global Partners LP.
		G	Exxon Mobil Corporation.
		G	Exxon Mobil Corporation.
	20100830	G	Alaska USA Federal Credit Union.
		G	Arrowhead Central Credit Union.
		G	Arrowhead Central Credit Union.
	20100833	G	ASP V Alternative Investments, L.P.
		G	Energy Spectrum Partners V, LP.
		G	Laser Northeast Gathering Company LLC.
		G	Laser Midstream Energy, LP.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Chapman, Contact Representative.

Federal Trade Commission, Premerger Notification Office, Bureau Of Competition, Room H–303 Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–17051 Filed 7–14–10; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–FY10–0199]

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 Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Importation of Transportation of Etiologic Agents (42 CFR 71.54)—(OMB Control No. 0920–0199 exp. 1/31/2011)—Extension—Office of Public Health Preparedness and Response (OPHPR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Foreign Quarantine Regulations (42 CFR part 71) set forth provisions to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Subpart F—Importations—contains provisions for importation of etiologic agents, hosts, and vectors (42 CFR part 71.54), requiring persons that import these materials to obtain a permit issued by the CDC. This request is for the information collection requirements contained in 42 CFR 71.54 for issuance of permits by CDC to importers of etiologic agents, hosts, or vectors of human disease.

CDC is requesting continued OMB approval to collect this information through the use of two separate forms. These forms are: (1) Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease; and (2) Application for Permit to Import or Transport Live Bats.

The Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease will be used by laboratory facilities, such as those operated by government agencies, universities, research institutions, and zoologic exhibitions, and also by importers of nonhuman primate trophy materials, such as hunters or taxidermists, to request permits for the importation of etiologic agents, hosts, or vectors of human disease. The Application for Permit to Import or Transport Etiologic Agents, Hosts, or Vectors of Human Disease requests applicant and sender contact information; description of material for importation; facility isolation and containment information; and personnel qualifications.

The Application for Permit to Import or Transport Live Bats will be used by laboratory facilities such as those operated by government agencies, universities, research institutions, and zoologic exhibitions entities to request importation and subsequent distribution after importation of live bats. The Application for Permit to Import or Transport Live Bats requests applicant and sender contact information; a description and intended use of bats to be imported; facility isolation and containment information; and personnel qualifications.

There is no cost to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Applicants	2,000	1	20/60	667
Applicants	10	1	20/60	3
Total				669

Date: July 8, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–17267 Filed 7–14–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0555]

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

National Public Health Performance Standards Program Local Public Health System Assessment (OMB 0920–0555 exp. 8/31/10)—Extension—Office of State, Tribal, Local and Territorial Support, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Office of State, Tribal, Local and Territorial Support is proposing to extend the formal, voluntary data collection that assesses the capacity of local public health systems to deliver the essential services of public health. Local health departments will respond to the survey on behalf of the collective body of representatives from the local public health system. Electronic data submission will be used when local public health agencies complete the public health assessment.

A three-year approval is being sought with the current data collection instrument. The data collection instrument has been valuable in assessing performance and capacity and identifying areas for improvement.

From 1998–2002, the National Public Health Performance Standards Program convened workgroups with the National Association of County and City Health Officials (NACCHO), The Association of State and Territorial Health Officials (ASTHO), the National Association of Local Boards of Health (NALBOH), the American Public Health Association (APHA), and the Public Health Foundation (PHF) to develop performance standards for public health systems based on the essential services of public health. In 2005, CDC reconvened workgroups with these same organizations to revise the data collection instruments, in order to ensure the standards remain current and improve user friendliness. There is no cost to the respondent, other than their time. The estimated annualized burden hours are 5600.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondents	Form name	No. of respondents	No. of responses per respondent	Average burden per response (in hours)
Local Public Health System	Local Public Health System Performance Assessment Instrument.	350	1	16

Dated: July 9, 2010.

Thelma Sims,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–17273 Filed 7–14–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–10–10DT]

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

Monitoring and Reporting System for Chronic Disease Prevention and Control Programs—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Although chronic diseases are among the most common and costly health problems, they are also among the most preventable. The Centers for Disease Control and Prevention (CDC) works with states, territories, tribal organizations, and the District of Columbia (collectively referred to as "state-based" programs) to develop, implement, manage, and evaluate chronic disease prevention and control programs. Support and guidance for these programs have been provided through cooperative agreement funding and technical assistance, administered by CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). Partnerships and collaboration with other Federal agencies, nongovernmental organizations, local communities, public and private sector organizations, and major voluntary associations have been critical to the success of these efforts.

CDC seeks OMB approval for three years to collect progress and activity information from health departments funded for four program areas: Tobacco control, diabetes prevention and control, Healthy Communities, and state-based behavioral risk factor surveillance. Information will be collected electronically through a new, electronic Management Information System (MIS). Information will be collected on each program area's objectives, planning activities, resources, partnerships, policy and environmental strategies for preventing or controlling chronic diseases, and progress toward meeting goals. The new MIS harmonizes the progress reporting framework for all program areas and

will support the collection of accurate, reliable, uniform and timely information. The MIS will generate a variety of routine and customizable reports that will allow each State or program to summarize its activities and progress. CDC will also have the capacity to generate reports that describe activities across multiple States and/or programs. The new MIS will replace two previously approved systems used by tobacco control programs (OMB No. 0920–0601, exp. 5/31/2010) and diabetes prevention and control programs (OMB No. 0920–0479, exp. 4/30/2013), which are being phased out.

CDC will use the information collection to monitor each program's progress and use of federal funds, to identify strengths and weaknesses, to make adjustments in the type and level of technical assistance provided to programs, and to respond to inquiries. Respondents will use the information collection to manage and coordinate their activities and to improve their efforts to prevent and control chronic diseases.

The initial set of respondents will be health departments in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. All awardees will report on tobacco control, diabetes prevention and control, behavioral risk factor surveillance, and Healthy Communities, with the exception of the District of Columbia, which is not currently participating in Healthy Communities.

Information will be collected electronically twice per year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,532.

ESTIMATED ANNUALIZED BURDEN TO RESPONDENTS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Diabetes Program	53	2	6
State Tobacco Program	53	2	6
State BRFSS Program	53	2	6
State Healthy Communities Program	52	2	6

Dated: July 9, 2010.

Thelma Sims,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–17265 Filed 7–14–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0296]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Labeling Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 16, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0381. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400W, Rockville, MD 20850, 301–796–3794, *JonnaLynn.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Labeling Regulations—21 CFR Parts 101, 102, 104, and 105 (OMB Control Number 0910–0381)—Extension

FDA regulations require food producers to disclose to consumers and others specific information about themselves or their products on the label or labeling of their products. Related regulations require that food producers retain records establishing the basis for the information contained in the label or labeling of their products and provide those records to regulatory officials. Finally, certain regulations provide for the submission of food labeling petitions to FDA. FDA's food labeling regulations under parts 101, 102, 104, and 105 (21 CFR parts 101, 102, 104, and 105) were issued under the authority of sections 4, 5, and 6 of the Fair Packaging and Labeling Act (the FPLA) (15 U.S.C. 1453, 1454, and 1455) and under sections 201, 301, 402, 403, 409, 411, 701, and 721 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321, 331, 342, 343, 348, 350, 371, and 379e). Most of these regulations derive from section 403 of the act, which provides that a food product shall be deemed to be misbranded if, among other things, its label or labeling fails to bear certain required information concerning the food product, is false or misleading in any particular, or bears certain types of unauthorized claims. The disclosure requirements and other collections of information in the regulations in parts 101, 102, 104, and 105 are necessary to ensure that food products produced or sold in the United States are in compliance with the labeling provisions of the act and the FPLA.

Section 101.3 of FDA's food labeling regulations requires that the label of a food product in packaged form bear a statement of identity (i.e., the name of the product), including, as appropriate, the form of the food or the name of the food imitated. Section 101.4 prescribes requirements for the declaration of ingredients on the label or labeling of food products in packaged form. Section 101.5 requires that the label of a food product in packaged form specify the name and place of business of the manufacturer, packer, or distributor and, if the food producer is not the manufacturer of the food product, its

connection with the food product. Section 101.9 requires that nutrition information be provided for all food products intended for human consumption and offered for sale, unless an exemption in § 101.9(j) applies to the product. Section 101.9(g)(9) also provides for the submission to FDA of requests for alternative approaches to nutrition labeling. Finally, § 101.9(j)(18) provides for the submission to FDA of notices from firms claiming the small business exemption from nutrition labeling. FDA has developed Form FDA 3570 to assist small businesses in claiming the small business exemption from nutrition labeling. The form contains all the elements required by § 101.9(j)(18).

Section 101.10 requires that restaurants provide nutrition information, upon request, for any food or meal for which a nutrient content claim or health claim is made. Section 101.12(b) provides the reference amount that is used for determining the serving sizes for specific products, including baking powder, baking soda, and pectin. Section 101.12(e) provides that a manufacturer that adjusts the reference amount customarily consumed (RACC) of an aerated food for the difference in density of the aerated food relative to the density of the appropriate nonaerated reference food must be prepared to show FDA detailed protocols and records of all data that were used to determine the density-adjusted RACC. Section 101.12(g) requires that the label or labeling of a food product disclose the serving size that is the basis for a claim made for the product if the serving size on which the claim is based differs from the RACC. Section 101.12(h) provides for the submission of petitions to FDA to request changes in the reference amounts defined by regulation.

Section 101.13 requires that nutrition information be provided in accordance with § 101.9 for any food product for which a nutrient content claim is made. Under some circumstances, § 101.13 also requires the disclosure of other types of information as a condition for the use of a nutrient content claim. For example, under § 101.13(j), if the claim compares the level of a nutrient in the food with the level of the same nutrient in another "reference" food, the claim must also disclose the identity of the reference food, the amount of the nutrient in each food, and the percentage or fractional amount by which the amount of the nutrient in the labeled food differs from the amount of the nutrient in the reference food. It also requires that when this comparison is based on an average of food products, this information must be provided to consumers or regulatory officials upon request. Section 101.13(q)(5) requires that restaurants document and provide to appropriate regulatory officials, upon request, the basis for any nutrient content claims they have made for the foods they sell.

Sections 101.14(d)(2) and (d)(3) provide for the disclosure of nutrition information in accordance with § 101.9 and, under some circumstances, certain other information as a condition for making a health claim for a food product. Section 101.15 provides that, if the label of a food product contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in both the foreign language and in English. Section 101.22 contains labeling requirements for the disclosure of spices, flavorings, colorings, and chemical preservatives in food products. Section 101.22(i)(4) sets forth reporting and recordkeeping requirements pertaining to certifications for flavors designated as containing no artificial flavor. Section 101.30 specifies the conditions under which a beverage that purports to contain any fruit or vegetable juice must declare the percentage of juice present in the beverage and the manner in which the declaration is to be made. Section 102.33 specifies the common or usual name for beverages that contain fruit or vegetable juice.

Section 101.36 requires that nutrition information be provided for dietary supplements offered for sale, unless an exemption in § 101.36(h) applies. Section 101.36(f)(2) cross-references the provisions in § 101.9(g)(9) for the submission to FDA of requests for alternative approaches to nutrition labeling. Also, § 101.36(h)(2) cross-references the provisions in § 101.9(j)(18) for the submission of small business exemption notices. As noted previously, FDA has developed Form FDA 3570 to assist small businesses in claiming the small business exemption from nutrition labeling. The form contains all the elements required by § 101.36(h)(2).

Section 101.42 requests that food retailers voluntarily provide nutrition information for raw fruits, vegetables, and fish at the point of purchase, and § 101.45 contains guidelines for providing such information. Also, § 101.45(c) provides for the submission of nutrient data bases and proposed nutrition labeling values for raw fruit, vegetables, and fish to FDA for review and approval.

Sections 101.54, 101.56, 101.60, 101.61, and 101.62 specify information that must be disclosed as a condition for making particular nutrient content claims. Section 101.67 provides for the use of nutrient content claims for butter, and cross-references requirements in other regulations for ingredient declaration (§ 101.4) and disclosure of information concerning performance characteristics (§ 101.13(d)). Section 101.69 provides for the submission of a petition requesting that FDA authorize a particular nutrient content claim by regulation. Section 101.70 provides for the submission of a petition requesting that FDA authorize a particular health claim by regulation. Section 101.77(c)(2)(ii)(D) requires the disclosure of the amount of soluble fiber per serving in the nutrition labeling of a food bearing a health claim about the relationship between soluble fiber and a reduced risk of coronary heart disease. Section 101.79(c)(2)(iv) requires the disclosure of the amount of folate per serving in the nutrition labeling of a food bearing a health claim about the relationship between folate and a reduced risk of neural tube defects.

Section 101.100(d) provides that any agreement that forms the basis for an exemption from the labeling requirements of section 403(c), (e), (g), (h), (i), (k), and (q) of the act be in writing and that a copy of the agreement be made available to FDA upon request. Section 101.100 also contains reporting and disclosure requirements as conditions for claiming certain labeling exemptions (e.g., § 101.100(h)).

Section 101.105 specifies requirements for the declaration of the net quantity of contents on the label of a food in packaged form and prescribes conditions under which a food whose label does not accurately reflect the actual quantity of contents may be sold, with appropriate disclosures, to an institution operated by Federal, State, or local government. Section 101.108 provides for the submission to FDA of a written proposal requesting a temporary exemption from certain requirements of § 101.9 and § 105.66 for the purpose of conducting food labeling experiments with FDA's authorization.

Regulations in part 102 define the information that must be included as part of the statement of identity for particular foods and prescribe related labeling requirements for some of these foods. For example, § 102.22 requires that the name of a protein hydrolysate shall include the identity of the food source from which the protein was derived.

Part 104, which pertains to nutritional quality guidelines for foods, cross-

references several labeling provisions in part 101 but contains no separate information collection requirements.

Part 105 contains special labeling requirements for hypoallergenic foods, infant foods, and certain foods represented as useful in reducing or maintaining body weight.

The disclosure and other information collection requirements in the previously mentioned regulations are placed primarily upon manufacturers, packers, and distributors of food products. Because of the existence of exemptions and exceptions, not all of the requirements apply to all food producers or to all of their products. Some of the regulations affect food retailers, such as supermarkets and restaurants.

The purpose of the food labeling requirements is to allow consumers to be knowledgeable about the foods they purchase. Nutrition labeling provides information for use by consumers in selecting a nutritious diet. Other information enables a consumer to comparison shop. Ingredient information also enables consumers to avoid substances to which they may be sensitive. Petitions or other requests submitted to FDA provide the basis for the agency to permit new labeling statements or to grant exemptions from certain labeling requirements. Recordkeeping requirements enable FDA to monitor the basis upon which certain label statements are made for food products and whether those statements are in compliance with the requirements of the act or the FPLA.

In the **Federal Register** of July 15, 2009 (74 FR 34353), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received on this information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section and Part/Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.3, 101.22, 102 and 104	25,000	1.03	25,750	.5	12,875
101.4, 101.22, 101.100, 102, 104 and 105	25,000	1.03	25,750	1	25,750
101.5	25,000	1.03	25,750	0.25	6,438
101.9, 101.13(n), 101.14(d)(3), 101.62, and 104	25,000	1.03	25,750	4	103,000
101.9(g)(9 and 101.36(f)(2)	12	1	12	4	48
101.9(j)(18) and 101.36(h)(2) Form FDA 3570	10,000	1	10,000	8	80,000
101.10	300,000	1.5	450,000	0.25	112,500
101.12(b)	29	2.3	67	1	67
101.12(e)	25	1	25	1	25
101.12(g)	5,000	1	5,000	1	5,000
101.12(h)	5	1	5	80	400
101.13(d)(1) and 101.67	200	1	200	1	200
101.13(j)(2), 101.13(k), 101.54, 101.56, 101.60, 101.61, and 101.62	5,000	1	5,000	1	5,000
101.13(q)(5)	300,000	1.5	450,000	0.75	337,500
101.14(d)(2)	300,000	1.5	450,000	0.75	337,500
101.15	160	10	1,600	8	12,800
101.22(i)(4)	25	1	25	1	25
101.30 and 102.33	1,500	5	7,500	1	7,500
101.36	300	40	12,000	4	48,000
101.42 and 101.45	1,000	1	1,000	0.5	500
101.45(c)	5	4	20	4	80
101.69	3	1	3	25	75
101.70	5	1	5	80	400
101.79(c)(2)(i)(D)	1,000	1	1,000	0.25	250

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section and Part/Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.79(c)(2)(iv)	100	1	100	0.25	25
101.100(d)	1,000	1	1,000	1	1,000
101.105 and 101.100(h)	25,000	1.03	25,750	0.5	12,875
101.108	1	1	1	40	40
Total					1,109,873

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Record-keepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
101.12(e)	25	1	25	1	25
101.13(q)(5)	300,000	1.5	450,000	0.75	337,500
101.14(d)(2)	300,000	1.5	450,000	0.75	337,500
101.22(i)(4)	25	1	25	1	25
101.100(d)(2)	1,000	1	1,000	1	1,000
101.105(t)	100	1	100	1	100
Total					676,150

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated annual reporting and recordkeeping burdens are based on agency communications with industry and FDA's knowledge of and experience with food labeling and the submission of petitions and requests to the agency. Where an agency regulation implements an information collection requirement in the act or the FPLA, only any additional burden attributable to the regulation has been included in FDA's burden estimate.

No burden has been estimated for those requirements where the information to be disclosed is information that has been supplied by FDA. Also, no burden has been estimated for information that is disclosed to third parties as a usual and customary part of a food producer's normal business activities. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of activities.

In this request for extension of OMB approval under the PRA, FDA is no longer combining the burden hours associated with OMB Control Numbers 0910–0395 (collection titled, "Food Labeling: Nutrition Labeling of Dietary Supplements on a 'Per Day' Basis") and 0910–0515 (collection titled, "Food Labeling: Trans Fatty Acids in Nutrition Labeling"), with the burden hours approved under OMB Control Number 0910–0381 (collection titled, "Food Labeling Regulations") as announced previously. Such consolidation may occur in the future.

Dated: July 9, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–17229 Filed 7–14–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0185]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Tobacco Health Document Submission

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by August 16, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to

oira_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910–0654. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3794, *Jonnalynn.Capezzuto@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Tobacco Health Document Submission—(OMB Control Number 0910–0654)—Extension

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–31) into law. The Tobacco Control Act granted FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Among its many provisions, the Tobacco Control Act added section 904(a)(4) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 387d(a)(4)), requiring submission of documents related to certain effects of tobacco products.

Section 904(a)(4) of the act requires each tobacco product manufacturer or importer, or agent thereof, to submit all documents developed after June 22, 2009, "that relate to health, toxicological, behavioral, or physiologic effects of current or future tobacco products, their constituents (including smoke constituents), ingredients, components, and additives." Information required under section 904(a)(4) of the act must be submitted to FDA beginning December 22, 2009.

FDA issued a draft guidance document entitled "Tobacco Health Document Submission'" on December 28, 2009 (74 FR 68629) to assist persons making certain document submissions to FDA under section 904(a)(4) of the act. The guidance document was finalized on April 20, 2010 (75 FR 20606). While electronic submission of tobacco health documents is not required, FDA designed the eSubmitter application as an alternative for mailing documents. This electronic tool allows for importation of large quantities of structured data, attachments of files (e.g., in portable document format (PDFs) and certain media files), and automatic acknowledgement of FDA's receipt of submissions. FDA also developed a paper form (FDA Form 3743) as an alternative submission tool. Both the eSubmitter application and the paper form can be accessed at *http://www.fda.gov/tobacco*.

On September 1, 2009 (74 FR 45219), FDA published notice in the **Federal Register** announcing that a proposed collection of information had been submitted to OMB for emergency processing under the PRA. On September 15, 2009 (74 FR 47257), FDA published a notice correcting the length of the comment period, keeping it open until October 1, 2009. On October 13, 2009 (74 FR 52495), FDA published a notice reopening the comment period until October 26, 2009. On January 7, 2010, FDA received emergency approval for this information collection. Based on comments indicating that the burden estimate was too low, FDA has adjusted its original burden estimate from 1.0 hour per response to 200 hours per response. FDA also increased the annual frequency per response from 1 to 4 (quarterly).

FDA is maintaining the original estimate of the number of respondents at 10. FDA is basing its estimates on the total number of tobacco firms it is aware of, its experience with document production, and comments received in response to the draft guidance document published on December 28, 2009.

In the **Federal Register** of April 20, 2010 (75 FR 20603), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one comment in response to the 60-day notice soliciting public comment on the extension of OMB approval for this information collection. The comment stated that the classification/coding recommendations will impose burdens that significantly exceed the burden estimate of 200 hours and will likely inundate FDA with information with little incremental value. The estimated 200 hours per response burden is based on the average burden estimate among all 10 respondents. Therefore, on an individual basis, the actual burden per respondent may be higher or lower than the 200 hours estimate since it is an average value. FDA currently is evaluating the classification/coding recommendations and will revisit this issue in future guidance.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Tobacco Health Document Submission and Form FDA 3743	10	4	40	200	8,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 9, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–17230 Filed 7–14–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, Office of Federal Advisory Committee Policy, National Institutes of Health (NIH), announces the establishment of the Interagency Pain Research Coordinating Committee.

Public Law 111–148 ("Patient Protection and Affordable Care Act"), Title IV, as it amends Part B of Title IV of the Public Health Service Act (42 USC 284 *et seq.*) requires the committee to: (a) Develop a summary of advances in pain care research supported or conducted by Federal agencies relevant to the diagnosis, prevention, and

treatment of pain and diseases and disorders associated with pain; (b) identify critical gaps in research on the symptoms and causes of pain; (c) make recommendations to ensure that the activities of the NIH and other Federal agencies are free of unnecessary duplication of effort; (d) make recommendations on how best to disseminate information on pain care; and (e) make recommendations on how to expand partnerships between public and private entities to expand collaborative, cross-cutting research.

Duration of this committee is two years from the date the Charter is filed.

Dated: July 9, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17261 Filed 7–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vaccines Against Microbial Diseases.

Date: July 23, 2010.

Time: 5:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel. Member Conflict: Topics in Bioengineering.

Date: July 28, 2010.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark Caprara, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17258 Filed 7–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings.

Date: August 2–5, 2010.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Brandt R. Burgess, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2584, *bburgess@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; "Ancillary Studies in Immunomodulation Clinical Trails".

Date: August 12, 2010.

Time: 10:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 9, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17259 Filed 7–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pharmacology, Plasticity and Mental Disorders.

Date: July 20–21, 2010.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Early Embryo Development Pluripotency.

Date: July 26–27, 2010.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael H Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 8, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17254 Filed 7–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2008–0077]

National Protection and Programs Directorate; Infrastructure Protection Data Call Survey; Correction

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice; correction.

SUMMARY: On December 22, 2009, the Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Information Collection Division (IICD) published a 60-day comment period notice in the **Federal Register** at 74 FR 68070–68071 seeking comments for an information collection entitled, "IP Data Call." This is a correction notice to correct the title of the published 60-day notice to read, "IP Data Call Survey." There are no further updates. This correction notice is issued as required by the Paperwork Reduction Act of 1995.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2010–17277 Filed 7–14–10; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; Form I–333, Obligor Change of Address.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 5, 2010 Vol. 75 No. 86, 24720, allowing for a 60 day public comment period. ICE received one comment during this period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days August 16, 2010.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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:* Obligor Change of Address.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–333. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on the Form I–333 is necessary for U.S. Immigration and Customs Enforcement (ICE) to provide immigration bond obligors a standardized method to notify ICE of address updates. Upon receipt of the formatted information records will then be updated to ensure accurate service of correspondence between ICE and the obligor.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be requested via email to: *forms.ice@dhs.gov* with "ICE Form I–333" in the subject line.

Dated: July 8, 2010.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2010–17208 Filed 7–14–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30–Day Notice of Information Collection for Review; Form G–146, Nonimmigrant Checkout Letter; OMB Control No. 1653–0020.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Information Collection was previously published in the **Federal Register** on May 5, 2010 Vol. 75 No. 86, 24721, allowing for a 60-day public comment period. USICE received no comments on this Information Collection from the public during this 60-day period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days August 16, 2010.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques 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:* Non-Immigrant Checkout Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–146, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or Households. When an alien (other than one who is required to depart under safeguards) is granted the privilege of voluntary departure without the issuance of an Order to Show Cause, a control card is prepared. If, after a certain period of time, a verification of departure is not received, actions are taken to locate the alien or ascertain his or her whereabouts. Form G–146 is used to inquire of persons in the United States or abroad regarding the whereabouts of the alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 10 minutes (.16) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,220 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information regarding this Information Collection should be requested via email to: *forms.ice@dhs.gov* with "ICE Form G–146" in the subject line.

Dated: July 8, 2010.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2010–17209 Filed 7–14–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection for Review. Application for Stay of Deportation or Removal, Form I–246, OMB No. 1653–0021.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 13, 2010.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Joseph M. Gerhart, Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Comments are encouraged and will be accepted for sixty days until [Insert date of the 60th day from the date that this notice is published in the **Federal Register**]. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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:* Renewal of information collection.

(2) *Title of the Form/Collection:* Application for Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–246, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. The information collected on the Form I–246 is necessary for U.S. Immigration and Customs Enforcement (ICE) to make a determination that the eligibility requirements for a request for a stay of deportation or removal are met by the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; comments or inquiries for additional information should be requested via email to: *forms.ice@dhs.gov* with "ICE Form I–246" in the subject line.

Dated: July 8, 2010.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2010–17211 Filed 7–14–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–687, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–687, Application for Status as Temporary Resident Under Section 254A of the Immigration and Nationality Act; OMB Control No. 1615–0090.

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 23, 2010, at 75 FR 21340, 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 16, 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 1615–0090 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:* Application for Status as Temporary Resident under Section 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–687; 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.* The information collection on Form I–687 is required to verify the applicant's eligibility for temporary status, and if the applicant is deemed eligible, to grant him or her the benefit sought.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 1 hour and 10 minutes (1.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 58 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 12, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–17306 Filed 7–14–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–821, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–821, Application for Temporary Protected Status; OMB Control No. 1615–0043.

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 16, 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 1615–0043 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:* Application for Temporary Protected Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–821; 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.* Form I–821 is necessary in order for USCIS to make a determination that the applicant meets eligibility requirements and conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 335,333 responses at 1 hour and 30 minutes (1.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 502,999 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 12, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–17305 Filed 7–14–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–644, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form N–644, Application for Posthumous Citizenship; OMB Control No. 1615–0059.

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 21013, 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 16, 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 1615–0059 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:* Application for Posthumous Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security*

sponsoring the collection: Form N–644; 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 to verify eligibility and review the request for awarding posthumous citizenship.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 1 hour and 50 minutes (1.83 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 92 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 12, 2010.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2010–17301 Filed 7–14–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5404–N–01]

Federal Housing Administration Risk Management Initiatives: Reduction of Seller Concessions and New Loan-to-Value and Credit Score Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: A recently issued independent actuarial study shows that the Mutual Mortgage Insurance Fund (MMIF) capital ratio has fallen below its statutorily mandated threshold. Consistent with HUD's responsibility under the National Housing Act to ensure that the MMIF remains financially sound, this notice solicits public comment on three proposed initiatives that will contribute to the restoration of the MMIF capital reserve account. The changes proposed in this notice are designed to preserve both the historical role of the Federal Housing Administration (FHA) in providing a home financing vehicle during periods of economic volatility and HUD's social mission of helping underserved borrowers. FHA proposes to tighten only those portions of its underwriting guidelines that have been found to present an excessive level of risk to both homeowners and FHA. First, FHA proposes to reduce the amount of closing costs a seller may pay on behalf of a homebuyer purchasing a home with FHA-insured mortgage financing for the purposes of calculating the maximum mortgage amount. This proposed cap on "seller concessions" will minimize FHA exposure to the risk of adverse selection. Secondly, FHA proposes to introduce a credit score threshold as well as reduce the maximum loan-to-value (LTV) for borrowers with lower credit scores, who represent a higher risk of default and mortgage insurance claim. Finally, FHA will tighten underwriting standards for mortgage loan transactions that are manually underwritten. These transactions have resulted in high mortgage insurance claim rates and present an unacceptable risk of loss.

DATES: *Comment Due Date:* August 16, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Ross, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone number 202–708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background: FHA and the Housing Crisis

FHA was established by Congress in 1934 to improve nationwide housing standards, provide employment and stimulate industry, to improve conditions with respect to home mortgage financing, to prevent speculative excesses in mortgage investment, and to eliminate the necessity for costly secondary financing. As a governmental mortgage insurance company with nationwide scope, FHA provided credit enhancement to protect mortgage lenders from risk of loss, which encouraged the banking community to extend credit to new homeowners and those in need of refinance and home improvement loans. The result was one of the most successful collaborations between the public and private sectors in U.S. history. To this day, the FHA model, which offers mortgage insurance for mortgage loans that meet FHA requirements, reduces risk to mortgage lenders, thereby enabling them to extend credit to homeowners and

homebuyers, even during periods of economic volatility.

The current state of the housing market validates the importance of the historical role of FHA in stabilizing the mortgage market during times of economic disruption. Over the last 2 years, FHA has resumed its countercyclical position, supporting the private sector when access to capital is otherwise constrained. The volume of FHA insurance increased rapidly as private sources of mortgage finance retreated from the market. FHA's share of the single-family mortgage market today is approximately 30 percent—up from 3 percent in 2007, and the dollar volume of insurance written has jumped from the $56 billion issued in that year to more than $300 billion in 2009.

Managing Risk to the MMIF

The growth in the MMIF portfolio over such a short period of time coincides with a set of difficult economic conditions. FHA is also concerned with the issue of layering risk. Default risk is compounded when there are low credit scores, high loan-to-value (LTV) ratios, high debt-to-income ratios, and low or zero cash reserves associated with a loan. Given these conditions and concerns, FHA, in managing the MMIF, must be especially vigilant in monitoring the performance of the portfolio, enhancing risk controls, and tightening standards to address portions of the business that expose homeowners to excessive financial risks. *See* section 202(a)(7)(A) of the National Housing Act, which addresses the operational goals of the MMIF (12 U.S.C 1708(a)(7)(A)).

The proposals set forth in this Notice are representative of FHA's focus on enhancing the agency's risk management practices, while fulfilling FHA's mission to serve borrowers in a manner that is financially sustainable for both FHA and borrowers. FHA's authorizing statute, the National Housing Act, clearly envisions that FHA will adjust program standards and practices, as necessary, to operate the MMIF, with reasonable expectations of financial loss.

While the Federal Credit Reform Act of 1990 requires that FHA (and all other government credit agencies) estimate and budget for the anticipated cost of mortgage loan guarantees, the National Housing Act imposes a special requirement that the MMIF hold an additional amount of funds in reserve to cover unexpected losses. On November 13, 2009, HUD released an independent actuarial study that reported that FHA will likely sustain significant losses from mortgage loans made prior to 2009, due to the high concentration of seller-financed downpayment assistance mortgage loans and declining real estate values nationwide, and that the MMIF capital reserve relative to the amount of outstanding insurance in force had fallen below the statutorily mandated 2 percent ratio.[1]

FHA maintains the MMIF capital reserve in a special reserve account. As with other federal credit agencies, FHA uses a financing account to cover the current anticipated cost of its mortgage loan guarantees. The MMIF capital reserve account serves as a back-up fund, where FHA holds additional capital to cover unexpected losses. Funds are transferred into this account only when FHA holds more cash in the financing account than is necessary to cover projected costs. In recent years, adverse market conditions, the poor performance of seller-financed gift letter mortgage loans, and worsening economic projections had substantially increased the estimated cost of outstanding single-family mortgage loan guarantees, and large transfers of funds were made from the reserve account into the primary financing account. As previously noted, these withdrawals from the MMIF capital reserve fund have resulted in its no longer complying with the minimum capital ratio mandated by law. However, if the current estimate of these costs proves excessive or if FHA implements policy changes that result in net income to the Federal Government, excess funds will be moved from the financing account back to the reserve account, thereby restoring the capital reserves of the MMIF.

There are four primary policy changes that FHA can implement to replenish the MMIF capital reserve account: (1) Increase the premium income generated; (2) reduce losses by tightening underwriting guidelines; (3) strengthen enforcement measures to reduce unwarranted claim payments, and (4) improve avoidance of claim costs through enhanced loss mitigation. FHA is engaged in efforts on all of these fronts, exercising its full authority under the terms of the National Housing Act, including new authorities provided in recently enacted legislation.

History of FHA Loan-to-Value and Credit Score Requirements

In 1934, single-family mortgage insurance was available for loans up to 80 percent of appraised value. In 1938, amendments to the National Housing Act introduced a 90 percent LTV ratio as well as a tiered approach that tied LTV to specific dollar amounts, e.g., 90 percent of the first $6,000 of value and 80 percent for the remainder, depending on whether the property had been approved by FHA prior to construction. By 1957, the permissible LTV had increased to 90 or 97 percent of the first $10,000 of value plus 85 percent of the next $6,000 and 70 percent of the remainder, again depending on whether the property had been approved prior to construction. LTVs in the mid 1990s followed the same general tiered approach, with the first $25,000 of value limited to 97 percent; 95 percent of value in excess of $25,000, not to exceed $125,000; and 90 percent of value in excess of $125,000. Under the amendments made by the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654, approved July 30, 2008) (HERA), FHA implemented a 96.5 percent LTV for purchase transactions.

By contrast, the conventional mortgage market changes LTV requirements based on current conditions in the market. In December 2007, Fannie Mae restricted the maximum LTV for properties located within a declining market to 5 percentage points less than it would otherwise permit for a given loan product, meaning that a 95 percent LTV program would see availability restricted to 90 percent LTV. In May 2008, Fannie Mae returned to a national LTV as high as 97 percent for conforming mortgages scored favorably by its automated underwriting system, and 95 percent LTV for those underwritten manually.

As for a minimum credit score requirement, FHA did not introduce such a requirement until July 2008 when borrowers with credit scores below 500 were limited to 90 percent LTV. However, the large financial institutions in the mortgage industry introduced a minimum credit score of 580 in the first quarter of 2008, regardless of the type of financing and LTV, and then raised it to 620 in the first quarter of 2009.

II. New Tools To Manage Risk—The Housing and Economic Recovery Act of 2008

HERA made significant and comprehensive reforms to the National Housing Act (12 U.S.C. 1701 *et seq.*) and consequently reforms to FHA programs. Section 2118 of HERA amended section 202 of the National Housing Act (12 U.S.C. 1708), by amending several

[1] The capital ratio generally reflects the reserves available (net of expected claims and expenses), as a percentage of the current portfolio, to address unexpected losses. The report can be found at: *http://www.hud.gov/offices/hsg/fhafy09annualmanagementreport.pdf.*

provisions directed to both highlighting and strengthening FHA's fiduciary responsibilities.

Section 202, as amended by HERA, provides in paragraph (a)(3), entitled "Fiduciary Responsibility," that the "Secretary has a responsibility to ensure that the Mutual Mortgage Insurance Fund remains financially sound." Paragraph (a)(4) continues a pre-HERA requirement, which is for the Secretary to provide, annually, for an independent actuarial study of the Fund, and the study is to include a review of risks to the Fund. Paragraph (a)(6) provides that if, pursuant to the independent actuarial study of the Fund, the Secretary determines that the Fund is not meeting the operational goals established under paragraph (7) or there is substantial probability that the Fund will not maintain its established target subsidy rate, "the Secretary may either make programmatic adjustments under this title as necessary to reduce the risk to the Fund, or make appropriate premium adjustments." Paragraph (a)(7) provides that the operational goals of the Fund include minimizing the default risk to the Fund and to homeowners, while meeting the housing needs of the borrowers that the single-family mortgage insurance program under this title is designed to serve.

Consistent with these new obligations and authorities provided under the National Housing Act, HUD has already undertaken several measures to protect the FHA fund during the economic downturn, focusing on programs and practices that resulted in poor loan performance. This includes: Prohibition on seller-financed downpayment assistance and the tightening of underwriting guidelines for both the streamline and cash-out refinance products. FHA also implemented several changes to the agency's appraisal standards, shortening the validity period and reaffirming appraiser independence, to ensure that appraisals are as up-to-date and accurate as possible.

In addition to program modifications, FHA has increased oversight of lenders.[2] FHA has terminated and suspended several lenders whose default and claim rates were higher than the national default and claim rate.

FHA also announced and implemented an increase in the upfront mortgage insurance premium. By Mortgagee Letter 2010–02, FHA notified the industry that FHA will collect an upfront mortgage insurance premium of 2.25 percent for FHA loans for which case numbers are assigned on or after April 5, 2010. As the Mortgagee Letter provides, the new upfront premium is applicable to mortgages insured under the MMIF. The Mortgagee Letter advises that the new upfront premium is not applicable to mortgages insured under the following programs: Title I of the National Housing Act; Home Equity Conversion Mortgages (HECMs); HOPE for Homeowners (H4H); Section 247 (Hawaiian Homelands); Section 248 (Indian Reservations); Section 223(e) (declining neighborhoods); and Section 238(c) (military impact areas in Georgia and New York). The Mortgagee Letter also advises that there is no change to the amount of annual premiums.

III. Proposed Risk Management Initiatives

In addition to these measures—which address all four components of FHA's enhanced risk management approach—this notice proposes to tighten FHA's underwriting guidelines in a manner that balances FHA's goals of protecting the MMIF's financial health, while continuing to meet FHA's historic mission of providing a vehicle for mortgage lenders to provide affordable mortgages. Given the importance of maintaining a viable MMIF for existing and future homeowners, it is FHA's intent to focus only on particular practices that have been found to result in extremely poor mortgage loan performance. TABLE A shows that few borrowers are served under the standards that FHA is proposing to eliminate, relative to the total FHA portfolio.

TABLE A—FHA SINGLE-FAMILY INSURANCE ENDORSEMENT SHARES IN CY 2009 [a]

Loan-to-value range	Credit score ranges					
	None (percent)	300–499 (percent)	500–579 (percent)	580–619 (percent)	620–679 (percent)	680–850 (percent)
Up to 90%	0.03	0.01	0.12	0.48	2.28	3.51
Above 90%	0.34	0.02	1.39	7.24	35.80	48.77

[a] All fully underwritten loans, excluding streamline refinance loans (and reverse mortgages). Source: U.S. Department of Housing and Urban Development/FHA; February 2010.

Table B clearly indicates, through the performance data provided, that these borrowers are at significantly greater risk of losing their homes.

TABLE B—FHA SINGLE-FAMILY INSURANCE

[Seriously Delinquent Rates [a] by LTV and Credit Scores [b] as of January 31, 2010]

LTV range	Credit score ranges					
	None (percent)	300–499 (percent)	500–579 (percent)	580–619 (percent)	620–679 (percent)	680–850 (percent)
Up to 90%	13.3	35.4	22.4	15.7	6.1	1.5
Above 90%	20.9	43.3	30.4	19.6	8.6	2.3

[a] Seriously delinquent rates measure the sum of 90+-day delinquencies, in-foreclosure, and in-bankruptcy cases, as a percent of all actively insured loans on a given date.

[2] *See* HUD press release of September 18, 2009, announcing FHA credit policy changes to improve risk management functions at *http://www.hud.gov/news/release.cfm?content=pr09-177.cfm*, and the individual Mortgagee Letters implementing these policy changes at *http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm*. See also HUD's November 30, 2009, rule proposing to increase the net worth of FHA-approved lenders at 74 FR 62521.

[b] Due to restrictions on the availability of loan-origination credit score data, this table includes only actively insured loans that were endorsed for insurance starting in Fiscal Year 2005. This table does not include information on streamline refinance loans.
Source: U.S. Department of Housing and Urban Development/FHA; February 2010.

Given FHA's mission, allowing the continuation of practices that result in such a high proportion of families losing their homes represents a disservice to American families and communities. It is FHA's intent to eliminate this portion of its business, and utilize other established methods to reach and support these families, such as through HUD's housing counseling program, which helps families prepare for and achieve sustainable homeownership. The following presents the practices that FHA plans to discontinue.

First, FHA proposes to reduce the amount of closing costs a seller (or other interested party) may pay on behalf of a homebuyer financing the purchase of a home with FHA mortgage insurance. Secondly, FHA proposes to introduce a minimum credit score for eligibility, as well as reduce the maximum LTV for borrowers with lower credit scores. Finally, FHA proposes to tighten underwriting standards for mortgage loans that are manually underwritten. These initiatives are intended to reduce the risk to, and assist in the return of, FHA's MMIF capital ratio to its mandated threshold. In addition, the initiatives will help to continue FHA's traditional role as a stabilizing force in the housing market during troubled economic times and remain a source of mortgage credit for low- and moderate-income homebuyers. These new guidelines are not applicable to mortgages insured under the following programs: Title I of the National Housing Act; Home Equity Conversion Mortgages (HECMs); HOPE for Homeowners (H4H); Section 247 (Hawaiian Homelands); Section 248 (Indian Reservations); Section 223(e) (declining neighborhoods); and Section 238(c) (military impact areas in Georgia and New York).

A. Reduction of Seller Concession

When a home seller pays all or part of the buyer's closing costs, such payments are referred to as seller concessions.[3] HUD's existing policy regarding concessions is found in Handbook 4155.1, section 2.A.3 and Handbook 4155.2, section 4.8, which define seller concessions and provide that any concessions exceeding 6 percent must be treated as inducements to purchase, resulting in a reduction in the FHA mortgage amount. This notice proposes to reduce the 6 percent limitation defined in the Handbooks to 3 percent. While HUD previously has allowed seller concessions of up to 6 percent of the sales price, conventional mortgage lenders have capped seller concessions at 3 percent of the sales price on loans with LTV ratios similar to FHA. Loans guaranteed by the Department of Veterans Affairs cap seller concessions at 4 percent of the sales price.

FHA proposes to cap the seller concessions in FHA-insured single-family mortgage transactions at 3 percent of the lesser of the sales price or appraised value, for the purpose of calculating the maximum mortgage amount. Table C shows that borrowers who received more than 3 percent in seller concessions had a significantly higher risk of losing their homes. While seller concessions above 3 percent would not be prohibited under this proposal, concessions that exceed FHA's 3 percent cap would be required to result in a dollar-for-dollar reduction in the sales price for the purpose of calculating the maximum FHA loan amount. This proposed cap will not only align FHA's single-family mortgage insurance programs to industry practice, but will help ensure that borrowers who rely on FHA-insured financing have sufficient investment in their home purchases and are less likely to default.

TABLE C—FHA SINGLE-FAMILY INSURANCE

[To-Date Claim Rates by Seller Concession Level—Percentage of Home Purchase Price as of January 31, 2010]

Endorsement fiscal year	Concession rates			Comparative ratios		
	Zero	Low: up to 3%	High: above 3%	Low/Zero	High/Zero	High/Low
2003	6.5%	6.2%	10.0%	0.96	1.55	1.61
2004	6.3%	7.0%	11.0%	1.11	1.76	1.59
2005	6.9%	7.9%	10.9%	1.14	1.58	1.38
2006	6.3%	7.5%	9.5%	1.19	1.51	1.27
2007	4.5%	5.3%	6.5%	1.19	1.46	1.23
2008	1.0%	1.2%	1.7%	1.18	1.67	1.41

Low = greater than zero and up to 3% of the sales price; High = greater than 3% of the sales price and up to 6%. Source: U.S. Department of HUD/FHA; Home Purchase loans excluding HECM, February 2010.

B. New LTV Ratio and Credit Score Requirements

FHA is proposing to introduce a minimum decision credit score of no less than 500 to determine eligibility for FHA financing and reduce the maximum LTV for all borrowers with decision credit scores of less than or equal to 579. Maximum FHA-insured financing (96.5 percent LTV for purchase transactions and 97.75 percent LTV for rate and term refinance transactions) would be available only to borrowers with credit scores at or above 580. All borrowers with decision credit scores between 500 and 579 would be limited to 90 percent LTV.

The decision credit score used by FHA in this analysis is based on methodologies developed by the FICO Corporation. FICO scores, which range from a low of 300 to a high of 850, are calculated by each of the three National Credit Bureaus and are based upon credit-related information reported by creditors, specific to each applicant. Lower credit scores indicate greater risk of default on any new credit extended to the applicant. The decision credit score is based on the middle of three National Credit Bureau scores or the lower of two scores when all three are not available, for the lowest scoring applicant. While FHA's historical data and analysis is derived from the "FICO-

[3] Seller concessions include any payment toward the borrower's closing costs by any third party with an interest in the transaction, to include the seller, builder, developer, mortgage broker, lender, or settlement company.

based" decision credit score, it is not FHA's intent to prohibit the use of other credit scoring models to assess an FHA borrower's credit profile. In this notice, FHA seeks comment on the best means for FHA to provide guidance to the industry on acceptable score ranges for other scoring models, to ensure that the scales used for all scoring systems are consistent and appropriate for an FHA borrower.

While FHA is serving very few borrowers with credit scores below 500, as shown in TABLE A, the performance of these borrowers is clearly very poor, as reflected in TABLES B and D. TABLE D shows the serious delinquency rates for borrowers with credit scores below 500, demonstrating that these borrowers struggle to meet their mortgage obligations. TABLE E demonstrates that the percentage of borrowers who ultimately lose their homes is twice as high for borrowers with lower credit scores. Similarly, FHA data demonstrates that borrowers with decision credit scores below 580, who invest only a minimal amount of funds into the transaction, struggle to make their mortgage payments and ultimately lose their homes at a rate that is unacceptable to FHA. Table D shows that borrowers affected by this notice have seriously delinquent rates four to five times higher than those who remain eligible.

TABLE D—FHA SINGLE FAMILY INSURANCE

[Seriously Delinquent Rates by Proposed Credit Score Floor[a] January 31, 2010]

Above Floor	Below 500 Floor (LTV up to 90)	Below 580 Floor (LTV above 90)	All Loans
7.63%	35.38%	29.80%	9.29%

[a] On active insured cases meeting today's underwriting criteria, which require 10% down for borrowers with credit scores below 500, excluding streamline refinance loans, endorsements Fiscal Years 2005–2009. Source: U.S. Department of Housing and Urban Development, Federal Housing Administration; February 2010.

FHA data indicate that insured mortgages with decision credit scores below 580 have significantly worse default and claim experience than do loans at or above 580. As seen in Table D, the seriously delinquent rate on actively insured mortgage loans in January 2010 was more than three times as high for loans below the proposed floor versus those above the floor. Higher delinquencies do translate into higher insurance claims over time. Table E shows the to-date claim rate of insured loans above and below the proposed floor, for Fiscal Years (FYs) 2005—FY 2008 books of business. The claim rate of mortgage loans below the floor is more than twice as high as those mortgage loans with credit characteristics above the floor.

TABLE E—FHA SINGLE FAMILY INSURANCE

[To-Date Claim Rates on Fully Underwritten Loans[a] by Proposed FICO Floor Restrictions (Above or Below)[b] as of January 31, 2010]

Endorsement FY	Decision Credit Score Floor			Ratio Below/Above
	Above	Below	All	
All Borrowers				
2005	5.76%	14.44%	7.28%	2.51
2006	5.42%	12.79%	6.59%	2.36
2007	3.74%	8.39%	4.65%	2.24
2008	0.97%	2.88%	1.20%	2.96

The proposed restrictions are a minimum 500 FICO score for borrowers with loan-to-value ratios less than or equal to 90%, and a minimum of 580 for borrowers with ratios above 90%.

Source: U.S. Department of Housing and Urban Development; February 2010.

FHA also must take measures that increase the likelihood that borrowers who are offered FHA-insured mortgages are capable of repaying these mortgages. The proposed changes announced in this notice address these concerns.

Under this proposal, effectively, a borrower with a decision credit score between 500 and 579 would be required to make a greater downpayment [at minimum, 10 percent] than a borrower with a higher score, for the purchase of a home with the same sales price.[4] Borrowers with credit scores below 500 would not be eligible for FHA-insured financing. The proposed new LTV and credit score requirements will reduce the risk to the MMIF and ensure that home buyers are offered mortgage loans that are sustainable.

Proposed Exemption for Borrowers Seeking to Refinance. While FHA proposes to introduce a minimum decision credit score of no less than 500 to determine eligibility for FHA financing and to reduce the maximum LTV for all borrowers with decision credit scores between 500 and 579, FHA is also considering a special, temporary allowance to permit higher LTV mortgage loans for borrowers with lower decision credit scores, so long as they involve a reduction of existing mortgage indebtedness pursuant to FHA program adjustments announced on March 26, 2010. The program adjustments will be proposed under separate notice. The current mortgage lender will need to agree to accept a short pay off, accepting less than the full amount owed on the original mortgage in order to satisfy the outstanding debt. This exemption will be applicable only to borrowers with credit scores between 500 to 579. Given the current economic conditions and the

[4] FHA will continue to allow borrowers to use permissible sources of funds, as described in FHA Handbook 4155.1, paragraph 5.B.1, to meet the minimum cash investment in the form of a downpayment. Gifts from family members, charitable organizations, employers, and government entities are also permitted, provided that none of the parties financially benefit from the sales transaction. In addition, governmental entities, including instrumentalities thereof, as described in Section 528 of the National Housing Act, may offer secondary financing to cover the borrowers' cash investment.

need (and encouragement by federal and other governmental programs) to refinance mortgages in order to obtain a more affordable mortgage through lower monthly payments, the decision credit scores proposed by this notice may be counterproductive in helping existing homeowners save their homes. Existing homeowners have an established payment history that can be taken into consideration in the underwriting process, but FHA recognizes that even homeowners who have been able to make their monthly payments may have had their credit scores negatively impacted by the downturn in the economy which has so seriously affected the housing market. FHA's consideration of different credit score requirements for refinance transactions would only be temporary, and would be applicable only to refinanced mortgages involving a short pay off. FHA is not proposing this distinct criteria permanently for refinance transactions, but rather only for such period as would help existing homeowners maintain their homes during this current economic downturn. FHA is proposing only different credit scores for refinance transactions to continue through, but not beyond, December 31, 2012. HUD specifically seeks comment on FHA's proposal.

C. Manual Underwriting

The purpose of mortgage underwriting is to determine a borrower's ability and willingness to repay the debt and to limit the probability of default. An underwriter must consider a borrower's credit history, evaluate their capacity to repay the loan based on income and current debt, determine if the cash to be used for closing is sufficient and from an acceptable source, and determine if the value of the collateral supports the amount of money being borrowed.

In cases where the borrower has very limited or nontraditional credit history, a FICO credit score may not have been issued by the credit bureaus, or the credit score may be based on references that are few in number or do not effectively predict future credit worthiness.

TABLE F—MANUAL UNDERWRITING STANDARDS

LTV	Credit score	Ratios	Reserves
90.00%	≥ 500 to ≤ 579	31/43%—Cannot Exceed	1 month PITI
96.50%*	≥ 580 to 619	31/43%—Cannot Exceed	1 month PITI
96.50%*	Nontraditional Credit. ≥ 620 and above	31/43%—May Exceed	1 month PITI

** Cash-out refinance LTV limit is 85% and conventional-to-FHA refinance LTV limit is 97.75%.*

Mortgage loans for borrowers in this category will need to be manually underwritten as are all "Refer" risk classifications provided by FHA's TOTAL Mortgage Score Card. Naturally, these categories of borrowers present a higher level of risk and, as a result, manual underwriting guidelines are generally more stringent to address that higher risk level.

FHA has determined that factors concerning borrower housing and debt-to-income ratios, along with cash reserves, are good predictive indicators as to the sustainability of the mortgage. FHA is proposing to implement additional requirements that will consider these factors for manually underwritten mortgage loans, as seen in TABLE F.

These additional requirements will consider the borrower's credit history, LTV percentage, housing/debt ratios, and reserves. On *all* manually underwritten mortgage loans, borrowers will be required to have minimum cash reserves equal to one monthly mortgage payment, which includes principal, interest, taxes, and insurance(s). Maximum housing and debt-to-income ratios will be set at 31 percent and 43 percent, respectively. Borrowers with credit scores of 620 or higher may exceed the qualifying ratios of 31/43 percent, not to exceed 35/45 percent provided that they are able to meet *at least* one of the compensating factors listed below. To exceed the qualifying ratios of 35/45 percent, not to exceed 37/47 percent, borrowers must meet at least two compensating factors listed below. Any other compensating factors are not acceptable. Mortgage lenders cannot use compensating factors to address unacceptable credit. While this notice does not address the interplay of the housing and debt-to-income ratios, FHA is seeking comment on how to serve borrowers with housing ratios above the threshold and debt-to-income ratios below the threshold, *i.e.,* 36/36 percent.

Acceptable compensating factors are:

- The borrower will have a documented significant decrease or a documented minimal change in housing expense AND a documented 12-month housing payment history with no more than 1X30 late payments, *e.g.,* no more than one month late on all rental or mortgage payments made within the month due.
- Documented significant additional income that is not considered effective income, *e.g.,* part-time income that does not meet the requirements in Handbook 4155.1, paragraph 4.D.2.d., and is not reasonably expected to continue for the next 2 years.

Documented cash reserves in the amount of 3 total monthly mortgage payments (principle, interest, taxes, insurance). The reserves, consisting of the borrower's own funds, must be liquid or readily accessible, and may not consist of gift funds.

- Energy Efficient Mortgages, as well as those homes that were built to the 2000 International Energy Conservation Code, formerly known as the Model Energy Code, or are being retrofitted to that standard, have "stretch ratios" up to 33/45 percent.

TABLE G shows that borrowers who met the proposed ratio and reserve requirements performed considerably better than those borrowers who did not meet the same guidelines. These proposed new requirements for manual underwriting will reduce the risk to the FHA MMIF, by helping to ensure that home buyers are financially capable of repaying the mortgage loan to be insured by FHA.

TABLE G—FHA SINGLE-FAMILY INSURANCE

[Credit Risk Comparisons for Proposed Limits on Manual Underwriting Approvals Data as of January 31, 2010]

Endorsement fiscal year	To-date claim rate (percent)	Seriously delinquent rate [a] (percent)	To-date claim rate (percent)	Seriously delinquent rate [a] (percent)	Claim rate ratio	Seriously delinquent rate ratio
	LTV up to 90, meeting ratio and reserve limits		LTV up to 90, not meeting ratio and reserve limits			
2004	4.3	21.2	6.3	26.7	1.48	1.26
2005	4.0	21.2	5.6	27.1	1.41	1.28
2006	4.4	26.3	5.2	35.4	1.18	1.35
2007	2.9	25.1	3.3	36.1	1.13	1.44
2008	0.6	20.2	1.3	30.4	2.23	1.51
	Above 90 LTV, 580–619 FICO (or nontraditional credit) meeting ratio and reserve requirements		Above 90 LTV, 580–619 FICO (or nontraditional credit), not meeting ratio and reserve requirements			
2004	5.0	15.9	5.8	20.2	1.18	1.27
2005	5.0	18.4	7.2	24.5	1.43	1.33
2006	5.3	21.8	7.3	30.8	1.38	1.42
2007	2.9	23.5	4.4	33.7	1.51	1.43
2008	0.9	19.4	1.2	27.4	1.35	1.41
	Above 90 LTV, FICO > 620 meeting reserve limits		Above 90 LTV, FICO > 620, not meeting reserve requirements			
2004	3.2	10.8	4.7	13.6	1.48	1.26
2005	3.9	12.6	5.0	17.0	1.29	1.35
2006	3.5	20.4	5.6	22.1	1.59	1.08
2007	2.7	21.8	4.2	27.3	1.59	1.25
2008	0.9	17.7	1.0	21.6	1.19	1.22

[a] The seriously delinquent rate is the sum of all loans 3 or more months delinquent, plus all in-foreclosure and in-bankruptcy cases, as a ratio of all active insurance in-force.

Source: U.S. Department of Housing and Urban Development/FHA; February 2010.

Table H shows that borrowers with credit scores below 620 who did not meet the proposed ratio and reserve requirements performed significantly worse than borrowers meeting those requirements.

TABLE H—FHA SINGLE-FAMILY INSURANCE

[Comparison of Seriously Delinquent Rates [a]—by Proposed Manual Underwriting Standards All Active Loans]

LTV ratio	Credit score range	Loans that meet proposed ratio and reserve limits [b]	Loans that do not meet proposed limits	Ratio: not meet/meet
Up to 90	500–579	22.02	30.06	1.37
Above 90	580–619 or nontraditional credit	18.33	26.15	1.43
Above 90	620 or above	12.01	17.05	1.42

[a] The seriously delinquent rate is the sum of all loans 3 or more months delinquent, plus all in-foreclosure and in-bankruptcy cases, as a ratio of all active insurance in force.

[b] See Chart below for Proposed Ratio and Reserve Limits.

Source: U.S. Department of Housing and Urban Development/FHA; February 2010.

All borrowers with credit scores must be classified by FHA's TOTAL Mortgage Scorecard to determine if manual underwriting is required. In cases where TOTAL Scorecard refers the case for manual underwriting, or in cases where the borrower(s) has no credit score, FHA is proposing the additional requirements for manual underwriting as illustrated in TABLE F. This table is applicable for purchase transactions, FHA cash-out refinance transactions, and all conventional to FHA refinance transactions. TABLE F is not applicable for FHA-to-FHA rate and term refinance (no cash-out), FHA streamline refinance (including credit qualifying), and HECM transactions.

The proposed changes announced in this notice will preserve both the historical role of the FHA in providing liquidity to the housing and mortgage markets during periods of economic volatility, as well as HUD's social mission of helping underserved borrowers access capital when the private sector needs additional credit enhancement to do so.

IV. Solicitation of Public Comments

FHA welcomes comments on the proposed risk management initiatives for a period of 30 calendar days. All comments will be considered in the development of the final **Federal Register** notice announcing the risk management initiatives and providing their effective date.

V. Findings and Certification

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this notice under Executive Order 12866 (entitled "Regulatory Planning and Review"). The notice was determined to be a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order).

In this notice, FHA proposes three policy changes that FHA can implement to replenish the MMIF capital reserve account. First, FHA proposes to reduce the amount of financing costs a property seller or other interested party may pay on behalf of a homebuyer using an FHA-insured mortgage. This proposed cap on "seller concessions" will more closely align FHA's single family mortgage insurance programs with standard industry practice and minimize FHA exposure to the risk of adverse selection. Secondly, FHA proposes to introduce a two-part credit-score threshold, with one lower bound for loans with loan-to-value ratios of 90 percent or less, and a higher threshold for those with loan-to-value ratios up to the statutory maximums. This will be the first time that FHA has ever instituted an absolute lower-bound for borrower credit scores. Borrowers with low credit scores present higher risk of default and mortgage insurance claim. Third, FHA will tighten underwriting standards for mortgage loan transactions that are manually underwritten. Such transactions that lack the additional credit enhancements proposed under this Notice result in higher mortgage insurance claim rates and present an unacceptable risk of loss. The benefit of these set of actions will be to reduce the net losses due to high rates of insurance claims on affected loans, while the cost will be the value of the homeownership opportunity denied to the excluded borrowers. The total saving to the FHA would be $96 million in reduced claim losses and the net cost to society of excluding reduced homeownership rates could be as high as $82 million.

With respect to expected benefits of this policy change, as noted earlier, the direct purpose of the policy change is to achieve the statutorily mandated minimum capital reserve ratio of 2 percent. The broader purpose of the policy change, however, and of the capital reserve ratio requirement itself, is to ensure the financial soundness of the FHA throughout a wide range of economic conditions. The current financial crisis has led to a credit crunch in which FHA has become the only source of mortgage credit for households who lack significant funds for downpayments and who do not have pristine credit histories. FHA's share of the single family mortgage market today is approximately 30 percent—up from a low point of just 3 percent in 2007. The dollar volume of insurance written jumped from just $56 billion in 2007 to over $300 billion in 2009. Facilitating the provision of credit during a liquidity crisis is a welfare-enhancing activity and the FHA provides such a public benefit. Quantifying the benefit involves measuring the extent to which this Notice increases the abilities of the FHA to meet its mission requirements without having to substantially increase insurance premiums, and then estimating the value of the net economic benefits provided to households by the housing options afforded them through FHA insurance.

With respect to possible costs of this policy change, FHA recognizes that tightening its underwriting guidelines will cause excluded households to either delay transition to homeownership status or else never make that transition. For refinance loans, the proposed restrictions will cause higher housing costs until such time as the excluded households can improve their credit histories and/or gain more home equity through general market-level house price appreciation. Individuals may face other costs from being excluded from an FHA-insured loan, one of which is a search cost for an alternative. However, an individual lender or broker will offer a wide variety of products to a potential customer. An FHA loan is only one of many products offered by the typical lender so that the typical potential borrower is not likely to go to another lender. The lender would inform the applicant that FHA guidelines have changed and that given their credit score, there are no loans for that individual. Some consumers may wish for a second opinion, however, in which case they would expend additional resources and time. If for example, a consumer spent two hours valued at $40 per hour and another $20 for an additional credit report, then the search cost would be $100 for a fraction of the excluded borrowers.

The foregoing provides only a brief overview of the analysis that HUD undertook in assessing costs and benefits. HUD's full analysis can be found at *http://www.hud.gov/offices/hsg/sfh/hsgsingle.cfm.*

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any policy document that has federalism implications if the document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This notice does not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This notice would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal

Information Relay Service at 800–877–8339.

Dated: July 9, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–17326 Filed 7–14–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5410–N–01]

Federal Housing Administration (FHA) First Look Sales Method for Grantees, Nonprofit Organizations, and Subrecipients Under the Neighborhood Stabilization Programs (NSP)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice outlines the process by which governmental entities, nonprofit organizations, and subrecipients participating in the Neighborhood Stabilization Program (NSP) (eligible NSP purchasers) are provided a preference to acquire FHA real estate-owned (REO) properties under FHA's temporary NSP First Look Sales Method. Eligible NSP purchasers may acquire such REO properties for any of the eligible uses under the NSP, including rental or homeownership. Today's notice also outlines how REO property sales under the FHA First Look Sales Method will be facilitated to ensure that NSP and FHA requirements are met, and to ensure that compliance with these requirements does not impede or otherwise disqualify eligible NSP purchasers from successfully participating in the FHA First Look Sales Method.

While there are currently two separate NSP programs (NSP1 and NSP2) created under their own respective authorizing legislation, for purposes of this notice the term "NSP" shall be used to refer in general to all current or future NSP programs, as well as to their respective eligible program participants.

DATES: The FHA First Look Sales Method announced in this notice shall be in effect from the date of publication of this notice through May 31, 2013.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Asset Management, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9172, Washington, DC 20410; telephone number 202–708–1672 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800– 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Neighborhood Stabilization Program (NSP)

Title III of Division B of the Housing and Economic Recovery Act, 2008 (Pub. L. 110–289, approved July 30, 2008) (HERA) appropriated $3.92 billion for emergency assistance for the redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA states otherwise, the grants are to be considered Community Development Block Grant (CDBG) funds. The grant program under Title III is commonly referred to as the Neighborhood Stabilization Program (NSP). HERA authorizes the Secretary to specify alternative requirements to any provision under Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301 *et seq.*) (HCD Act), except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including lead-based paint), in accordance with the terms of section 2301 of HERA and for the sole purpose of expediting the use of grant funds.

On October 6, 2008 (73 FR 58330), HUD published a notice in the **Federal Register** advising the public of the allocation formula and allocation amounts, the list of grantees, alternative requirements, and waivers granted. On June 19, 2009 (74 FR 29223), HUD published a second notice in the **Federal Register** advising the public of substantive revisions to the October 6, 2008, notice, primarily as a result of changes to NSP authorized under the American Recovery and Reinvestment Act (Pub. L. 111–005, approved February 17, 2009) (Recovery Act).

Title XII of Division A of the Recovery Act also appropriated additional funding under NSP. On May 4, 2009, HUD posted on its website the Notice of Funding Availability (NOFA) for the Neighborhood Stabilization Program 2 (NSP2) under the Recovery Act. HUD announced the posting of the NSP2 NOFA through a **Federal Register** notice published on May 7, 2009 (74 FR 21377). The NSP2 NOFA announced the availability of approximately $1.93 billion in competitive grants authorized under the Recovery Act. Following issuance of the NSP2 NOFA, HUD made some revisions.

A notice posted on June 11, 2009 clarified, among other things, how applicants were to meet the geographic targeting requirements. A second notice posted on November 9, 2009, revised the NSP2 NOFA to: (1) Correct an inconsistency in the NSP2 NOFA regarding when the lead member of a consortium must enter into consortium funding agreements with consortium members; and (2) extend the deadline for submission of such agreements to January 29, 2010. A third notice posted on January 21, 2010, specified the NSP2 NOFA deadline date for submission of consortium funding agreements. Additional notices posted by HUD on April 2, 2010, revise the definitions of "foreclosed" and "abandoned" for the purposes of the NSP programs. Notices of the changes listed above were published in the **Federal Register** on June 17, 2009 (74 FR 28715), November 16, 2009 (74 FR 58973), January 27, 2010, (75 FR 4410), and April 9, 2010 (75 FR 18228), and are available on HUD's Web site at: *http://www.hud.gov/nspta.*

B. FHA Temporary First Look Sales Method for Eligible NSP Purchasers

The purpose of the FHA real estate-owned (REO) property disposition program is to dispose of properties in a manner that expands homeownership opportunities, strengthens neighborhoods and communities, and ensures a maximum return to the mortgage insurance funds. HUD's regulations for the program are codified at 24 CFR part 291 (entitled "Disposition of HUD-Acquired Single Family Property"). Under the part 291 regulations, HUD has considerable flexibility in determining appropriate methods of sale for REO properties. Section 291.90 provides that "HUD may, in its discretion, on a case-by-case basis or as a regular course of business, choose from among" several sales methods identified in the regulations. Further, § 291.90(e) provides that "HUD may select any other methods of sale, as determined by the Secretary."

Consistent with the goals of both NSP, to aid in the redevelopment of abandoned and foreclosed homes, and of HUD's REO sales program, to expand homeownership opportunities and strengthen communities, this notice announces a temporary REO sales method under the authority conferred by § 291.90(e). Through the FHA First Look Sales Method described in this notice, HUD will afford eligible NSP purchasers with a preference ("First Look") to acquire FHA REO properties that are available for purchase within NSP areas. Eligible NSP purchasers may

acquire such REO properties with the assistance of NSP funds for any eligible uses under the NSP, including rental or homeownership.

The NSP designated areas referred to within this notice shall include those areas termed "areas of greatest need" under NSP1, "target geographies" under NSP2, and those areas to be given other future NSP area designations.

C. Eligible NSP Purchasers

Governmental entities, nonprofit organizations, and subrecipients that have received a HUD-issued Name and Address Identification Number (NAID) are eligible to participate in the First Look Sales Method, and are referred to throughout this notice as "eligible NSP purchasers." For-profit organizations are not eligible to participate in the FHA First Look Sales Method. **Note:** Each FHA REO property purchased by an eligible NSP purchaser under the First Look sales method must be purchased, at least in part, with the assistance of NSP funds.

II. Procedures and Requirements for Eligible NSP Purchaser Participation in FHA First Look Sales Method

A. Eligible NSP Purchaser Application for Electronic Systems Access

Eligible NSP purchasers (NSP grantees, nonprofit organizations, and subrecipients) seeking to acquire FHA REO properties through the FHA First Look Sales Method are not required to complete an approval process as required of other entities seeking to purchase REO properties under the FHA direct sales program. However, entities acquiring FHA REO properties must have identifying information entered into HUD Single Family Asset Management System (SAMS). Therefore, eligible NSP purchasers interested in acquiring FHA REO properties through the FHA First Look Sales Method must first submit a completed and signed Payee Name and Address Form, SAMS 1111, to the applicable FHA Homeownership Center (HOC), along with supporting documentation described below.

Using the information provided under the completed SAMS form, HUD will create and assign a unique Name and Address Identification Number (NAID) for each entity involved in direct business with HUD. This form is available online at: *http://www.hud.gov/offices/adm/hudclips/forms/files/1111sams.pdf;* instructions are provided on page 2 of the SAMS form identifying the required documentation to be attached to the SAMS 1111 submission in order to successfully obtain a NAID.

Note: If an eligible NSP purchaser is an entity or organization to which HUD has already assigned a NAID, it is still necessary for the entity or organization to complete this step in order for their current NAID number to be coded for the FHA First Look Sales Method. In either case, applicants are directed to read the SAMS 1111 instructions to ensure that their NAID application package is submitted with the required information and supporting documentation.

Once an eligible NSP purchaser has submitted its SAMS/NAID paperwork to the appropriate HOC, and once these forms have been processed and approved, HUD shall generate a NAID number that must be used by the eligible NSP purchaser to electronically submit an offer to purchase any given FHA REO property available for purchase during the FHA First Look purchase period described below under Section E, *Exercising Purchase Preference.* Information about the eligible NSP purchaser's NAID number shall be provided to the eligible NSP purchaser by HUD's Office of Community Planning and Development (CPD) and its NSP contractor.

State or local government NSP participants, whether HUD direct grant recipients or subawardee/subrecipient partners to another grant recipient entity, shall submit the following documents as part of their NSP NAID application package:

- A completed form SAMS 1111 and supporting documentation as specified under the SAMS 1111 instructions;
- A letter from either the chief elected official or by the director of the local government agency managing the community's NSP funds verifying that it is an NSP recipient or subawardee/subrecipient and identifying the government official or staff person or persons who has or have been granted signatory authority to purchase any FHA REO properties with the assistance of a grantee's NSP funds.
- In each case where the state or local government entity is a direct HUD recipient of NSP funds, the letter shall also identify the state or local government's NSP grant award number.
  - In each case where a state or local government entity is a direct HUD NSP recipient, the letter shall also identify any and all organizations and entities (state/county/local government and/or nonprofit organization(s)) that are subawardees/subrecipients under the state or local government's NSP grant, including all pertinent contact information for each (names, titles, addresses, telephone and fax numbers, email addresses).
  - In each case where a state or local government entity is an NSP subawardee/subrecipient, the letter shall identify the direct HUD NSP grant recipient with which the state or local government NAID applicant has partnered, including all pertinent contact information for the direct recipient partner (name, title, address, telephone and fax numbers, and email address), and the direct HUD NSP grant recipient's grant award number.

Nonprofit NSP participants, whether direct HUD grant recipients or subawardee/subrecipient partners to another grant recipient entity, shall submit the following documents as part of their NSP NAID application package:

- A completed form SAMS 1111, and supporting documentation as specified under the SAMS 1111 instructions;
- The most current version of the nonprofit's approved bylaws, or equivalent legal document, identifying which elected nonprofit board officials and/or nonprofit staff have signatory authority to execute the purchase of real property on behalf of the nonprofit organization and with the nonprofit organization's financial resources; and
- A letter from the Executive Director and/or the nonprofit Board President/Chair (or equivalent) certifying that the nonprofit is an NSP recipient or subawardee/subrecipient and identifying the board official(s) and/or nonprofit staff person(s) who have signatory authority to execute the purchase of any FHA REO properties assisted with the nonprofit's NSP funds. In each case where the nonprofit organization is a direct HUD recipient of NSP grant funds, the letter shall also identify the nonprofit's NSP grant number.
  - In each case where a nonprofit organization is a direct HUD NSP recipient, the letter shall also identify any and all organizations and entities (state/county/local government and/or nonprofit organization(s)) that are subawardee/subrecipients under the nonprofit's NSP grant, including all pertinent contact information for each such subrecipient (names, titles, addresses, telephone and fax numbers, email addresses).
  - In each case where a nonprofit entity is an NSP subrecipient/subawardee, the letter shall identify the direct HUD NSP grant recipient with which the nonprofit NAID applicant has partnered, including all pertinent contact information for the direct recipient partner (name, title, address, telephone and fax numbers, email address), and the direct HUD NSP grant recipient's grant award number.

B. Submission of NAID Application Documentation

Eligible NSP purchasers shall submit the documentation described in Section II.A of this notice to the appropriate HOC below, for review and approval. Each application submitted by mail must be enclosed in an envelope marked: "ATTENTION—NSP NAID PROCESSING."

Atlanta HOC: U.S. Dept. of HUD, Atlanta Homeownership Center, 40 Marietta Street, Atlanta, GA 30303–2806

Denver HOC: U.S. Dept. of HUD, Denver Homeownership Center, 1670 Broadway, Denver, CO 80202–4801

Philadelphia HOC: U.S. Dept. of HUD, Philadelphia Homeownership Center, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3389

Santa Ana HOC: U.S. Department of Housing & Urban Development, Santa Ana Homeownership Center, Santa Ana Federal Building, 34 Civic Center Plaza, Room 7015, Santa Ana, CA 92701–4003

Applications for NSP NAID numbers may also be submitted to the appropriate HOC via email. All required NAID application documents, including those requiring official signatures, must be converted into Portable Document Format (.PDF) files and emailed to the appropriate HOC. The subject line for each such email submission must read, "ATTENTION—NSP NAID PROCESSING."

The following email addresses have been established for each respective HOC for the express purpose of receiving NSP NAID application submissions:

- Denver: *NSP–NAIDDENHOC@hud.gov;*
- Philadelphia: *NSP–NAIDPHIHOC@hud.gov;*
- Atlanta: *NSP–NAIDATLHOC@hud.gov;*
- Santa Ana: *NSP–NAIDSAHOC@hud.gov.*

Information regarding which HOC has jurisdiction over FHA REO sales in a particular state is available online at *http://www.hud.gov/offices/hsg/sfh/hoc/hsghocs.cfm.*

Additional information about FHA programs and policies is available through FHA's toll-free telephone number (800–CALL–FHA/800–225–5342, and TDD: 877–833–2483). Information may also be provided by contacting FHA by email at *info@fhaoutreach.com.*

C. Duration of FHA First Look Periods: Consideration and Purchase

FHA REO properties that become available for purchase within an NSP-designated area shall be designated as First Look properties. HUD CPD and its NSP data mapping contractor will make information available to eligible NSP purchasers about FHA REO properties located within NSP-designated areas on a daily basis, per the receipt of electronic boundary files for each NSP designated area, as described under Section D, below. The period between conveyance to FHA and the completion of the property appraisal shall constitute the First Look consideration period, lasting up to 12 business days on average. Once an NSP First Look property has been appraised, the eligible NSP purchaser will be notified that the property has an appraised sales value and that the First Look purchase period has commenced. From this point the eligible NSP purchaser shall have two (2) business days to submit an offer to the appropriate FHA Management and Marketing (M&M) contractor to purchase the property. Information about each contractor and related contract submission process instructions shall also be provided to eligible NSP purchasers separate from this notice.

The duration of the entire First Look period may be a total of 14 days on average. Each such First Look property shall remain available for purchase under the First Look Sales Method until an eligible NSP purchaser submits an offer to purchase the property (in whole or in part with the assistance of NSP funds), or through the expiration of the 2-day purchase period, whichever comes first. In the event that no eligible NSP purchaser exercises its preference to purchase an FHA REO property with the assistance of NSP funds during the 2-day First Look purchase period, the M&M contractor shall proceed to market the property according to the applicable disposition procedures under 24 CFR part 291.

D. Submission of Electronic Boundary Files of NSP Designated Areas

Notification of the availability of FHA REO properties will be made available to NSP grantees where the property location is within the boundary of the NSP grantees' designated area and for those NSP grantees that have applied for and received a HUD-issued NAID. NSP grantees are required to submit an amendment to HUD if the designated area changes. In addition, the grantee needs to provide HUD with an updated jurisdictional boundary file. Submission instructions for NSP boundary files and guidance on the approved formats are available at *http://hudnsphelp.info/index.cfm?do=NSP1info* and *http://www.huduser.org/portal/nsp1/nsp.html.*

E. Exercising Purchase Preference

Information about the availability of each FHA REO property that is available for purchase within a designated NSP area shall be made available to eligible NSP purchasers through the CPD NSP contractor immediately after the property is conveyed to FHA. Each such FHA REO property shall subsequently be appraised and made available for purchase by an eligible NSP purchaser under the First Look Sales Method for a period of two (2) business days. Before submitting an offer to purchase an FHA REO property through the FHA First Look Sales Method, and with the assistance of NSP funds, eligible NSP purchasers must confirm that the property is within the boundaries of the NSP designated area as it was accepted by CPD, regardless of any possible errors or generalizations made to the representation of that designated area in the boundary file or made by HUD when determining that an FHA REO property is within a designated area. After confirmation, eligible NSP purchasers should use the NAID to submit offers to purchase.

In those cases where the boundaries of any two or more NSP areas overlap, and where multiple eligible NSP purchasers wish to exercise their preference to purchase an FHA REO property that is located in two or more such NSP designated areas, the right to purchase the property shall be granted to the eligible NSP purchaser that first submits an offer to purchase the property in question. FHA REO properties within an FHA-approved Asset Control Area shall not be available for purchase under the First Look Sales Method.

F. Discounted Sales Price

For each FHA REO property acquired by an eligible NSP purchaser through the FHA First Look Sales Method, and with the assistance of NSP funds, FHA, through its applicable M&M contractor, shall sell the property to the eligible NSP purchaser at a discounted purchase price of 10 percent below the appraised property value, less any applicable costs, including commissions. In all cases, the minimum discounted purchase price of each FHA REO First Look property purchased by an eligible NSP purchaser (in whole or in part with NSP funds) shall be one percent off of the appraised property value; in no case shall the discounted purchase price

exceed 99% of the appraised property value. The sales price of each FHA REO property is based upon the appraised value of the property. Upon request, the date of the FHA appraisal will be made available to the NSP purchaser by the M&M contractor.

G. Uniform Relocation Act

Acquisitions financed with NSP grant funds are subject to the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (URA) and its implementing regulations at 49 CFR part 24, and the requirements set forth in the NSP notice published in the **Federal Register** on October 6, 2008. Since eligible NSP purchasers do not have the power to condemn FHA REO property, acquisitions through the FHA First Look Sales Method may fall under the voluntary acquisition exclusion at 49 CFR 24.101(b)(3). That provision exempts certain governmental acquisitions from the URA acquisition policies without the written disclosures ordinarily provided to private sellers.

H. Tenant Protection Requirements Under PTFA and ARRA

There are two separate laws concerning tenants in foreclosed properties: the Protecting Tenants at Foreclosure Act (PTFA), which is part of the Helping Families Save Their Homes Act of 2009 (Pub. L. 111–22, approved May 20, 2009), and the Recovery Act. On June 24, 2009 (74 FR 30106), FHA issued a notice on PTFA directed to entities and individuals that participate in HUD programs or with whom HUD interacts in its programs (for example, approved mortgagees and approved nonprofit organizations). The responsibility for meeting the new tenant protection requirements applies to all successors in interest of residential property, regardless of whether a federally related mortgage is present. The immediate successors in interest of residential property, which is being foreclosed, bear direct responsibility for meeting the requirements of PTFA. The PTFA protections are self-executing and became effective on May 20, 2009.

The Recovery Act includes separate tenant protection requirements. In order to use NSP funds to acquire foreclosed residential property, the eligible NSP purchaser must perform due diligence to ensure that the initial successor in interest to the foreclosed property complied with tenant protection requirements specified in the Recovery Act (or make a determination that such tenant protection requirements are inapplicable), and the grantee must keep adequate documentation of tenant protection compliance or inapplicability. Eligible NSP purchasers are required to document compliance with the tenant protection provisions of the Recovery Act, as follows:

> [T]he grantee shall maintain documentation of its efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property has complied with the requirements in accordance with Appendix 1, Section K. Acquisition and relocation under section K.2.a. and K.2.b. of the May 4, 2009 NSP2 NOFA. If the grantee determines that the initial successor in interest in such property failed to comply with such requirements, it may not use NSP funds to finance the acquisition of such property unless it assumes the obligations of the initial successor in interest specified in section K.2.a. and K.2.b. If a grantee elects to assume such obligations, it must provide the relocation assistance required pursuant to 24 CFR 570.606 to tenants displaced as a result of an activity assisted with NSP funds and maintain records in sufficient detail to demonstrate compliance with the provisions of that section.

For each proposed acquisition of an FHA REO property with NSP grant funds, the FHA Mortgagee Compliance Manager (MCM) [1] will provide the eligible NSP purchasers with information regarding when each property acquired by FHA REO was determined to be vacant and the date that the Notice of Foreclosure was issued. Such information may include whether only the former mortgagor currently occupies and/or occupied the property at the time of the notice of foreclosure, copies of the tenant lease, information on the occupants, and/or any notices to vacate that the foreclosure attorney who works for the mortgagees may have on file. Based upon the information provided, it will be the responsibility of the eligible NSP purchaser to determine whether the initial successor in interest of a particular foreclosed property was in compliance with the Recovery Act and whether the property was eligible for acquisition with NSP grant funds.

I. Contract Contingency Terms

Properties acquired with NSP funds are subject to a number of other federal requirements cited under HUD's regulations before the sale can be executed and the funds can be expended. These requirements include, but are not limited to: Environmental review, including historic preservation and other related laws under 24 CFR part 50 or part 58, as applicable; the lead-based paint hazard abatement requirements under 24 CFR part 35; payment of prevailing wages determined under the Davis-Bacon Act of 1931, as appropriate; and the URA. The acquisition and ultimate disposition of these properties must also comply with applicable federal civil rights laws, including, but not limited to, Title VI of the Civil Rights Act of 1964 and its implementing regulations at 24 CFR part 1; the Fair Housing Act, as amended, and its implementing regulations at 24 CFR part 100; Section 504 of the Rehabilitation Act of 1973 and its implementing regulations at 24 CFR part 8; and the Architectural Barriers Act of 1968.

Eligible NSP purchasers shall be permitted to submit, and FHA M&M vendors shall accept, sales contracts for the purchase of FHA REO properties with the assistance of NSP funds under the FHA First Look Sales Method that include contingency clauses pertaining to the successful completion of the environmental review process, the lead paint inspection, and other requirements, as applicable under the NSP. Contingency clauses concerning the environmental review process must meet the provisions of the NSP Guidance on Conditional Purchase Agreements found at *http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/pdf/cond_purchase_agreement.pdf.*

Each eligible NSP purchaser is expected to close on the purchase of each FHA REO property within the same time frames that apply to non-NSP purchasers under FHA requirements. As such, when scheduling the settlement date, the M&M contractor shall provide the maximum time allowable under applicable FHA requirements to ensure that the eligible NSP purchaser is provided with the time necessary to document compliance with all applicable NSP requirements. This includes the approval by the M&M contractor of any request submitted by an eligible NSP purchaser to extend the settlement deadline, per the procedures and guidelines provided under Property Disposition Handbook One to Four Family Properties (Handbook 4310.5 REV–2) (*http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4310.5/index.cfm*). Approval of settlement deadline extension requests are typically premised upon the fact that a purchaser is experiencing extenuating circumstances beyond its control and which have a direct impact upon its ability to go to settlement at the initially agreed-upon deadline. For eligible NSP purchasers these extenuating circumstances may pertain, but may not

[1] Michaelson, Connor & Boul, which is referred to at *http://www.hud.gov/offices/hsg/sfh/nsc/mcm.cfm.*

be limited to, the successful completion of various NSP requirements, as described above. Any such request for the extension of the settlement deadline on the part of the eligible NSP purchaser, and subsequent decision on the part of the M&M contractor, must be made in writing.

Note: Prior to signing any sales contract, the HUD Office of Single Family Housing will first complete its environmental review responsibilities pursuant to 24 CFR part 50, including its responsibility to provide notice of site contamination following a search of agency files pursuant to section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund", 42 U.S.C. 9620(h)), and will incorporate any resulting conditions in the sales contract. Any remediation of site contamination required pursuant to section 120(h) shall be performed prior to property transfer. Also as a condition of sale, the purchaser of any FHA owned property located in a special flood hazard area and where flood insurance is available through the National Flood Hazard Insurance Program will be required to obtain flood insurance.

In the event that an FHA REO property for which an eligible NSP purchaser has submitted a contingent sales contract that does not meet the standards and requirements under 24 CFR part 35 and/or 24 CFR part 50 or part 58, or any other applicable statutes, regulations, or requirements, or if the NSP purchaser cannot successfully complete the various environmental review and other federal requirement reviews under the NSP program before the expiration of the required FHA deadline; or if the purchase of the property does not otherwise meet the eligible NSP purchaser's cost feasibility or other affordable housing program requirements, the sales contract shall be terminated at no cost to the eligible NSP purchaser. In addition, all obligations of the eligible NSP purchaser under the contract shall be extinguished.

J. FHA 90-Day Anti-Frequent Re-Sale Waiver

On January 15, 2010, FHA issued a waiver of regulations under 24 CFR 203.37a(b)(2), "Re-sales occurring 90 days or less following acquisition." The waiver is effective February 1, 2010, through January 31, 2011, unless otherwise extended or withdrawn. On May 21, 2010 (75 FR 38632), HUD published a notice in the **Federal Register** announcing this waiver and seeking comments from industry, potential purchasers, and other interested members of the public on the conditions which must be met for the waiver to be provided. Comments will be taken into consideration in determining whether any modifications should be made to the waiver eligibility conditions. Under this waiver, FHA REO properties can be acquired by a purchaser and resold by the same purchaser to a homebuyer who has been approved to acquire the property with an FHA insured mortgage less than 90 days after the initial acquisition. The full text of the anti-frequent re-sale waiver is available online: *http://www.hud.gov/offices/hsg/sfh/currentwaiver.pdf.* Additional guidance on compliance with the terms of this waiver is forthcoming from the Department.

K. Affordability Requirements

FHA REO properties acquired with NSP funds through the FHA First Look Sales Method must meet the NSP affordability requirements, and shall otherwise be considered to be the monitoring responsibility of CPD. As required by statute and regulation, eligible NSP purchasers shall maintain all documentation of compliance with NSP Program affordability requirements for each FHA REO property acquisition assisted, in whole or in part, with NSP funds, and shall make such documentation available for review, upon request of FHA staff and/or (consistent with state and local laws regarding privacy and obligations for confidentiality) FHA M&M III contractors.

L. Paperwork Reduction Act

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2502–0306 and 2502–0540. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

M. Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulation Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number).

Dated: July 9, 2010.

David H. Stevens,

Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 2010–17335 Filed 7–14–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N139; 1112–0000–81440–F2

Endangered and Threatened Wildlife and Plants; Permit, San Bernardino County, CA

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from CJR General Partnership (applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (Act). We are considering issuing a permit that would authorize the applicant's take of the federally threatened desert tortoise (*Gopherus agassizii*) and State threatened Mohave ground squirrel (*Xerospermophilus mohavensis*) incidental to otherwise lawful activities that would result in the permanent loss of 120 acres of habitat for the species near Oro Grande in San Bernardino County California. We invite comments from the public on the application, which includes the AgCon Habitat Conservation Plan (HCP) that fully describes the proposed project and measures the applicant will undertake to minimize and mitigate anticipated take of the species. We also invite comments on our preliminary determination that the HCP qualifies as a "low-effect" plan, which is eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this determination in our draft Environmental Action Statement and associated Low-Effect Screening Form, both of which are also available for review.

DATES: To ensure consideration, please send your written comments by August 16, 2010.

ADDRESSES: You may download a copy of the permit application, HCP, and related documents on the Internet at *http://www.fws.gov/ventura/,* or you may request documents by U.S. mail or phone (see below). Please address written comments to Diane K. Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. You may alternatively send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Jen Lechuga, HCP Coordinator, at the Ventura address above or by telephone at (805) 644–1766, extension 224.

SUPPLEMENTARY INFORMATION:

Background

The desert tortoise, Mojave population, was listed as threatened on April 2, 1990 (55 FR 12178). Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Actas "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take (i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively.

The Mohave ground squirrel is not a species listed under the Act. However, it is a State threatened species under the California Endangered Species Act. By including the Mohave ground squirrel in the HCP, take of this species would be authorized under the permit should this species become listed under the Act.

The Act's take prohibitions do not apply to federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, the HCP's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants.

The applicant proposes to expandits existing 120-acre Oro Grande sand and gravel mine pitto the north by 120 acres on parcel APN 0470–052–02 located north of Bryman Road and east of National Trails Highway, approximately 5 miles south of Helendale, San Bernardino County, California. The parcel contains Mojave creosotebush scrub and sandy loam soils. Desert tortoise surveys were conducted on the property and two individuals were found. Surveys for Mohave ground squirrels were not conducted. Their presence was assumed as the species has been recorded nearby and the property is within the range of and provides suitable habitat for the Mohave ground squirrel.

The proposed project would result in permanent impacts to 120 acres of habitat for the desert tortoise and Mohave ground squirrel. The applicant proposes to implement the following measures to minimize and mitigate for the loss of desert tortoise and Mohave ground squirrel habitat within the permit area: (1) Applicant will purchase 120 acres of desert tortoise and Mohave ground squirrel habitat in the Superior-Cronese Critical Habitat Unit and Desert Wildlife Management Area for the desert tortoise which will be managed in perpetuity by the California Department of Fish and Game or a third party for the conservation of the desert tortoise and Mohave ground squirrel; (2) a qualified biologist will oversee site preparation including vegetation and topsoil removal and fence construction, and provide worker training on the desert tortoise and Mohave ground squirrel and requirements of the HCP; (3) all desert tortoises captured during clearance surveys of the mine pit expansion site will be moved to adjacent creosotebush scrub habitat managed by the Bureau of Land Management (BLM); and (4) permanent desert tortoise exclusion fencing will be installed to demarcate the impact area from the adjacent areas, including the BLM-managed lands.

In the proposed HCP, the applicant considersfive alternatives to the taking of the desert tortoise and Mohave ground squirrel. The No Action alternative would maintain current conditions, the project would not be implemented, there would be no impacts to the desert tortoise or Mohave ground squirrel, and an incidental take permit application would not be submitted to the Service. The other alternatives include expanding mining operations at another existing mine, developing a new mine at a new site, reducing the size of the proposed mine expansion, and changing the duration or direction of the proposed mine expansion.

We are requesting comments on our preliminary determination that the applicant's proposal will have a minor or neglible effect on the species covered in the plan, and that the plan qualifies as a "low-effect" HCP as defined by our Habitat Conservation Planning Handbook (November 1996). We base our determination that the HCP qualifies as a low-effect HCP on the following three criteria: (1) Implementation of the applicant's project description in the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to the environmental values or resources that would be considered significant. As more fully explained in our draft Environmental Action Statement and associated Low-Effect Screening Form, the applicant's proposed HCP qualifies as a "low-effect" HCP for the following reasons:

(1) Approval of the HCP would result in minor or negligible effects on the desert tortoise, Mohave ground squirrel, and their habitats. We do not anticipate significant direct, indirect, or cumulative effects to the desert tortoise resulting from the proposed project;

(2) Approval of the HCP would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks;

(3) Approval of the HCP would not result in any cumulative or growth-inducing impacts and would not result in significant adverse effects on public health or safety;

(4) The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local, or tribal law or requirement imposed for the protection of the environment; and

(5) Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

We, therefore, have made the preliminary determination that the approval of the HCP and incidental take permit application qualifies for a categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior Manual (516 DM 2 Appendix 2 and 516 DM 8). Based on our review of public comments that we receive in response to this notice, we

may revise this preliminary determination.

Next Steps

We will evaluate the HCP and comments we receive to determine whether the permit application meets the requirements of section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*) and implementing regulations (50 CFR 17.32). If we determine that the application meets these requirements, we will issue the permit for incidental take of the desert tortoise and Mohave ground squirrel. We will also evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements are met, we will issue the permit to the applicant.

Public Comments

If you wish to comment on the permit application, HCP, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: July 9, 2010.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2010–17270 Filed 7–14–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVSO0530 L5101.ER0000 LVRWF0900110; NVN–0865171; 10–08807; MO# 4500011976; TAS: 14X5017]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Abengoa Solar Inc., Lathrop Wells Solar Facility, Amargosa Valley, Nye County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Pahrump Nevada Field Office, Southern Nevada District Office intends to prepare an Environmental Impact Statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until September 13, 2010. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the BLM Web site at: *http://www.blm.gov/nv/st/en/fo/lvfo.html.* Comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later, to be included in the Draft EIS. Additional opportunities for public participation will be provided upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the Abengoa Solar Inc., Lathrop Wells Solar Facility by any of the following methods:

- *E-mail: lwse_EIS@blm.gov*
- *Fax:* (702) 515–5010 (attention: Gregory Helseth)
- *Mail:* Gregory Helseth, BLM Southern Nevada District Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130–2301.
- *In person:* At any EIS public scoping meeting.

Documents pertinent to this proposal may be examined at the BLM Southern Nevada District Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, send requests to: BLM Southern Nevada District Office, Gregory Helseth, Renewable Energy Project Manager, Attn: Abengoa Lathrop Wells Solar Facility, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130; e-mail: *Gregory_Helseth@blm.gov* or *lwse_EIS@blm.gov;* or phone: (702) 515–5173

SUPPLEMENTARY INFORMATION: The applicant, Abengoa Solar Inc., has requested a right-of-way authorization for the construction, operation, maintenance, and termination of a solar energy generation project. The proposed Lathrop Wells Solar Facility project would consist of a concentrated solar power facility including a solar parabolic trough, photovoltaic panels, an electrical transmission substation, switchyard facilities, and a transmission line connecting to the existing Valley Electric Line south of the project. The proposed project would produce approximately 250 megawatts (MW) from a parabolic-trough, dry-cooled solar power plant with the option to expand the facility by adding a second 250–MW unit. Additionally, the proposal may include up to 20 MW of photovoltaic solar power. The proposed project would be located on approximately 5,336 acres of public lands in the Amargosa Valley, Nye County, Nevada. The purpose of the public scoping process is to ascertain the relevant issues that will influence the scope of the environmental analysis, including alternatives, and to guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: Threatened and endangered species, visual resource impacts, impacts to lands with wilderness characteristics, recreation impacts, socioeconomic effects, and cumulative impacts.

The BLM will use and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted, and Tribal concerns, including impacts on Indian trust assets, will be given due consideration. Federal, state, and local agencies, as well as individuals, organizations or tribes that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request, or be requested by the BLM, to participate as a cooperating agency.

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.

Patrick Putnam,

Field Manager, Pahrump Field Office.

[FR Doc. 2010–17264 Filed 7–14–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–NWRS–2010–N056; 1265–0000–10137 S3]

Deer Flat National Wildlife Refuge, Canyon, Owyhee, Payette, and Washington Counties, ID; Malheur County, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; announcement of open houses; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) for Deer Flat National Wildlife Refuge (Refuge). The Refuge has units located in Canyon, Owyhee, Payette, and Washington Counties, ID, and Malheur County, OR. We will prepare an environmental impact statement (EIS) to evaluate the potential effects of various CCP alternatives. This notice also requests public comments and announces public open houses; see **DATES**, **ADDRESSES**, and **SUPPLEMENTARY INFORMATION** for the details. We issue this notice in compliance with our CCP policy to notify the public and other agencies of our intentions and to obtain suggestions and information on the scope of issues we will consider during the CCP planning process.

DATES: To ensure consideration, we must receive your written comments by September 10, 2010. Public open houses will be held on July 28, August 20, and August 21, 2010; see **SUPPLEMENTARY INFORMATION** for details.

ADDRESSES: Send your comments or requests for more information by any of the following methods:

E-mail: deerflat@fws.gov.

Fax: Attn: Refuge Manager, (208) 467–1019.

U.S. Mail: Refuge Manager, Deer Flat National Wildlife Refuge, 13751 Upper Embankment Road, Nampa, ID 83686.

In-Person Drop-Off: You may drop off comments during regular business hours (8 a.m. to 4 p.m.) at the above address, or at the public open house.

FOR FURTHER INFORMATION CONTACT: Jennifer Brown-Scott, phone (208) 467–9278.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for the Refuge. This notice complies with our CCP policy to (1) advise the public, other Federal and State agencies, and Tribes of our intention to conduct detailed planning on the Refuge, and (2) obtain suggestions and information on the scope of issues to consider during development of the Draft CCP/EIS.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the National Wildlife Refuge System Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning and public involvement process is a way for the Service and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for future management of the Refuge.

We will conduct the environmental review of this project and develop an EIS in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Deer Flat National Wildlife Refuge

The Refuge was established in 1909 by President Theodore Roosevelt. Its purpose is to serve as a refuge and breeding ground for migratory birds and other wildlife. The Refuge encompasses 11,860 acres in two units—the Lake Lowell Unit and the Snake River Islands Unit. The Lake Lowell Unit encompasses 10,640 acres located in Canyon County, ID. The Lake Lowell Unit is an overlay refuge, on an off-stream Bureau of Reclamation (Reclamation) irrigation project. Reclamation owns and operates two dams on Lake Lowell to manage the lake's water for irrigation. Reclamation will participate in our CCP planning, NEPA, and public involvement process as a cooperating agency. The Snake River Islands Unit includes over 100 islands along 113 miles of the Snake River located in Canyon, Payette, Owyhee, and Washington Counties in ID; and Malheur County, OR.

The Refuge provides a variety of wildlife habitats, including the open waters and wetland edges of Lake Lowell, sagebrush uplands and riparian forest around the lake, and grassland and riparian forests on the Snake River Islands. In early summer, western grebes, white pelicans, mallards, and wood ducks congregate on the lake. When the lake is drawn down in late summer for irrigation, large numbers of shorebirds—including least sandpipers, godwits, yellowlegs, and plovers—feed on the exposed mudflats. Duck populations peak in mid-December, with 40,000–70,000 ducks using Lake Lowell annually. The Snake River Islands' grassland, shrub, and riparian forest habitats and surrounding waters provide habitat throughout the year for herons, cormorants, songbirds, and predators such as foxes, coyotes, red-tailed hawks, and American kestrels.

Over 250 species of birds and 30 species of mammals can be found on the Refuge.

Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. We will be refining these issues and/or identifying additional issues, with input from the public, partners, and Federal, State, local and tribal governments during the public comment period. Some of these issues follow.

- What actions should we take to sustain and restore priority wildlife species and habitats over the next 15 years?
- What, where, when, and how should wildlife-dependent and other public use opportunities be provided?
- Are existing Refuge access points and uses adequate and appropriate?
- Should some areas of the Refuge be managed as undisturbed wildlife sanctuary areas?
- How can the Service, Reclamation, and others improve Lake Lowell's water quality?

Public Comments

Throughout the summer of 2010 we will conduct a public scoping comment period. During this time we will meet with stakeholders; Federal, State, local and tribal governments; and other interested parties, and hold three public open houses to answer questions and accept comments regarding refuge planning issues to be considered. Comments are due by September 10, 2010.

Open Houses

Three open houses will be held on July 28, August 20, and August 21, 2010, at the Deer Flat National Wildlife Refuge Visitor Center, 13751 Upper Embankment Road, Nampa, ID 83686. The open houses are scheduled from 12 p.m. to 3 p.m. and 6 p.m. to 9 p.m. on July 28; 10 a.m. to 6 p.m. on August 20, and 10 a.m. to 3 p.m. on August 21. For more information visit our Web site at *http://www.fws.gov/deerflat/.*

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 7, 2010.

Carolyn A. Bohan,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2010–17269 Filed 7–14–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N141]
[96300–1671–0000–P5]

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species and marine mammals.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703–358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Endangered Species

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
00568A	Bryce Carlson/Emory University	75 FR 22162; April 27, 2010	June 24, 2010
02299A	John Turner	75 FR 27814; May 18, 2010	June 30, 2010
069429 and 069443	Steve Martin's Working Wildlife	75 FR 23279; May 3, 2010	July 1, 2010
075249	Sam Noble Oklahoma Museum of Natural History.	75 FR 14627; March 26, 2010	May 16, 2010
07801A	Roger Jarvis	75 FR 19656; April 15, 2010	June 4, 2010
080731 and 716917	George Carden Circus International, Inc..	75 FR 2561; January 15, 2010	July 1, 2010
070854, 079868, 079870, 079871, and 079872.	George Carden Circus International, Inc..	75 FR 27814; May 18, 2010	July 1, 2010
128999 and 12311A	George Carden Circus International, Inc..	75 FR 28650; May 21, 2010	July 1, 2010
084874	University of New Mexico, Museum of Southwestern Biology.	74 FR 62586; November 30, 2009.	April 01, 2010
08939A	Los Angeles Zoo	75 FR 23279; May 3, 2010	June 17, 2010
09558A	Rodney Peterson	75 FR 22162; April 27, 2010	June 7, 2010
09584A	Robert Lange	75 FR 22162; April 27, 2010	June 7, 2010
11227A	James Cordock	75 FR 27814; May 18, 2010	June 16, 2010
11231A	Brooks Puckett	75 FR 28650; May 21, 2010	June 29, 2010
196074	Carly H. Vynne, University of Washington.	74 FR 21817; May 11, 2009	December 07, 2009

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
212266	Florida Atlantic University/Div. of Research and Sponsored Program.	75 FR 14627; March 26, 2010	May 16, 2010
215520	University of California, Los Angeles/Center for Tropical Research.	74 FR 62586; November 30, 2009.	March 18, 2010
218825	Pauline L. Kamath, University of California at Berkeley.	74 FR 58977; November 16, 2009.	March 18, 2010
228022	Metro Richmond Zoo	75 FR 427; January 5, 2010	April 12, 2010
231585	Wildlife Conservation Society	75 FR 427; January 5, 2010	April 22, 2010
231674	Lemur Conservation Foundation	75 FR 62586; November 30, 2009.	April 12, 2010
231677	Terrance David Braden	75 FR 9251; March 1, 2010	March 31, 2010
237536	Virginia Zoological Park	75 FR 2561; January 15,2010	February 19, 2010

Marine Mammals

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
837414	SAAMS, Alaska SeaLife Center	75 FR 4103; January 26, 2010	June 29, 2010

Dated: July 9, 2010

Brenda Tapia,

Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–17309 Filed 7–14– 10; 8:45 am]

BILLING CODE S

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 19, 2010. Pursuant to section 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 30, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/National, Historic Landmarks Program.

ARIZONA

Yavapai County

Tuzigoot Museum, Alternate US 89A HWY and Tuzigoot Rd, Clarkdale, 10000518

COLORADO

Bent County

Bent County High School, (New Deal Resources on Colorado's Eastern Plains MPS) 1214 Ambassador Thompson Blvd, Las Animas, 10000505

KANSAS

Morris County

Council Grove Downtown Historic District, Generally spanning from Neosho River to Belfry on W Main and extending N to Columbia between Neosho and Mission, Council Grove, 10000519

MASSACHUSETTS

Barnstable County

Atwood-Higgins Historic District, Bound Brook Island Rd, Wellfleet, 10000508

Suffolk County

Charles River Reservation—Upper Basin Headquarters, 1420–1440 Soldiers Field Rd, Boston, 10000506

MINNESOTA

Yellow Medicine County

Wood Lake Battlefield Historic District, Intersection of 218 Ave and 600 St, Sioux Agency Township, 10000517

MISSOURI

Clay County

Missouri City Savings Bank Building and Meeting Hall, 417–419 Main St, Missouri City, 10000507

NEW YORK

Cortland County

Taylore Center Methodist Episcopal Church and Taylore District #3 School, 4332–4338 Cheningo-Solon Pond Rd, Taylore Center, 10000513

Lewis County

Croghan Island Mill, 9897 S Bridge St, Croghan, 10000515

Moser Farm, 8778 Erie Canal Rd, Kirschnerville, 10000516

Monroe County

Grace Church, 9 Brown's Ave, Scottsville, 10000514

Onondaga County

Barnes—Hiscock House, The, 930 James St, Syracuse,10000512

TENNESSEE

Hamilton County

Ridgedale Methodist Episcopal Church, 1518 Dodds Ave, Chattanooga, 10000509

Sullivan County

Fairmont Neighborhood Historic District, Roughly bounded by Taylor St, Pennsylvania Ave, Maple St, and Florida Ave, Bristol, 10000510

WEST VIRGINIA

Randolph County

Fort Marrow, N corner USR 219 and CR 219/16, Huttonsville, 10000511

[FR Doc. 2010–17217 Filed 7–14–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Removal of Listed Property

Pursuant to section 60.15 of 36 CFR part 60. Comments are being accepted on the following properties being considered for removal from the National Register of Historic Places. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 30, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

Request for removal has been made for the following resources:

TEXAS

Victoria County

Krenek House, 607 N. Main, Victoria, 86002611

[FR Doc. 2010–17219 Filed 7–14–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 12, 2010. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 30, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Los Angeles County

Ford Place Historic District, 110–175 N Oakland Ave; 450–465 Ford Place; 144 N Los Robles Ave, Pasadena, 10000496

Placer County

Fiddyment Ranch Main Complex, 4440 Phillip Rd, Roseville, 10000503

CONNECTICUT

Fairfield County

Allen House, The, 4 Burritt's Landing N, Westport, 10000492

Indian Harbor Yacht Club, 710 Steamboat Rd, Greenwich, 10000494

Village Creek, Roughly bounded by Village Creek, Hayes Creek and Woodward Ave, Norwalk, 10000493

Litchfield County

Rock Hall, 19 Rock Hall Rd, Colebrook, 10000495

IDAHO

Elmore County

KwikCurb Diner, 850 S. 3rd W, Mountain Home, 10000502

IOWA

Polk County

Liberty Building, (Architectural Legacy of Proudfoot & Bird in Iowa MPS) 418 Sixth Ave, Des Moines, 10000488

MISSOURI

Nodaway County

Administrative Building, 800 University Dr, Maryville, 10000504

MONTANA

Stillwater County

United Methodist Episcopal Church, SE Corner of Clark St and Second Ave, Park City, 10000497

Yellowstone County

Dude Rancher Lodge, 415 N 29th St, Billings, 10000489

PUERTO RICO

San Juan Municipality

Rum Pilot Plant, (Rum Industry in Puerto Rico MPS) State Rd #1, Estacion Experimental Agricola, Rio Piedras, San Juan, 10000501

TENNESSEE

Hamilton County

First Congregational Church, 901 Lindsay St, Chattanooga, 10000491

TEXAS

Bexar County

Toltec, The, 131 Taylor St, San Antonio, 10000498

Karnes County

Karnes County Courthouse, 101 Panna Maria Ave, Karnes City, 10000499

Tarrant County

Vandergriff Building, 100 E Division St, Arlington, 10000500

WISCONSIN

Columbia County

Kingsley Bend Mount Group Boundary Increase, (Late Woodland Stage in Archeological Region 8 MPS) 1.5 Miles S/SE of JNCTN of STH 16 and 127, Town of Newport, 10000490

[FR Doc. 2010–17220 Filed 7–14–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N142]
[96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA laws require that we invite public comment before issuing these permits.

DATES: We must receive requests for documents or comments on or before August 16, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax

Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), requires that we invite public comment before final action on these permit applications.

III. Permit Applications

Endangered Species

Applicant: Los Angeles Zoo; Los Angeles, CA; PRT-16655A

The applicant requests a permit to export three captive-born brush-tailed bettongs or woylie (*Bettongia penincillata*) to the Toronto Zoo, Ontario Canada, for the purpose of enhancement of the survival of the species.

Applicant: Zoological Society of San Diego; Escondido, CA; PRT–17213A

The applicant requests a permit to export one captive-born greater one-horned rhinoceros (*Rhinoceros unicornis*) to the Chester Zoo, Chester, UK, for the purpose of enhancement of the survival of the species.

Applicant: Earth Promise, Inc., dba Fossil Rim Wildlife Center; Glen Rose, TX; PRT–15360A

The applicant requests a permit to import three captive-bred female cheetahs (*Acinonyx jubatus*) from the Toronto Zoo, Ontario Canada, for the purpose of enhancement of the survival of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Keith Davis, Adamsville, AL; PRT–15860A

Applicant: Anthony Giorgio, Roseville, MI; PRT–15914A

Dated: July 9, 2010

Brenda Tapia,

Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–17307 Filed 7–14– 10; 8:45 am]

BILLING CODE S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–1430–ET; F–81469, F–81490]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On behalf of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration and the U.S. Geological Survey, the Assistant Secretary of the Interior for Land and Minerals Management proposes to extend the duration of Public Land Order (PLO) No. 2344, as modified by PLO No. 6839, for an additional 20-year period. These PLOs transferred jurisdiction of approximately 171 acres of public land withdrawn for the Naval Arctic Research Laboratory near Barrow, Alaska from the Department of the Navy to the National Oceanic and Atmospheric Administration and the U.S. Geological Survey, and withdrew an additional 45 acres of public land on behalf of these agencies for the Barrow Base Line Observatory and the Barrow Magnetic Observatory. This notice also gives an opportunity to comment on the proposed action.

DATES: Comments must be received by October 13, 2010.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Robert L. Lloyd, BLM Alaska State Office, 907–271–4682 or at the address above.

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 2344 (26 FR 3701, (1961)), as modified by PLO No. 6839 (56 FR 13413, (1991)), will expire on April 1, 2011, unless extended. The U.S. Department of Commerce, National Oceanic and Atmospheric Administration and the U.S. Geological Survey have filed applications to extend the withdrawal for an additional 20-year period to continue protection of the facilities at the Barrow Base Line Observatory and the Barrow Magnetic Observatory.

This withdrawal comprises approximately 216 acres of public land located within U.S. Survey No. 5253 in secs. 23 and 26, T. 23 N., R. 18 W., Umiat Meridian, and is described in PLO No. 2344 (26 FR 3701, (1961)), as

modified by PLO No. 6839 (56 FR 13413, (1991)). A complete description, along with all other records pertaining to the extension application, can be examined in the BLM Alaska State Office at the address listed in the **ADDRESSES** section of this notice.

The use of a right-of-way or interagency or cooperative agreement would not adequately protect the Federal investment in the Barrow Base Line Observatory and the Barrow Magnetic Observatory.

There are no suitable alternative sites available since the Barrow Base Line Observatory and the Barrow Magnetic Observatory are already constructed on the above-referenced public land.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Alaska State Director at the address in the **ADDRESSES** section of this notice. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM Alaska State Director by October 13, 2010. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and at least one local newspaper at least 30 days before the scheduled date of the meeting.

The withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4 and subject to Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 and subject to Section 810 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120.

Authority: 43 CFR 2310.3–1.

Dated: July 1, 2010.

Robert L. Lloyd,

Branch Chief, Alaska Lands and Transfer Adjudication, Division of Alaska Lands.

[FR Doc. 2010–17232 Filed 7–14–10; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTB05000–L14300000–FQ0000; MTM 41529 and MTM 41534]

Public Land Order No. 7745; Partial Revocation of Power Site Reserve Nos. 510 and No. 515; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two withdrawals created by Executive Orders insofar as they affect approximately 170 acres of public lands withdrawn for Power Site Reserve Nos. 510 and 515. This order also opens the lands to exchange.

DATES: *Effective Date:* July 15, 2010.

FOR FURTHER INFORMATION CONTACT: Angela Brown, BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725–9431, 406–683–8045, or Sandra Ward, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5052.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has determined that portions of Power Site Reserve Nos. 510 and 515 are no longer needed and partial revocation of the withdrawals is needed to facilitate a pending land exchange. The Federal Energy Regulatory Commission has no objections to the revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, and Section 24 of the Act of June 10, 1920, 16 U.S.C. 818, it is ordered as follows:

1. The withdrawals created by Executive Orders dated November 3, 1915 and December 13, 1915, which established Power Site Reserve Nos. 510 and 515 respectively, are hereby revoked insofar as they affect the following described lands:

Principal Meridian, Montana

Power Site Reserve No. 510

T. 4 S., R. 9 W.

Sec. 11, SW¼NW¼.

Power Site Reserve No. 515

T. 5 S., R. 8 W.

Sec. 6, lots 4, 5, and 6, and that portion of the NE¼SW¼ lying west of Highway 91.

The areas described aggregate approximately 170.00 acres in Beaverhead and Madison Counties.

2. The State of Montana has been notified of their 90-day preference right for public highway rights-of-way or material sites. Any location, entry, selection, or subsequent patent shall be subject to any rights granted to the State as provided by Section 24 of the Act of June 10, 1920, as amended, 16 U.S.C. 818.

3. At 9 a.m. on July 15, 2010 the lands described in Paragraph 1 are hereby opened to and made available for exchange in accordance with Section 206 of the Federal Land Policy and Management Act of 1976, subject to the provisions of Section 24 of the Federal Power Act, valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

(Authority: 43 CFR part 2370; 43 CFR subpart 2320)

Dated: June 30, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2010–17236 Filed 7–14–10; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC08000–L1430000–ET0000; CACA 41334]

Public Land Order No. 7746; Withdrawal of Public Lands, South Fork of the American River; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 2,238.49 acres of public lands from location and entry under the United States mining laws for the Bureau of Land Management to protect the unique natural, scenic, cultural, and recreational values along the South Fork of the American River.

DATES: *Effective Date:* July 15, 2010.

ADDRESSES: Field Manager, BLM Mother Lode Field Office, 5152 Hillsdale Circle, El Dorado Hills, California 95762.

FOR FURTHER INFORMATION CONTACT: Jodi Lawson, BLM Mother Lode Field Office,

916–941–3101, or Dan Ryan, BLM California State Office, 916–978–4677.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management will manage the lands to protect the unique natural, scenic, cultural, and recreational values along the South Fork of the American River.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2) for the Bureau of Land Management to protect the unique natural, scenic, cultural, and recreational values along the South Fork of the American River:

Mount Diablo Meridian

T. 11 N., R. 9 E.,
Sec. 10, NW¼NW¼ and S½;
Sec. 12, lots 1 to 9 inclusive, NW¼SE¼NW¼, and NW¼NE¼SE¼;
Sec. 20, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 28, SW ¼, NW¼ excluding Mineral Survey 5163, W½ SW¼, and SE¼ SW¼;
Sec. 30, lots 1 to 4 inclusive, SW¼NE¼, SE¼NW¼, E½,SW¼, and SE¼;
Sec. 32, N½NE¼, SW¼NE¼, W½, and S½SE¼.
T. 11 N., R. 10 E.,
Sec. 18, lots 5, 6, and 7, and NW¼NE¼NW¼;
Sec. 22, NW¼SE¼SW¼, and that portion of the E½, NW¼, excluding lots 1, 4, and 5;
Sec. 26, SW¼.
The areas described aggregate 2,238.49 acres, more or less, in El Dorado County.

2. The withdrawal made by this order does not alter the applicability of the public land laws other than under the mining laws.

3. This withdrawal will expire on December 15, 2049, unless as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: June 30, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2010–17233 Filed 7–14–10; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–670]

In the Matter of Certain Adjustable Keyboard Support Systems and Components Thereof; Notice of Commission Determination of No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is no violation of 19 U.S.C. 1337 by respondents in the above-referenced investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Jia Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–4737. Copies of non-confidential documents filed in connection with this investigation are or will be 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., Washington, DC 20436, telephone (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.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 13, 2009 based on a complaint filed by Humanscale Corporation ("Humanscale") of New York, New York. 74 FR 10963 (Mar. 13, 2009). The complaint, as amended, named CompX International, Inc., of Dallas, Texas and Waterloo Furniture Components Limited, of Ontario, Canada (collectively, "CompX") as respondents. The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain adjustable keyboard support systems and components thereof that infringe certain claims of U.S. Patent No. 5,292,097 ("the '097 patent").

On February 23, 2010, the ALJ issued a final ID, including his recommended determination on remedy and bonding. In his ID, the ALJ found that CompX's "Wedge-Brake" products do not infringe either claims 7 or 34. The ALJ found that CompX's "Brake-Shoe" products, on the other hand, do infringe claims 7 and 34, but that respondents established that claim 7 is invalid because it is obvious under 35 U.S.C. 103. The ALJ further found that respondents have not established the defense of intervening rights. Finally, the ALJ found that complainant proved the existence of a domestic industry in the United States. Accordingly, the ALJ recommended that the Commission issue a limited exclusion order barring entry into the United States of infringing adjustable keyboard support systems and components thereof. The ALJ further recommended the issuance of a cease and desist order against respondent Waterloo Furniture Components Ltd.

On March 9, 2010, Humanscale, CompX, and the Commission investigative attorney ("IA") each filed a petition for review of the ALJ's final ID. On April 26, 2010, the Commission determined to review a portion of the ALJ's ID and requested briefing from the parties on the issues under review and on remedy, the public interest, and bonding. On May 17, 2010, Humanscale, CompX, and the IA each filed responses to the Commission's request for written submissions. On May 27, 2010, Humanscale, CompX and the IA filed reply submissions. On June 14, 2010, CompX filed a surreply to Humanscale's reply submission.

Having examined the record of this investigation, including the ALJ's ID and the submissions of the parties, the Commission has determined to reverse the ALJ's determination that the respondents violated section 337. The Commission finds the asserted claims are not infringed and are invalid.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.45).

By order of the Commission.

Issued: July 9, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–17297 Filed 7–14–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–10–024]

Government In the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 28, 2010 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–1163 (Final) (Woven Electric Blankets from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before August 9, 2010.)
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: July 12, 2010.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2010–17334 Filed 7–13–10; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree; Pursuant to the Resource Conservation and Recovery Act ("RCRA")

Notice is hereby given that on July 9, 2010, a proposed Consent Decree in *United States* v. *the Metropolitan Bus Authority of Puerto Rico* (D. P.R.) No. 3:10–cv–01631 was lodged with the United States District Court for the District of Puerto Rico.

In this action, the United States resolves the Metropolitan Bus Authority of Puerto Rico's ("MBA") violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, et seq., the regulations implementing RCRA, and an administrative Consent Agreement and Final Order ("CA/FO") entered into between MBA and the United States Environmental Protection Agency ("US EPA") on July 8, 2007. The United States asserted claims for MBA's failure to comply with multiple RCRA regulations pertaining to the facility's operations, failure to apply for a permit to store hazardous waste, failure to comply with reporting and record retention regulations, and failure to comply with the terms of the CA/FO.

Under the terms of the proposed settlement, MBA will pay a penalty of $1.2 million and will perform injunctive relief, including implementing RCRA compliance procedures, a RCRA-specific employee training program, and undertaking a comprehensive third-party multimedia environmental compliance audit at its Central Facility in San Juan. The proposed Consent Decree resolves only the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

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. *the Metropolitan Bus Authority of Puerto Rico* (D. P.R.) No. 3:10–cv–01631; D.J. Ref. No. 90–7–1–09630. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Torre Chardon, Suite 1201, 350 Carlos Chardon Ave., San Juan, Puerto Rico 00918, (contact AUSA Isabel Munoz-Acosta), and at U.S. EPA Region II, Office of Regional Counsel, Caribbean Team, Centro Europa Building, Suite 417, 1492 Ponce de Leon Ave. San Juan, Puerto Rico 00907 (contact Lourdes Del Carmen Rodriguez). 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 $13.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–17228 Filed 7–14–10; 8:45 am]

BILLING CODE 4410–15–P

LEGAL SERVICES CORPORATION

Sunshine Act; Notice of Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors' Search Committee for LSC President ("Search Committee" or "Committee") will meet on July 20, 2010. The meeting will begin at 4 p.m. (Central Daylight Savings Time) and continue until conclusion of the Committee's agenda.

LOCATION: Sidley Austin, LLP, 1 South Dearborn Street, Chicago, IL 60603.

STATUS OF MEETING: Closed. The meeting of the Search Committee will be closed to the public pursuant to a vote of the Board of Directors authorizing the Committee to consider and perhaps act on proposals submitted by bidding executive search recruiters and to evaluate the qualifications of the recruiters. This closure will be authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(4) and (6)] and LSC's implementing regulation 45 CFR 1622.5(c) [1] and (e).[2]

A *verbatim* written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(4) and (6)] and LSC's implementing regulation 45 CFR 1622.5(c) and (e), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

Matters To Be Considered

Closed Session

1. Approval of agenda.
2. Consider and act on proposals submitted by and evaluate the qualifications of executive search recruiters that submitted proposals for a

[1] 45 CFR 1622.5(c)—Protects information the disclosure of which would disclose trade secrets and commercial or financial information which is confidential.

[2] 45 CFR 1622.5(e)—45 CFR § 1622.5(e)—Protects information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

contract to assist in recruitment of a new LSC president.

3. Consider and act on other business.

4. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Kathleen Connors, Executive Assistant to the President, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Kathleen Connors at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: July 13, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–17438 Filed 7–13–10; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–080)]

NASA Advisory Council; Technology and Innovation Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Technology and Innovation Committee of the NASA Advisory Council. It will include a joint session with the Exploration Committee of the NASA Advisory Council starting at 1 p.m. PDT. The meeting will be held for the purpose of reviewing the Space Technology Program planning.

DATES: Tuesday, August 3, 2010, 8:30 a.m. to 6:15 p.m. PDT.

ADDRESSES: NASA Jet Propulsion Laboratory—Von Karman Auditorium, 4800 Oak Grove Drive, Pasadena, CA 91011.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Office of the Chief Technologist, NASA Headquarters, Washington, DC 20546, (202) 358–4710, fax (202) 358–4078, or *g.m.green@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- Office of the Chief Technologist Update
- Space Technology Programs Briefings
- Open Collaboration and Innovation Presentation
- Update on Human Exploration Framework Team (HEFT) (joint session)
- Exploration Systems Mission Directorate (ESMD) and the Office of the Chief Technologist Coordination Activities (joint session)
- Overview of ESMD New Technology Initiatives (joint session)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: July 8, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–17199 Filed 7–14–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–081)]

NASA Advisory Council; Audit, Finance and Analysis Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Audit, Finance and Analysis Committee of the NASA Advisory Council.

DATES: Friday, July 30, 2010, 9 a.m.–12 p.m. (Local Time).

ADDRESSES: NASA Headquarters, 300 E Street, SW., Conference Room 8D48, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Charlene Williams, Office of the Chief Financial Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, at 202–358–2183, fax: 202–358–4336.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

- Overview-Strategic Investment Division
- Open Government Initiative
- Federal Advisory Committee Act (FACA) Briefing

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state that they are attending the Audit, Finance and Analysis meeting in room 8D48, before receiving an access badge. All non-U.S citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), and place and date of entry into the U.S., fax to Charlene Williams, Executive Secretary, Audit, Finance and Analysis Committee, FAX: (202) 358–4336, by no later than July 23, 2010. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Charlene Williams at 202–358–2183, or fax: (202) 358–4336.

Dated: July 12, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–17316 Filed 7–14–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–079)]

NASA Advisory Council; Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aeronautics Committee of the NASA Advisory Council. The meeting will be held for the purpose of soliciting from the aeronautics community and other persons research and technical information relevant to program planning.

DATES: Friday, July 30, 2010, 8 a.m. to 4 p.m. (local time).

ADDRESSES: NASA Glenn Research Center, Building 15, Small Dining/Conference Room, Cleveland, Ohio

(Note that visitors will need to go to the Glenn Research Center Main Gate, to be granted access.)

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Minor, Aeronautics Research Mission Directorate, National Aeronautics and Space Administration Headquarters, Washington, DC, 20546, (202) 358–0566, or *susan.l.minor@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

- NASA Glenn Research Center Overview.
- Proposed National Research Council Study of the Aeronautics Research Mission Directorate Research Portfolio.
- Outbrief on National Research Council Committee of Experts Meeting on Validation & Verification Planning.
- Mid- and Long-Term NextGen Challenges.

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Linda F. Huddleston via e-mail at *linda.f.huddleston@nasa.gov* or by telephone at (216) 433–2205. Persons with disabilities who require assistance should indicate this. Any person interested in participating in the meeting by Webex and telephone should contact Ms. Susan L. Minor at (202) 358–0566 for the Web link, toll-free number and passcode.

Dated: July 8, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–17201 Filed 7–14–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Strategy and Budget, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a meeting for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Tuesday, July 29, 2010 at 2 p.m. to 3:30 p.m.

SUBJECT MATTER: Future year budgets.

STATUS: Closed.

LOCATION: This meeting will be held at National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: Blane Dahl, National Science Board Office, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2010–17439 Filed 7–13–10; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Task Force on Merit Review, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

DATE AND TIME: Wednesday, July 28 at 1 p.m. EDT.

SUBJECT MATTER: Discussion of survey methods for gathering merit review-related data from such sources as Committee of Visitors (COV) reports and stakeholder groups.

STATUS: Open.

LOCATION: This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. Room 350 will be available for the public to listen-in on this teleconference meeting. All visitors must contact the Board Office at least *one day* prior to the meeting to arrange for a visitor's badge and obtain the room number. Call 703–292–7000 to request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive their visitor's badge on the day of the teleconference.

UPDATES AND POINT OF CONTACT: Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb/notices/*) for information or schedule updates, or contact: Kim Silverman, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Daniel A. Lauretano,

Counsel to the National Science Board.

[FR Doc. 2010–17461 Filed 7–13–10; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0249]

Draft Regulatory Guide; Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance, availability of Draft Regulatory Guide (DG)–1234.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–0249 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

FOR FURTHER INFORMATION CONTACT: R. A. Jervey, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 251–7404 or e-mail *Richard.Jervey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft guide in the agency's "Regulatory Guide" series. This series

was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled, "Water Sources for Long-Term Recirculation Cooling Following a Loss-Of-Coolant Accident," is temporarily identified by its task number, DG–1234, which should be mentioned in all related correspondence. DG–1234 is proposed Revision 4 of Regulatory Guide 1.82. This revision incorporates current state of knowledge found during NRC-sponsored research and plant-specific analysis and testing applicable to Emergency Core Cooling System (ECCS) strainer performance and debris blockage by Loss of Coolant Accident (LOCA) generated debris.

This guide describes methods that the staff of the U.S. Nuclear Regulatory Commission considers acceptable to implement requirements regarding the sumps and suppression pools that provide water sources for emergency core cooling, containment heat removal, or containment atmosphere cleanup systems. It also provides guidelines for evaluating the adequacy and the availability of the sump or suppression pool for long-term recirculation cooling following a loss-of-coolant accident. This guide applies to both pressurized-water reactor and boiling-water reactor types of light-water reactors.

II. Further Information

The NRC staff is soliciting comments on DG–1234. Comments may be accompanied by relevant information or supporting data, and should mention DG–1234 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Comments would be most helpful if received by September 10, 2010. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

The NRC requests that any party 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.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0249. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* DG–1234 is available electronically under ADAMS Accession Number ML092850003. The regulatory analysis may be found in ADAMS under Accession No. ML101610267. In addition, electronic copies of DG–1234 are available through the NRC=s public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.*

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0249.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 8th day of July 2010.

For the Nuclear Regulatory Commission.

Mark P. Orr,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–17251 Filed 7–14–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0143]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed International Isotopes Uranium Processing Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent.

SUMMARY: International Isotopes Fluorine Products, Inc. (IIFP), a wholly owned subsidiary of International Isotopes, Inc. (INIS), submitted a license application, which included an Environmental Report (ER) on December 30, 2009, that proposes the construction, operation, and decommissioning of a fluorine extraction and depleted uranium de-conversion facility to be located near Hobbs in Lea County, New Mexico. The U.S. Nuclear Regulatory Commission (NRC), in accordance with the National Environmental Policy Act (NEPA) and its regulations in 10 Code of Federal Regulations Part 51, announces its intent to prepare an Environmental Impact Statement (EIS) evaluating this proposed action. The EIS will examine the potential environmental impacts of the proposed INIS facility.

DATES: NRC invites public comments on the appropriate scope of issues to be considered in the EIS. The public scoping process required by NEPA begins with publication of this Notice of Intent. Written comments submitted by mail should be postmarked by no later than August 30, 2010 to ensure consideration. Comments mailed after that date will be considered to the extent practical.

The NRC will conduct a public scoping meeting in Hobbs, New Mexico, to assist in defining the appropriate scope of the EIS, and to help identify the significant environmental issues that need to be addressed in detail. The meeting date, time, and location are listed below:

Meeting Date: July 29, 2010.
Meeting Time: 5:30 p.m. to 8:30 p.m.
Meeting Location: Lea County Event Center, 5101 Lovington Highway, Hobbs, New Mexico 88240.

ADDRESSES: Members of the public are invited and encouraged to submit written comments regarding the appropriate scope and content of the EIS. Comments may be submitted by any one of the methods described below. Please include Docket ID NRC–2010–0143 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC's Agencywide Documents Access and Management System (ADAMS) Web site *http://www.nrc.gov/reading-rm/adams.html* and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Also, the NRC requests that any party 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.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0143. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher at 301–492–3668, or e-mail at *Carol.Gallagher@nrc.gov.*

Mail/fax comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives, and Branch (RADB), Division of Administrative Services, Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Commenters may also send comments electronically to *INIS_EIS@nrc.gov* or by fax to (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: For general or technical information associated with the licensing review of the INIS application, please contact Matthew Bartlett at (301) 492–3119 or *Matthew.Bartlett@nrc.gov.* For general information on the NRC NEPA process or the environmental review process related to the INIS application, please contact Asimios Malliakos at (301) 415–6458 or *Asimios.Malliakos@nrc.gov*

Information and documents associated with the INIS project, including the application and ER, are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm/adams.html.* Members of the public may access the applicant's ER in the NRC's (ADAMS) at accession number ML100120758.

A copy of the applicant's ER is available for public inspection at the Hobbs Public Library located at 509 North Shipp, Hobbs, New Mexico 88240. Documents may also be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

1.0 Background

On December 30, 2009, INIS submitted an ER to the NRC as part of its license application for authorization to construct, operate, and decommission a proposed fluorine extraction process and depleted uranium de-conversion facility. The EIS will evaluate the potential environmental impacts associated with the proposed INIS uranium processing facility. The environmental evaluation will be documented in the draft and final EISs in accordance with NEPA and NRC's implementing regulations at 10 CFR part 51.

2.0 INIS Uranium Processing Facility

The INIS facility, if licensed, would provide services to the uranium enrichment industry for de-conversion of depleted uranium hexafluoride (DUF_6) into uranium oxides for long-term stable disposal. The proposed facility would also produce high-purity inorganic fluorides for applications in the electronic, solar panel, and semiconductor markets and anhydrous hydrofluoric acid for various industrial applications. The proposed facility is projected to be capable of deconverting up to 7.5 million pounds per year of DUF_6 provided by commercial enrichment facilities throughout the United States.

3.0 Alternatives To Be Evaluated

No-Action—The no-action alternative would be to not build the proposed INIS uranium processing facility. Under this alternative, the NRC would not approve the license application. This alternative serves as a baseline for comparison.

Proposed action—The proposed action involves the construction, operation, and decommissioning of a uranium processing facility to be located near Hobbs, New Mexico. The applicant would be issued an NRC license under the provisions of 10 CFR part 40.

Other alternatives not listed here may be identified through the scoping process.

4.0 Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for detailed analysis in the EIS:

- *Land Use:* plans, policies, and controls;
- *Transportation:* transportation modes, routes, quantities, and risk estimates;
- *Geology and Soils:* physical geography, topography, geology, and soil characteristics;
- *Water Resources:* surface and groundwater hydrology, water use and quality, and the potential for degradation;
- *Ecology:* wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;
- *Air Quality:* meteorological conditions, ambient background, pollutant sources, and the potential for degradation;
- *Noise:* ambient, sources, and sensitive receptors;
- *Historical and Cultural Resources:* historical, archaeological, and traditional cultural resources;
- *Visual and Scenic Resources:* landscape characteristics, manmade features, and viewshed;
- *Socioeconomics:* demography, economic base, labor pool, housing, transportation, utilities, public services and facilities, education, recreation, and cultural resources;
- *Environmental Justice:* potential disproportionately high and adverse impacts to minority and low-income populations;
- *Public and Occupational Health:* potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);
- *Waste Management:* types of wastes expected to be generated, handled, and stored; and
- *Cumulative Effects:* impacts from past, present and reasonably foreseeable actions at and near the site.

This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of the EIS. Additions to, or deletions from this list may occur as a result of the public scoping process.

5.0 Scoping Meeting

One purpose of this notice is to encourage public involvement in the EIS process and to solicit public comments on the proposed scope and content of the EIS. Scoping is an early

and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the EIS and to identify the significant issues related to the proposed action. It is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. The principal goals of the scoping process are to:

- Ensure that concerns are identified early and are properly studied;
- Identify alternatives to be examined;
- Identify significant issues to be analyzed;
- Eliminate unimportant issues from detailed consideration; and
- Identify public concerns.

On July 29, 2010, the NRC will hold a public scoping meeting at the Lea County Event Center in Hobbs, New Mexico, to solicit both oral and written comments from interested parties. The meeting will be transcribed to record public comments. The meeting will convene at 5:30 p.m. and will continue until approximately 8:30 p.m.

The meeting will begin with NRC staff providing a description of the NRC's role and mission. A brief overview of the licensing process will be followed by a brief description of the environmental review process. Most of the meeting time will be allotted for attendees to make oral comments.

In addition, the NRC staff will host informal discussions for 1 hour prior to the start of the public meeting. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below.

Persons may register to attend or present oral comments at the scoping meeting by contacting Tarsha Moon at (301) 415–6745, or by sending an e-mail to *INIS_EIS@nrc.gov* no later than July 22, 2010. Members of the public may also register to speak at the meeting prior to the start of the session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. If special equipment or accommodations are needed to attend or present information at the public meeting, please contact Tarsha Moon no later than July 19, 2010, so that the NRC staff can determine whether the request can be accommodated.

6.0 Scoping Comments

Members of the public may provide comments orally at the transcribed public meeting or in writing. Written comments may be sent by e-mail to *INIS_EIS@nrc.gov* or mailed/faxed to the address listed above in the **ADDRESSES** Section.

At the conclusion of the scoping process, the NRC staff will prepare a summary of public comments regarding the scope of the environmental review and significant issues identified. NRC staff will send this summary to each participant in the scoping process for whom the staff has an address. This summary and project-related material will be available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm/adams.html.* The scoping meeting summaries and project-related materials will also be available on the NRC's INIS Web page: *http://www.nrc.gov/materials/fuel-cycle-fac/inisfacility.html.*

7.0 The NEPA Process

The EIS for the INIS facility will be prepared pursuant to the National Environmental Policy Act of 1969 as amended and the NRC's NEPA Regulations at 10 CFR part 51. After the scoping process is complete, the NRC will prepare a draft EIS. There will be a 45-day comment period on the draft EIS and a public meeting to receive comments. Availability of the draft EIS, the dates of the public comment period, and information about the public meeting will be announced in the **Federal Register**, on NRC's INIS web page, and in the local news media. The final EIS will include responses to any comments received on the draft EIS.

Dated at Rockville, Maryland, this 8th day of July, 2010.

For the Nuclear Regulatory Commission.

David Skeen,

Acting Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–17253 Filed 7–14–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Request for Comments on an Existing Information Collection: (OMB Control No. 3206–0032; RI 25–14 and RI 25–14A)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995 and 5 CFR part 1320), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for comments on an existing information collection. "Self-Certification of Full-Time School Attendance for the School Year" (OMB Control No. 3206–0032; RI 25–14), is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of Section 8341(a)(4)(C), and Section 8441, title 5, U.S. Code, to receive benefits as a student. "Information and Instructions for Completing the Self-Certification of Full-Time School Attendance" (OMB Control No. 3206–0032; RI 25–14A), provides instructions for completing the Self-Certification of Full-Time School Attendance For The School Year survey form.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it 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; and ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

We estimate 14,000 RI 25–14s will be processed annually. We estimate it takes approximately 12 minutes to complete the form. The estimated annual burden is 2,800 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 days from the date of this publication.

ADDRESSES: Send or deliver comments to—

James K. Freiert (Acting), Deputy Associate Director, Retirement Operations, Retirement and Benefits, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative coordination contact:

Cyrus S. Benson, Team Leader, Publications Team, RB/RM/Administrative Service, U.S. Office of Personnel Management, 1900 E Street,

NW.—Room 4H28, Washington, DC 20415, (202) 606–4808.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–17241 Filed 7–14–10; 8:45 am]

BILLING CODE 6325–38–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of an existing collection of information: 3220–0052, Application to Act as Representative Payee, consisting of RRB Form(s) AA–5, Application for Substitution of Payee, G–478, Statement Regarding Patient's Capability to Manage Payments and booklet RB–5, Your Duties as Representative Payee-Representative Payee Record. Our ICR describes the information we seek to collect from the public. Completion is required to obtain or retain benefits. One response is required of each respondent. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR No. 63 on 16875 on April 2, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application to Act as Representative Payee.

OMB Control Number: 3220–0052.

Form(s) submitted: AA–5, Application for Substitution of Payee; G–478, Statement Regarding Patient's Capability to Manage Payments; and RB–5, Your Duties as Representative Payee's Record.

Type of request: Extension of a currently approved collection.

Affected public: Individuals or households; Business or other for Profit.

Abstract: Under Section 12 of the Railroad Retirement Act, the Railroad Retirement Board (RRB) may pay benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or is a minor. The collection obtains information related to the representative payee application, supporting documentation, and the maintenance of records pertaining to the receipt and use of the benefits.

Changes Proposed: The RRB proposes no changes to the forms in the information collection.

The burden estimate for the ICR is as follows:

Estimated annual number of respondents: 17,300.

Total annual responses: 20,300.

Total annual reporting hours: 16,350.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2010–17202 Filed 7–14–10; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12140 and #12141]

West Virginia Disaster Number WV–00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of WEST VIRGINIA (FEMA–1903–DR), dated 04/23/2010.

Incident: Severe Winter Storms and Snowstorms.

Incident Period: 02/05/2010 through 02/11/2010.

DATES: *Effective Date:* 07/07/2010.

Physical Loan Application Deadline Date: 06/22/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/24/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of WEST VIRGINIA, dated 04/23/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Grant, Mineral, Monongalia.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–17260 Filed 7–14–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12226 and #12227]

Minnesota Disaster #MN–00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Minnesota dated 07/08/2010.

Incident: Severe Storms and Tornadoes.

Incident Period: 06/17/2010 through 06/26/2010.

Effective Date: 07/08/2010.

Physical Loan Application Deadline Date: 09/07/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 04/08/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration,

409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Otter Tail, Wadena.

Contiguous Counties: Minnesota: Becker, Cass, Clay, Douglas, Grant, Hubbard, Todd, Wilkin.

The Interest Rates are:

For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.500
Homeowners without Credit Available Elsewhere	2.750
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12226 B and for economic injury is 12227 0.

The State which received an EIDL Declaration # is Minnesota.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Karen G. Mills,

Administrator.

[FR Doc. 2010–17263 Filed 7–14–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12212 and #12213]

West Virginia Disaster Number WV–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of West Virginia (FEMA–1918–DR), dated 06/24/2010.

Incident: Severe storms, flooding, mudslides, and landslides.

Incident Period: 06/12/2010 through 06/29/2010.

DATES: *Effective Date:* 07/08/2010.

Physical Loan Application Deadline Date: 08/23/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 03/24/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of West Virginia, dated 06/24/2010, is hereby amended to establish the incident period for this disaster as beginning 06/12/2010 and continuing through 06/29/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–17314 Filed 7–14–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12210 and #12211]

West Virginia Disaster Number WV–00020

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1918–DR), dated 06/24/2010.

Incident: Severe storms, flooding, mudslides, and landslides.

Incident Period: 06/12/2010 and continuing.

DATES: *Effective Date:* 07/08/2010.

Physical Loan Application Deadline Date: 08/23/2010.

EIDL Loan Application Deadline Date: 03/24/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of West Virginia, dated 06/24/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Lewis.

Contiguous Counties: (Economic Injury Loans Only):

West Virginia: Braxton, Doddridge, Gilmer, Harrison, Upshur, Webster.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–17317 Filed 7–14–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12210 and #12211]

West Virginia Disaster Number WV–00020

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1918–DR), dated 06/24/2010.

Incident: Severe storms, flooding, mudslides, and landslides.

Incident Period: 06/12/2010 through 06/29/2010.

DATES: *Effective Date:* 07/08/2010.

Physical Loan Application Deadline Date: 08/23/2010.

EIDL Loan Application Deadline Date: 03/24/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of West Virginia, dated 06/24/2010 is hereby amended to establish the incident period for this disaster as beginning 06/12/2010 and continuing through 06/29/2010 .

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–17315 Filed 7–14–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12040 and #12041]

Virginia Disaster Number VA–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA–1874–DR), dated 02/16/2010.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 12/18/2009 through 12/20/2009.

Effective Date: 07/07/2010.

Physical Loan Application Deadline Date: 04/19/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 11/16/2010.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Virginia, dated 02/16/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Buena Vista City.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–17262 Filed 7–14–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 6h–1; SEC File No. 270–497; OMB Control No. 3235–0555.

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") is soliciting comments on the existing collection of information provided for in Rule 6h–1 (17 CFR 240.6h–1) under the Securities Exchange Act of 1934, as amended ("Act") (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 6(h) of the Act (15 U.S.C. 78f(h)) requires national securities exchanges and national securities associations that trade security futures products to establish listing standards that, among other things, require that: (i) Trading in such products not be readily susceptible to price manipulation; and (ii) the market on which the security futures product trades has in place procedures to coordinate trading halts with the listing market for the security or securities underlying the security futures product. Rule 6h–1 implements these statutory requirements and requires that (1) the final settlement price for each cash-settled security futures product fairly reflects the opening price of the underlying security or securities, and (2) the exchanges and associations trading security futures products halt trading in any security futures product for as long as trading in the underlying security, or trading in 50% of the underlying securities, is halted on the listing market.

It is estimated that approximately 18 respondents, consisting of 14 national securities exchanges and 4 national securities exchanges notice-registered pursuant to Section 6(g) of the Act (15 U.S.C. 78f(g)), will incur an average burden of 10 hours per year to comply with this rule, for a total burden of 180 hours. At an average cost per hour of approximately $316, the resultant total cost of compliance for the respondents is $56,880 per year (18 respondents × 10 hours/respondent × $316/hour = $56,880).

Written comments are invited on (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 estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: 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.*

Dated: July 8, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17195 Filed 7–14–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62473; File No. SR–ISE–2010–74]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Options on the Sprott Physical Gold Trust

July 8, 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 July 7, 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 Exchange. ISE filed the proposal 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

[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).

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to enable the listing and trading on the Exchange of options on the Sprott Physical Gold Trust. The text of the proposed rule change is available on the Exchange's Web site *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 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

Recently, the U.S. Securities and Exchange Commission ("SEC" or "Commission") authorized ISE to list and trade options on the SPDR Gold Trust,[5] the iShares COMEX Gold Trust and the iShares Silver Trust,[6] the ETFS Gold Trust and the ETFS Silver Trust,[7] the ETFS Palladium Trust and the ETFS Platinum Trust.[8] Now, the Exchange proposes to list and trade options on the Sprott Physical Gold Trust.

Under current Rule 502(h), only Exchange-Traded Fund Shares, or ETFs, that are traded on a national securities exchange and are defined as an "NMS" stock under Rule 600 of Regulation NMS, and that (i) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments) or (ii) represent interests in a trust that holds a specified non-U.S. currency or currencies deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust ("Funds") or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs") or (iv) represent interests in the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Gold Trust, the ETFS Silver Trust, the ETFS Palladium Trust or the ETFS Platinum Trust or (v) represents an interest in a registered investment company ("Investment Company") organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV ("Managed Fund Share") are eligible as underlying securities for options traded on the Exchange.[9] This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include the Sprott Physical Gold Trust.

Apart from allowing the Sprott Physical Gold Trust to be an underlying for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in ISE Rule 502(h).

Specifically, in addition to satisfying the aforementioned listing requirements, ETFs must meet either (1) the criteria and guidelines under ISE Rules 502(a) and (b) or (2) they must be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Exchange-Traded Fund Shares in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

The Exchange states that the current continued listing standards for options on ETFs will apply to options on the Sprott Physical Gold Trust. Specifically, under ISE Rule 503(h), options on Exchange-Traded Fund Shares may be subject to the suspension of opening transactions in any of the following circumstances: (1) In the case of options covering Exchange-Traded Fund Shares approved pursuant to Rule 502(h)(A)(i), in accordance with the terms of subparagraphs (b)(1), (2), (3) and (4) of Rule 503; (2) in the case of options covering Exchange-Traded Fund Shares approved pursuant to Rule 502(h)(A)(ii), following the initial twelve-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial

[5] *See* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR–ISE–2008–12).

[6] *See* Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (SR–ISE–2008–58).

[7] *See* Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (SR–ISE–2009–106).

[8] *See* Securities Exchange Act Release No. 61983 (April 26, 2010), 75 FR 23314 (May 3, 2010) (SR–ISE–2010–19).

[9] *See* ISE Rule 502(h).

holders of the Exchange-Traded Fund Shares for 30 or more consecutive trading days; (3) the value of the underlying gold is no longer calculated or available; or (4) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Additionally, the Sprott Physical Gold Trust shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering the Sprott Physical Gold Trust, if the Sprott Physical Gold Trust ceases to be an "NMS stock" as provided for in ISE Rule 503(b)(5) or the Sprott Physical Gold Trust is halted from trading on its primary market.

The addition of the Sprott Physical Gold Trust to ISE Rule 502(h) will not have any effect on the rules pertaining to position and exercise limits [10] or margin.[11]

The Exchange represents that its surveillance procedures applicable to trading in options on the Sprott Physical Gold Trust will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. ("NYMEX") (a member of the Intermarket Surveillance Group) related to any financial instrument that is based, in whole or in part, upon an interest in or performance of gold.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [12] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5) [13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system in a manner consistent with the protection of investors and the public interest. In particular, the Exchange believes that amending its rules to accommodate the listing and trading of options on the Sprott Physical Gold Trust will benefit investors by providing them with valuable risk management tools.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, 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, it has become effective pursuant to Section 19(b)(3)(A) [14] of the Act and Rule 19b–4(f)(6) [15] thereunder. The Exchange provided 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 the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can list and trade options on the Sprott Physical Gold Trust immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest to permit the Exchange to list and trade options on the Sprott Physical Gold Trust without delay.[16] The Commission notes the proposal is substantively identical to a proposal that was recently approved by the Commission, and does not raise any new regulatory issues.[17] For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–74 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–ISE–2010–74. 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

[10] *See* ISE Rules 412 and 414.

[11] *See* ISE Rule 1202.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] *See* Securities Exchange Act Release No. 62463 (July 7, 2010) (SR–CBOE–2010–043).

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–ISE–2010–74 and should be submitted on or before August 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17194 Filed 7–14–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62472; File No. SR–Phlx–2010–94]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Fees and Rebates for Adding and Removing Liquidity

July 8, 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 29, 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 the fees and rebates for adding and removing liquidity for options overlying various select symbols.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after 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, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its current fees and rebates for adding and removing liquidity by implementing a fee for adding liquidity. Specifically, the Exchange proposes to assess a $0.05 per contract fee for Firms and Broker-Dealers who add liquidity in select symbols.[3] The Exchange is proposing these fees in order to support increased bandwidth usage.

The Exchange currently assesses a per-contract transaction charge in various select Symbols on six different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange: (i) Specialists,[4] Registered Options Traders ("ROTs"),[5] Streaming Quote Traders ("SQTs")[6] and Remote Streaming Quote Traders ("RSQTs");[7] (ii) customers;[8] (iii) specialists, SQTs and RSQTs that receive Directed Orders ("Directed Participants"[9] or "Directed Specialists, RSQTs, or SQTs"[10]); (iv) Firms; (v) broker-dealers; and (vi) Professionals.[11] The current per-contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.

The per-contract transaction charges that are currently assessed on participants who submit proprietary quotes and/or orders that remove liquidity in the applicable Symbols are, by category:

Category	Charge
Customer	$0.25 per contract.
Directed Participants	$0.30 per contract.

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The fees and rebates for adding and removing liquidity are applicable to executions in options overlying AA, AAPL, ABK, ABX, AIG, ALL, AMD, AMR, AMZN, ARIA, AXP, BAC, BRCD, C, CAT, CIEN, CIGX, CSCO, DELL, DIA, DNDN, DRYS, EBAY, EK, F, FAS, FAZ, GDX, GE, GLD, GLW, GS, HAL, IBM, INTC, IWM, IYR, JPM, LVS, MGM, MOT, MSFT, MU, NEM, NOK, NVDA, ONNN, ORCL, PALM, PFE, POT, QCOM, QID, QQQQ, RIG, RIMM, RMBS, SBUX, SDS, SIRI, SKF, SLV, SMH, SNDK, SPY, T, TBT, TZA, UAUA, UNG, USO, UYG, V, VALE, VZ, WYNN, X, XHB, XLF, XRX and YHOO ("Symbols").

[4] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[5] A Registered Option Trader is defined in Exchange Rule 1014(b) as a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes a SQT, a RSQT and a Non-SQT, which by definition is neither a SQT or a RSQT. *See* Exchange Rule 1014 (b)(i) and (ii).

[6] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[7] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[8] This applies to all customer orders, directed and non-directed.

[9] For purposes of the fees and rebates related to adding and removing liquidity, A Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

[10] *See* Exchange Rule 1080(l), "* * * The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. *See* Exchange Rule 1014.

[11] The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional").

Category	Charge
Specialist, ROT, SQT, RSQT	$0.32 per contract.
Firms	$0.45 per contract.
Broker-Dealers	$0.45 per contract.
Professional	$0.40 per contract.

The Exchange also currently assesses a per-contract rebate relating to transaction charges for orders or quotations that add liquidity in the select Symbols. The amount of the rebate depends on the category of participant whose order or quote was executed as part of the Phlx Best Bid and Offer. Specifically, the per-contract rebates are, by category:

Category	Rebate
Customer	$0.20 per contract.
Directed Participants	$0.25 per contract.
Specialist, ROT, SQT, RSQT	$0.23 per contract.
Firms	$0.00 per contract.
Broker-Dealers	$0.00 per contract.
Professional	$0.20 per contract.

The Exchange proposes to assess a $0.05 per contract fee for adding liquidity in the select Symbols for Firms and Broker-Dealers. Today, Firms and Broker-Dealers receive no rebate for adding liquidity, therefore the proposal constitutes a $0.05 fee increase for those participants.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after 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 [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the order types it uses, and the prices of its quotes and orders (*i.e.,* its propensity to add or remove liquidity). The Exchange believes that its proposal to assess a $0.05 per contract for Firms and Broker-Dealers adding liquidity in the select Symbols is reasonable because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the proposed fees assessed to Firms and Broker-Dealers are comparable to rates assessed by the International Securities Exchange, Inc. ("ISE"). Currently, ISE assesses a fee of $0.10 for Firm Proprietary orders and a fee of $0.20 for Non-ISE Market maker (FARMM) orders for adding liquidity in certain symbols.[14] In addition, the Exchange also believes that these fees are reasonable because the net differential between the proposed fee for adding liquidity and the proposed fee for removing liquidity is similar to the $0.30 net differential that exists today at ISE as between a Market Maker Plus receiving a $0.10 rebate and a Non-ISE Market Maker (FARMM) being assessed a $0.20 fee for adding liquidity.

The Exchange believes that the price differentiation between Firms and Brokers-Dealers and Specialists, ROTs, SQTs and RSQTs [15] is justified in that the Specialists, ROTs, SQTs and RSQTs have obligations to the market, which do not apply to Firms and Broker-Dealers.[16] The concept of incenting market makers, who have quoting obligations, with a rebate is not novel.[17] The Exchange believes that it is equitable to assess a $0.05 fee for adding liquidity on Firms and Broker-Dealers who have no such quoting requirements as do market makers. In addition, the Exchange believes that by not assessing a fee on customers for adding liquidity and providing a $.20 per contract rebate for adding liquidity incentivizes customer order flow to the Exchange. Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at all option exchanges.

Differentiated pricing is typical in mature, competitive markets and is generally understood to benefit purchasers. Simply put, investor protection is furthered by the lowering of prices and by robust competition, not by a regulatory paradigm that (contrary to current economic thought) enforces price rigidity and uniformity while looking askance at attempts to reduce prices. As Congress and the Commission both recognize, nothing is more important to fostering a national market system than competition—and few things are more important to competition than the ability to quickly alter prices or other terms to respond to competition or win a significant new customer. Price rigidity and uniformity are signs of a stagnant market, not a vibrant one; regulation of differential pricing should be reserved to anti-competitive conduct that impedes the objectives of the securities laws.

The Exchange 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 Exchange believes the proposal is an equitable allocation of fees and not unfairly discriminatory for the reasons stated above.

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.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] *See* ISE's Schedule of Fees. *See also* Securities and [sic] Exchange Act Release No. 61869 (April 7, 2010), 75 FR 19449 (April 14, 2010) (SR–ISE–2010–25).

[15] Specialists, ROTs, SQTs and RSQTs are the Exchange's market maker category.

[16] *See* Exchange Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

[17] *See* Securities Exchange Act Release No. 62048 (May 6, 2010) 75 FR 26830 (May 12, 2010) (SR–ISE–2010–43).

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 [18] and paragraph (f)(2) of Rule 19b–4 [19] 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–2010–94 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–Phlx–2010–94. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2010–94 and should be submitted on or before August 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17193 Filed 7–14–10; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 240.19b–4(f)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62471; File No. SR–NYSEArca–2010–64]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. Relating to Listing of the Wilshire Micro-Cap ETF

July 8, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 1, 2010, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 list and trade shares of the Wilshire Micro-Cap ETF under NYSE Arca Equities Rule 5.2(j)(3). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Wilshire Micro-Cap ETF (the "Fund") under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units ("Units").[4] The Fund is a series of the Claymore Exchange-Traded Fund Trust.

The Fund seeks investment results that correspond generally to the performance, before the Fund's fees and expenses, of the Wilshire US Micro-Cap Index℠ (the "Wilshire Micro-Cap" or the "Index").[5]

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the "generic" listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on US indexes. The Index meets all such requirements except for those set forth in Commentary .01(a)(A)(1) [6] and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Equities Rule 5.2(j)(3)(A).

[5] *See* the Claymore Exchange-Traded Fund Trust's registration statement on Form N–1A, dated May 18, 2010 (File Nos. 333–134551; 811–21906) ("Registration Statement"). Statements herein regarding the Fund, the Shares and the Wilshire US Micro-Cap Index are based on the Registration Statement.

[6] Commentary .01(a)(A)(1) to NYSE Arca Equities Rule 5.2(j)(3) provides that component stocks (excluding Units and securities defined in Section 2 of Rule 8, collectively, "Derivative Securities

.01(a)(A)(5).[7] Specifically, as of April 21, 2010, 76.93% of the weight of the Index components have a market capitalization greater than $75 million. In addition, as of April 21, 2010, the Index included 201 non-NMS stocks out of a total of approximately 1,564 components in the Index. Thus, non-NMS stocks comprised approximately 12.8% of the number of stocks in the Index. Stocks comprising 97.3% of the weight of the Index were NMS stocks.[8]

According to the Registration Statement, the Fund, using a low cost "passive" or "indexing" investment approach, will seek to replicate, before the Fund's fees and expenses, the performance of the Wilshire Micro-Cap. The Wilshire Micro-Cap is a rules-based index comprised of approximately 1,564 securities of micro-capitalization companies as of March 31, 2010, as defined by Wilshire Associates Incorporated ("Wilshire" or the "Index Provider"). The Wilshire Micro-Cap is designed to represent micro-sized companies and is a subset of the Wilshire 5000 Total Market Index℠ (the "Wilshire 5000"). The Wilshire Micro-Cap represents a float-adjusted, market capitalization-weighted index of the issues ranked below 2500 by market capitalization of the Wilshire 5000.

The Exchange represents that: (1) Except for Commentary .01(a)(A)(1) and .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A–3 [9] under the Act for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Index and Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and Information Bulletin to ETP Holders, as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.[10]

The Exchange believes that, notwithstanding the fact that the Index does not meet certain generic listing criteria in NYSE Arca Equities Rule 5.2(j)(3), Commentary .01, the Index is sufficiently broad-based, and the Index stocks are sufficiently liquid to deter potential manipulation. As of June 9, 2010, the average market capitalization of Index stocks was $82.52 million, 62.82% of the Index weight was comprised of stocks with a global monthly trading volume of greater than one million shares, and 77.82% of the Index weight was comprised of stocks with a global monthly trading volume of greater than 500,000 shares. The average global monthly trading volume for Index stocks for the period December 2009 through May 2010 ranged from 3.7 million to 9.7 million shares. In addition, as of April 21, 2010, stocks comprising only 2.7% of the Index weight were non-NMS stocks.

Detailed descriptions of the Fund, the Index, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (*http://www.claymore.com*), as applicable.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [11] of the Act, in general, and furthers the objectives of Section 6(b)(5),[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded 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–2010–64 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.

Products") that in the aggregate account for at least 90% of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum market value of at least $75 million.

[7] Commentary .01(a)(A)(5) to NYSE Arca Equities Rule 5.2(j)(3) provides that all securities in the index or portfolio shall be US Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934 (17 U.S.C. 78a) ("Act"). NYSE Arca Equities Rule 5.2(j)(3) defines the term "US Component Stock" as an equity security that is registered under Sections 12(b) or 12(g) of the Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

[8] Non-NMS stocks are traded either on the OTC Bulletin Board or the Pink OTC Markets.

[9] 17 CFR 240.10A–3.

[10] *See, e.g.,* Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–NYSEArca–2010–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–64 and should be submitted on or before August 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17192 Filed 7–14–10; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62476; File No. SR–FINRA–2010–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

July 8, 2010.

I. Introduction

On March 30, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) to (i) expand the information released through BrokerCheck, both in terms of scope and time; and (ii) establish a formal process to dispute the accuracy of, or update, information disclosed through BrokerCheck. The proposal was published for comment in the **Federal Register** on April 22, 2010.[3] The Commission received fourteen comments on the proposal.[4] FINRA responded to the comments on June 21, 2010.[5] This order approves the proposed rule change.

II. Description of the Proposal

A. Expansion of Information Released through BrokerCheck

Pursuant to FINRA Rule 8312(b), BrokerCheck is an online application through which the public may obtain information regarding current and former members, associated persons and persons who were associated with a member within the preceding two years. Historic Complaints[6] regarding such persons are disclosed pursuant to Rule 8312(b) only if: (i) A matter became a Historic Complaint on or after March 19, 2007; (ii) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten years old; and (iii) the person has a total of three or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became Historic Complaints on or after March 19, 2007), or any combination thereof (the "three strikes provision").[7] In addition, pursuant to FINRA Rule 8312(c), BrokerCheck allows the public to obtain certain limited information regarding formerly associated persons, regardless of the time elapsed since they were associated with a member, if they were the subject of any final regulatory action.[8]

In connection with its most recent change to BrokerCheck,[9] FINRA stated that it would consider whether to provide greater disclosure of information through BrokerCheck.[10] Based on its continued evaluation of the BrokerCheck program, FINRA proposes to (i) expand the BrokerCheck disclosure period for formerly associated persons of a member from two years to ten years and (ii) eliminate the conditions that must be met before Historic Complaints will be displayed in BrokerCheck (*i.e.* the three strikes provision) and, thereby, make publicly available in BrokerCheck all Historic Complaints that were archived after the implementation of Central Registration Depository ("CRD®" or "Web CRD") on August 16, 1999.[11]

Additionally, FINRA proposes to make publicly available on a permanent basis information regarding formerly associated persons, regardless of the time elapsed since they were associated with a member, if they were convicted of or pled guilty or nolo contendere to a crime;[12] were the subject of a civil injunction in connection with investment-related activity or a civil court finding of involvement in a violation of any investment-related statute or regulation;[13] or were named as a respondent or defendant in an investment-related, consumer-initiated

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61927 (April 16, 2010), 75 FR 21064 (April 22, 2010) (SR–FINRA–2010–012) ("Notice").

[4] *See* Exhibit A for a list of comment letters.

[5] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Richard E. Pullano, Associate Vice President and Chief Counsel, FINRA, dated June 21, 2010 ("Response Letter").

[6] Historic Complaints are customer complaints that were reported on a uniform registration form that are more than two years old and that have not been settled or adjudicated and customer complaints, arbitrations, or litigations that have been settled for an amount less than the specified dollar amount (identified on the customer complaint question) and are therefore no longer reportable on a uniform registration form. *See* FINRA Rule 8312(b)(7).

[7] *Id.* In addition, if a person meets the three criteria established for disclosing Historic Complaints, only those Historic Complaints that became Historic Complaints after March 19, 2007 will be displayed through BrokerCheck.

[8] A "final regulatory action" includes any final action of the Commission, Commodity Futures Trading Commission, a Federal banking agency, the National Credit Union Administration, another Federal regulatory agency, a State regulatory agency, a foreign financial regulatory authority, or a self-regulatory organization, including actions that have been appealed. *See* Questions 14C, 14D, and 14E on Form U4, as well as Question 7D of Form U5. *See also* Section 3(a)(39) of the Act.

[9] *See* Securities Exchange Act Release No. 61002 (November 13, 2009), 74 FR 61193 (November 23, 2009) (SR–FINRA–2009–050).

[10] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, FINRA, dated October 15, 2009, in response to comments received regarding Securities Exchange Act Release No. 60462 (August 7, 2009), 74 FR 41470 (August 17, 2009) (SR–FINRA–2009–050); *see also* discussion of comments in Securities Exchange Act Release No. 61002 (November 13, 2009), 74 FR 61193 (November 23, 2009) (SR–FINRA–2009–050).

[11] *See* proposed FINRA Rule 8312(b).

[12] *See* Questions 14A(1)(a) and 14B(1)(a) on Form U4, as well as Questions 7C(1) and 7C(3) on Form U5.

[13] *See* Questions 14H(1)(a) and 14H(1)(b) on Form U4.

arbitration or civil law suit which alleged that they were involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person,[14] in each case as reported to Web CRD on a uniform registration form.[15] For such formerly associated persons, FINRA proposes to disclose through BrokerCheck: (i) Information concerning any such disclosure event(s); (ii) certain administrative information, such as employment and registration history as reported on a registration form; (iii) the most recently submitted comment, if any, provided by the person, if the comment is relevant and in accordance with the procedures established by FINRA; and (iv) dates and names of qualification examinations passed by the formerly associated person, if available.[16] Disclosure pursuant to the proposed rule change would *not* include other information in CRD, such as customer complaints, historic complaints, terminations, bankruptcies and liens. In addition, the expanded disclosure under the proposed rule would *not* apply to formerly associated persons who exercised control over an organization that was convicted of or pled guilty or nolo contendere to a crime (Questions 14A(2) and 14B(2) on Form U4) or who had an investment-related civil action brought against them by a State or foreign financial regulatory authority, if the action was settled (Question 14H(1)(c) on Form U4).

B. BrokerCheck Dispute Process

FINRA also proposes to adopt paragraph (e) of Rule 8312 to codify a process for persons to dispute the accuracy of, or update, the information disclosed through BrokerCheck. FINRA presently has an informal dispute process. Currently, upon the receipt of an inquiry from a person who believes that information about him contained in BrokerCheck is inaccurate, FINRA staff will review the alleged inaccuracy; if appropriate, contact the entity that reported the information; and make a determination as to whether the information is accurate or should be modified or removed from BrokerCheck.

Under proposed Rule 8312(e), in order to initiate a dispute regarding the accuracy of information contained in BrokerCheck, an "eligible party"[17] must submit a written notice to FINRA, including all available supporting documentation.[18] After receiving the written notice, FINRA will determine whether the dispute is eligible for investigation. Proposed Supplementary Material .02 to Rule 8312 provides examples of situations that are not eligible for investigation, which include, but are not limited to, disputes that (i) involve information previously disputed under the dispute resolution process and that does not contain any new or additional evidence; (ii) are brought by an individual or entity that is not an eligible party; (iii) do not challenge the accuracy of information contained in a BrokerCheck report but seek to explain information; and (iv) involve information contained in the CRD that is not disclosed through BrokerCheck. FINRA will presume that a dispute involving factual information is eligible for investigation unless the facts and circumstances suggest otherwise.[19]

Under the proposed rule, if FINRA determines that a dispute is eligible for investigation, FINRA will add a general notation to the eligible party's BrokerCheck report stating that the eligible party has disputed certain information included in the report,[20] which notation will be removed when FINRA resolves the dispute. If FINRA determines that a dispute is not eligible for investigation, it will notify the eligible party in writing.[21]

When a dispute is deemed eligible for investigation, FINRA will evaluate the written notice and supporting documentation and, if FINRA determines that it is sufficient to update, modify or remove the information that is the subject of the request, FINRA will make the appropriate change. When the written notice and supporting documentation do not include sufficient information upon which FINRA can make a determination, FINRA will, under most circumstances, contact the entity that reported the information to the CRD and request that this reporting entity confirm the accuracy of the information. If the reporting entity acknowledges that the information is not accurate, FINRA will update, modify or remove the information, as appropriate, based on the information provided by the reporting entity. If the reporting entity verifies the accuracy of the information, or the reporting entity no longer exists or is unable to verify the accuracy of the information, FINRA would not change the information.[22]

Upon making its determination, FINRA will notify the eligible party in writing that the investigation resulted in a determination that (i) the information is inaccurate or not accurately presented and has been updated, modified or deleted; (ii) the information is accurate in content and presentation and no changes have been made; or (iii) the accuracy of the information or its presentation could not be verified and no changes have been made. A determination by FINRA regarding a dispute, including whether to leave unchanged or to update, modify or delete disputed information, is not subject to appeal.[23]

III. Summary of Comments and FINRA's Response

The Commission received fourteen comment letters on the proposed rule change.[24] Most comments focus on three issues: (i) The proposed expanded disclosure of Historic Complaints through BrokerCheck and the format of such disclosure; (ii) limitations on information proposed to be disclosed via BrokerCheck; and (iii) the formalized process to dispute and/or update information in BrokerCheck.

A. Disclosure of Information in BrokerCheck

i. Expanded Disclosure of Historic Complaints

Eight comment letters generally support expanded disclosure through BrokerCheck, including the proposal to expand disclosure of Historic Complaints.[25] Three comment letters generally oppose any expanded disclosure of Historic Complaints.[26]

[14] *See* Question 14I(1)(b) on Form U4 and Question 7E(1)(b) on Form U5.

[15] *See* proposed FINRA Rule 8312(c). The proposal will apply only to those individuals registered with FINRA on or after August 16, 1999, which is the date that Web CRD was implemented.

[16] *Id.* The information would mirror the information currently disclosed permanently with respect to any formerly registered person who is the subject of a final regulatory action.

[17] Only an "eligible party" would be able to dispute the accuracy of information disclosed in that party's BrokerCheck report. An "eligible party" includes any current member; any former member, provided that the dispute is submitted by a natural person who served as the former member's Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Legal Officer or Chief Compliance Officer, or an individual with similar status or function, as identified on Schedule A of Form BD at the time the former member ceased being registered with FINRA; or any associated person of a member or person formerly associated with a member for whom a BrokerCheck report is available. *See* proposed FINRA Rule 8312(e)(1)(A).

[18] *See* proposed FINRA Rule 8312(e)(1)(B).

[19] *See* proposed FINRA Rule 8312(e)(2)(A).

[20] In circumstances where a dispute involves a court order to expunge information from BrokerCheck, FINRA will prevent the disputed information from being displayed via BrokerCheck while FINRA evaluates the matter.

[21] *See* proposed FINRA Rule 8312(e)(2)(C).

[22] *See* proposed FINRA Rule 8312(e)(3)(A).

[23] *See* proposed FINRA Rule 8312(e)(3)(B) and (C).

[24] *See supra,* note 4.

[25] *See* comment letters from Caruso, Cornell, NASAA, PIABA, SIFMA, St. John's, Syracuse and Welker.

[26] *See* comment letters from Cutter, MWA and Oster.

Three additional commenters take issue with the scope, time period and/or method of disclosure of Historic Complaints as set forth in the proposed rule change.[27] Four commenters believe that disclosure of all Historic Complaints will only serve to confuse investors.[28] One commenter suggests that customer complaints that are found to be without merit and closed without compensation to the investor should be subject to the current two-year disclosure period.[29] One comment letter argues that previously archived Historic Complaints should not be made available via BrokerCheck, and that Historic Complaints should only be reported under the ten-year disclosure period on a going forward basis.[30] Two commenters recommend that BrokerCheck only display Historic Complaints on or after March 18, 2002, the reporting date that the Investment Adviser Public Disclosure-Individual ("IAPD–I") database will use, as opposed to August 16, 1999, the date that Web CRD was implemented.[31]

FINRA believes that implementing the proposed rule change to expand disclosure to include Historic Complaints will allow investors and other users of BrokerCheck to view information they may consider important and relevant.[32] In response to commenters who raise the above objections, FINRA notes that under the proposed rule change, Historic Complaints will be displayed for ten years following the termination of an individual's registration, rather than on a permanent basis,[33] as other commenters suggest.[34] FINRA also notes that Historic Complaints displayed on BrokerCheck will include information regarding the Historic Complaint's disposition and the individual's comments on the matter, if any.[35] Additionally, FINRA states that it is in the process of modifying the CRD system to allow firms to more easily update or otherwise provide context to Historic Complaints.[36] FINRA disagrees, therefore, that the expanded disclosure will confuse investors and believes investors and other users of BrokerCheck are, and in the future will be even better able to, put such complaints in the appropriate context.[37]

FINRA disagrees with the suggestion that archived Historic Complaints should not be made available via BrokerCheck, and that Historic Complaints should only be reported under the ten-year disclosure period on a going-forward basis. FINRA states that this would result in far fewer Historic Complaints being disclosed than would be under the proposal and would actually reduce the number of Historic Complaints currently disclosed under FINRA Rule 8312.[38]

With respect to timeframe, FINRA continues to believe that it should disclose all Historic Complaints that became non-reportable after implementation of Web CRD on August 16, 1999. FINRA believes it is not necessary or desirable to harmonize the disclosure date for Historic Complaints with the March 18, 2002 date used for complaint disclosure in the IAPD–I database, as suggested by some commenters.[39] FINRA notes that the two systems are separate, each system would note its respective time frame, and using the 1999 date will provide more information to investors than the 2002 date.[40]

Commenters also propose changes to the way Historic Complaints are displayed on BrokerCheck and argue that additional disclosure in BrokerCheck is necessary to clarify that the complaints are based on allegations and have not been finally resolved.[41] FINRA notes that similar disclosure already exists on each BrokerCheck report.[42] FINRA agrees, however, that customer complaint information should be clearly identifiable and states that it is in the process of revising the customer dispute disclosure section of BrokerCheck to provide further clarity, including adding a new heading to the report to identify customer disputes that a firm reports as closed with no action, withdrawn, dismissed or denied.[43]

ii. Expanded Disclosure, Generally

Six commenters argue that all of the information contained in BrokerCheck regarding currently and formerly registered individuals should be made available permanently;[44] one commenter argues against any expansion whatsoever.[45] Those commenters in favor of expanding disclosure to include all information available in BrokerCheck believe that information should not be removed from BrokerCheck for formerly associated persons after the ten-year disclosure period.[46] Four commenters argue that there is no compelling reason (including the justification espoused by FINRA[47]) to distinguish between currently and formerly registered persons with respect to the disclosure time period in BrokerCheck.[48] Two commenters believe that if FINRA will not eliminate the disclosure discrepancies between currently and formerly associated persons, at a minimum the information disclosed permanently should be expanded to include additional categories.[49] Three commenters believe that the information on BrokerCheck should be expanded to include all information made available through State securities regulators as well as in CRD.[50]

In response, FINRA notes that the events proposed to be permanently disclosed in BrokerCheck pursuant to the proposed rule change constitute final dispositions which, in most circumstances, have been determined by an impartial fact finder after the subject person has been given the opportunity to refute the allegations.[51] Finally, FINRA points out that much of the information proposed to be disclosed pursuant to the proposed rule change is already publicly available through other sources.[52]

[27] *See* comment letters from FSI, Janney and NAIBD.

[28] *See* comment letters from Cutter, MWA, NAIBD and Oster. The comment letter from Oster argues that disclosing only those Historic Complaints made on or after August 16, 1999 will result in investors receiving biased data and drawing inappropriate conclusions therefrom.

[29] *See* comment letter from Oster.

[30] *See* comment letter from FSI.

[31] *See* comment letters from FSI and NAIBD.

[32] *See* Response Letter at 6.

[33] *Id.*

[34] *See* comment letters from Cutter and NAIBD.

[35] *See* Response Letter at 6.

[36] The Commission urges FINRA to ensure that firms do not, under the guise of providing context to Historic Complaints, alter the essence of the complaint.

[37] *See* Response Letter at 6.

[38] *See* Response Letter at 5.

[39] *See* comment letters from FSI and NAIBD.

[40] *See* Response Letter at 4–5.

[41] *See* comment letters from Cutter, FSI, Janney, MWA, NAIBD and SIFMA.

[42] *See* Response Letter at 3.

[43] *Id.*

[44] *See* comment letters from Caruso, Cornell, NASAA, PIABA, St. John's and Syracuse.

[45] *See* comment letter from MWA.

[46] *Id.*

[47] FINRA stated that each of the disclosure events proposed to be permanently included in BrokerCheck constitutes a final disposition. *See* Notice at 8.

[48] *See* comment letters from Caruso, PIABA, St. John's and Syracuse.

[49] *See* comment letter from NASAA, arguing that BrokerCheck should include on a permanent basis information on felony charges, misdemeanor charges involving an investment-related business, fraud, wrongful taking of property, bribery, perjury, forgery and other crimes of property, employment terminations relating to allegations of violations of investment-related statutes or fraud, bankruptcy and unsatisfied judgments or liens. *See also* comment letter from Syracuse, arguing that disclosure should be expanded to permanently include bankruptcy filings and misdemeanor charges relating to fraud and other crimes bearing on a broker's veracity in financial and business matters.

[50] *See* comment letters from PIABA, St. John's and Syracuse.

[51] *See* Response Letter at 9. *See also* Notice at 8.

[52] *Id.*

C. Formalized Process To Dispute and/or Update Information in BrokerCheck

All comment letters generally supported FINRA's proposed codification of the process for disputing and updating information displayed on BrokerCheck. Two comment letters request that a timeline for submission and FINRA response be added to the rule, and these commenters also request that FINRA allow firms or associated persons to supplement descriptions of the incidents being reported.[53] Another commenter suggests that FINRA establish a standing national BrokerCheck Record Review Committee (or delegate responsibility to FINRA's National Adjudicatory Council) to investigate BrokerCheck inquiries and make determinations with respect to eligibility and removal or modification of information on BrokerCheck.[54]

FINRA represents that it will work diligently to process disputes as expeditiously as possible, and believes that it will be able to make determinations regarding disputes within a reasonable time frame.[55] FINRA does not believe that mandating time limitations for submitting and responding to disputes or establishing a committee to make determinations regarding disputes is necessary.[56] FINRA states that most disputes regarding the accuracy of information in BrokerCheck are straightforward and unambiguous and requiring a committee to review such disputes would increase the processing time.[57] Finally, FINRA believes it would be redundant to expand the dispute process to allow individuals to supplement descriptions on BrokerCheck, as the opportunity to provide context to a disclosed matter on BrokerCheck is already available to individuals.[58]

In response to a request for clarification regarding whether FINRA rules prohibiting false filings would apply to the dispute process,[59] FINRA notes that submissions by firms and individuals in connection with the dispute process will be subject to FINRA rules.[60]

IV. Discussion and Commission Findings

After carefully reviewing the proposed rule change, the comment letters, and the Response Letter, 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 association.[61] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[62] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that expanding the information available through BrokerCheck about (i) persons who were previously associated with a member within the last two to ten years and (ii) formerly associated persons who were convicted of or pled guilty or nolo contendere to a crime, were the subject of a civil injunction in connection with investment-related activity or a civil court finding of involvement in a violation of any investment-related statute or regulation, or were named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil law suit which alleged that they were involved in a sales practice violation and which resulted in an arbitration award or civil judgment against the person, will help members of the public to protect themselves from unscrupulous people. The Commission believes that such information is relevant to investors and members of the public who wish to educate themselves with respect to the professional history of a formerly associated person. Formerly associated persons, although no longer in the securities industry in a registered capacity, may work in other investment-related industries, such as financial planning, or may seek to attain other positions of trust with potential investors. Disclosure of such person's record while he was in the securities industry via BrokerCheck should help members of the public decide whether to rely on his advice or expertise or do business with him. Currently, Web CRD would indicate that no information is available for a formerly associated person, which could lead a person making an inquiry about a formerly associated person to conclude that the formerly associated person had a clean record. Expanding the disclosure period for formerly registered individuals to ten years, as well as expanding certain information made available through BrokerCheck on a permanent basis, will provide investors and other users of BrokerCheck information that should be useful and relevant regarding such formerly registered individuals' history. In addition, if registered persons are aware that their CRD information will be available for a longer period of time, it should provide an additional incentive to act consistent with industry best practices.

The Commission also believes that the aspect of FINRA's proposal that expands the information available through BrokerCheck regarding Historic Complaints will further help members of the public to evaluate an individual's record. The Commission believes that it is consistent with the Act for FINRA to conclude that customer complaints should be available to investors and members of the public who wish to educate themselves with respect to the professional history of a current or formerly associated person. Persons may take Historic Complaints filed against an individual in the securities industry into account in considering whether to do business with a current or former associated person. The Commission agrees with FINRA and believes that potential investors and members of the public who research a person with whom they are considering doing business are capable of evaluating Historic Complaints in the appropriate context.

Finally, the Commission believes that creating a formalized process for disputing and/or updating the information displayed through BrokerCheck is appropriate. The written guidelines proposed provide administrative transparency and should help persons better understand the procedure for disputing or updating information in BrokerCheck, ultimately allowing for greater efficiency keeping information in BrokerCheck accurate.

The Commission recognizes that the commenters make arguments with respect to the usefulness of the

[53] *See* comment letters from FSI and NAIBD. The FSI letter suggests requiring FINRA to make an eligibility determination within 30 days of receipt of notice, while the NAIBD letter suggests requiring FINRA to make a determination regarding update or removal of the disputed information within 30 days of the submission of supporting evidence.

[54] *See* comment letter from SIFMA.

[55] *See* Response Letter at 7. FINRA notes, however, that in certain circumstances the evaluation of a dispute will be outside of its control.

[56] *Id.*

[57] *Id.*

[58] *See* Response Letter at 8. FINRA points out that individuals can provide context to a matter disclosed on BrokerCheck through the submission of Forms U4 and U5. In a separate section of the Response Letter, FINRA also notes that firms and individuals may add or revise comments to, or update information regarding, Historic Complaints disclosed on BrokerCheck. *See* Response Letter at 4.

[59] *See* comment letter from NASAA.

[60] *See* Response Letter at 7–8.

[61] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[62] 15 U.S.C. 78*o*–3(b)(6).

additional information they seek to have disclosed regarding registered and formerly registered persons.[63] The Commission recognizes that the public's ability to access information, whether to inquire about a registered person or a formerly associated person, may serve to protect investors, the integrity of the marketplace, and the public interest. The Commission urges FINRA to consider expanding the information as suggested by the commenters. This information is available from the individual States; however, it would be more accessible through BrokerCheck. The Commission urges the public to utilize all sources of information, particularly the databases of the State regulators, as well as legal search engines and records searches, in conducting a thorough search of any associated person's activities.

The Commission notes that FINRA stated it would continue to evaluate all aspects of the BrokerCheck program to determine whether future circumstances should lead to greater disclosure through BrokerCheck.[64] FINRA has a statutory obligation to make information available to the public[65] and, as stated in the past, the Commission believes that FINRA should continuously strive to improve BrokerCheck because it is a valuable tool for the public in deciding whether to work with an industry member.[66] The changes proposed in this filing will enhance BrokerCheck by including more information that should prove useful to the general public and by maintaining the accuracy of such information. In addition, the disclosure of this additional information may serve as a deterrent to questionable and fraudulent activity.

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[67] that the proposed rule change (SR–FINRA–2010–012), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

Florence E. Harmon,

Deputy Secretary.

Exhibit A

List of Comment Letters Received for SR–FINRA–2010–012

1. Andrew Oster, President and CEO, Oster Financial Group, LLC, dated May 4, 2010 ("Oster").
2. Pamela Fritz, CSCP, AIRC, FFSI, FIC, Chief Compliance Officer, MWA Financial Services, Inc., dated May 6, 2010 ("MWA").
3. Lisa Roth, National Association of Independent Brokers-Dealers, Inc. Member Advocacy Committee Chair, and CEO and COO, Keystone Capital Corporation, dated May 6, 2010 ("NAIBD").
4. Melanie Senter Lubin, Maryland Securities Commissioner and Chair, North American Securities Administrators Association, Inc. CRD/IARD Steering Committee, dated May 11, 2010 ("NASAA").
5. Scott R. Shewan, President, Public Investors Arbitration Bar Association, dated May 11, 2010 ("PIABA").
6. Kelly R. Welker, Branch Manager, LPL Financial, dated May 12, 2010 ("LPL").
7. Deborah Castiglioni, CEO and CCO, Cutter Company, Inc., dated May 12, 2010 ("Cutter").
8. Lisa A. Catalano, Director, Associate Professor of Clinical Legal Education and Christine Lazaro, Supervising Attorney, Securities Arbitration Clinic, St. John's University School of Law, dated May 13, 2010 ("St. John's").
9. William A. Jacobson, Esq., Associate Clinical Professor of Law, Cornell Law School, and Director, Cornell Securities Law Clinic and Adisada Dudic, Cornell Law School, 2011, dated May 13, 2010 ("Cornell").
10. E. John Moloney, President and CEO, Moloney Securities Company, Inc. and Chairman, Securities Industry and Financial Markets Association Small Firms Committee, dated May 13, 2010 ("SIFMA").
11. Joelle B. Franc, Student Attorney; Jonathan P. Terracciano, Student Attorney; and Birgitta K. Siegel, Esq., Visiting Asst. Professor; Securities Arbitration & Consumer Law Clinic, Syracuse University College of Law, dated May 13, 2010 ("Syracuse").
12. John M. Ivan, Senior Vice President, General Counsel, Janney Montgomery Scott, LLC, dated May 14, 2010 ("Janney").
13. Dale E. Brown, President and CEO, F.inancial Services Institute, dated May 19, 2010 ("FSI").
14. Steven B. Caruso, Maddox Hargett Caruso, P.C., dated May 25, 2010 ("Caruso").

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[63] *See* page 4, which notes information in CRD that will not be made available as a result of this rule change.

[64] *See* Response Letter at 9.

[65] *See* Section 15A(i) of the Act.

[66] *See, e.g.,* Securities Exchange Act Release No. 61002 (November 13, 2009), 74 FR 61193 (November 23, 2009) (SR–FINRA–2009–050).

[67] 15 U.S.C. 78s(b)(2).

[68] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62468; File No. SR–NASDAQ–2010–074]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rule 4753(c) as a Six Month Pilot in 100 NASDAQ-Listed Securities

July 7, 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 18, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "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 Nasdaq. On June 25, 2010, Nasdaq filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to adopt Rule 4753(c) as an initial six month pilot in 100 NASDAQ-listed securities.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3]

* * * * *

4753. Nasdaq Halt and Imbalance Crosses

(a)–(b) No change.

(c) *Beginning August 1, 2010, for a period of six months,* [B]*b*etween 9:30 a.m. and 4 p.m. EST, the System will

[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 manual of NASDAQ found at *http://nasdaq.cchwallstreet.com.*

automatically monitor System executions to determine whether the market is trading in an orderly fashion and whether to conduct an Imbalance Cross in order to restore an orderly market in a single Nasdaq Security.

(1) An Imbalance Cross shall occur if the System executes a transaction in a Nasdaq Security at a price that is beyond the Threshold Range away from the Triggering Price for that security. The Triggering Price for each Nasdaq Security shall be the price of any execution by the System in that security within the prior 30 seconds. The Threshold Range shall be determined as follows:

Execution price	Thresh[h]old range away from triggering price (percent)
$1.75 and under	15
Over $1.75 and up to $25	10
Over $25 and up to $50	5
Over $50	3

(2) If the System determines pursuant to subsection (1) above to conduct an Imbalance Cross in a Nasdaq Security, the System shall automatically cease executing trades in that security for a 60-second Display Only Period. During that 60-second Display Only Period, the System shall:

(A) Maintain all current quotes and orders and continue to accept quotes and orders in that System Security; and

(B) Disseminate by electronic means an Order Imbalance Indicator every 5 seconds.

(3) At the conclusion of the 60-second Display Only Period, the System shall re-open the market by executing the Nasdaq Halt Cross as set forth in subsection (b)(2)–(4) above.

(4) 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. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to adopt Rule 4753(c), a volatility-based pause in trading in individual NASDAQ-listed securities traded on NASDAQ ("NASDAQ Securities"). NASDAQ is proposing to adopt the rule initially as a six-month pilot in 100 NASDAQ Securities beginning August 1, 2010.

Background

NASDAQ's efficient market structure allows the price of a security to change quickly in response to information and market demand. Allowing trading to react quickly is generally beneficial to investors. In some circumstances, however, abrupt and significant movements in the price at which a security is traded can indicate aberrant volatility, which is harmful to investors. On August 19, 2008, the Commission approved new Rule 4753(c), which established a volatility-based halt process on a one-year pilot basis for an initial 100 NASDAQ-listed securities.[4] Subsequent to the Commission's approval, NASDAQ implemented a market order price collar to address aberrant volatility in lieu of immediately implementing the Rule 4753(c) pilot.[5] Although these collars are designed to address volatility by reducing the risk that market orders will execute at prices that are significantly worse than the national best bid and offer, they had limited effect on May 6, 2010 because of the limited number of market orders involved in trading that day on NASDAQ.

In light of the unprecedented aberrant volatility witnessed on May 6, 2010, and the limited effect that NASDAQ's market collars had in dampening such volatility, NASDAQ believes that the Rule 4753(c) halt process is needed to protect its listed securities and market participants from such volatility in the future. Accordingly, as described below, NASDAQ is proposing to adopt Rule 4753(c) again as a six-month pilot for 100 NASDAQ-listed securities.

NASDAQ's Approach: Rule 4753(c)

NASDAQ originally adopted Rule 4753(c) to promote the protection of investors by providing a meaningful pause in NASDAQ Securities on NASDAQ in the midst of abrupt and significant price movements, while permitting trading to move freely in rapid and stable markets.[6] As the events of May 6, 2010 show, severe and rapid price dislocation can occur in securities with no connection to the fundamental soundness of the underlying companies. Such dislocation may be caused by operational and structural factors beyond the control of issuers and individual markets. NASDAQ's Rule 4753(c) process is designed to protect NASDAQ securities and market participants from aberrant volatility, which can quickly spread like a contagion from market to market, to allow time to reestablish a rational market in NASDAQ Securities.

NASDAQ's proposed Rule 4753(c) process automatically suspends trading in individual NASDAQ Securities that are the subject of abrupt and significant intraday price movements between 9:30 a.m. and 4 p.m. Eastern Standard Time. The Rule 4753(c) process is triggered automatically when the execution price of a NASDAQ Security moves more than a fixed amount away from a pre-established "triggering price" for that security. The Triggering Price for each NASDAQ Security is the price of any execution by the System[7] in that security within the previous 30 seconds. For each NASDAQ Security, the System continually compares the price of each execution in the System against the prices of all System executions in that security over the 30 seconds.

Proposed Rule 4753(c) has tiered triggering price range percentages that are based on the execution price of a security. NASDAQ has observed that, on a percentage basis, lower priced stocks normally trade in a wider range than stocks with higher prices. For example, during the first quarter of 2010, a period of relatively low market volatility, stocks priced under $1.75 had an average range (percent difference from high to low over the course of the day) of 9%, stocks priced $1.75 up to $24.99 had an average range of 4%. Stocks priced $25 to $49.99 had an average range of 3%. Stocks priced above $50

[4] Securities Exchange Act Release No. 58386 (August 19, 2008), 73 FR 50380 (August 26, 2008) (SR–NASDAQ–2007–067).

[5] This process cancels any portion of most unpriced orders that would execute either on NASDAQ or when routed to another market center at a price that is the greater of $0.25 or 5 percent worse than the NBBO at the time NASDAQ receives the order. *See* Securities Exchange Act Release No. 60371 (July 23, 2009), 74 FR 38075 (July 30, 2009) (SR–NASDAQ–2009–070).

[6] NASDAQ has other similar processes that serve to protect investors during periods of abnormal trading activity. NASDAQ Rule 4120 authorizes NASDAQ Regulation to halt trading in a security based upon news or an emergency in the market. NASDAQ Regulation also has the ability under NASDAQ Rule 11890 to break trades in order to protect the integrity of the market.

[7] As defined in Rule 4751(a).

had an average range of 2%. The purpose of Rule 4753(c) is not to inhibit trading within the normal range, but rather to pause trading in instances of aberrant volatility. As a consequence, NASDAQ selected percentage tiers that allow for a wider range in lower priced securities, with decreasing ranges on a percentage basis as price increases.

When the Rule 4753(c) process is triggered, NASDAQ institutes a formal trading halt during which time NASDAQ systems are prohibited from executing orders.[8] Members, however, may continue to enter quotes and orders, which are queued during a 60-second Display Only Period. At the conclusion of the Display Only Period, the queued orders are executed at a single price, pursuant to Rule 4753.

Current Environment

In light of the events of May 6, 2010, NASDAQ believes that circumstances warrant the implementation of Rule 4753(c), in addition to the market collar protections currently in place.[9] NASDAQ believes that implementing Rule 4753(c) will serve to protect market participants from aberrant volatility such as that which occurred on May 6, 2010. NASDAQ also believes that Rule 4753(c) will serve as a complement to the recently-approved cross-market single stock pause to be adopted by the U.S. national securities exchanges.[10] NASDAQ notes that there are several differences between the cross-market approach and Rule 4753(c). Specifically, Rule 4753(c) uses tiered threshold range percentages that are based on a security's execution price in determining the price at which a halt would be initiated, whereas the cross market approach does not. Rule 4753(c) also has a shorter time threshold used in determining that a pause in trading should be initiated, and a shorter time during which a security is paused, as compared to the cross-market approach. Rule 4753(c) is applied throughout the trading day, whereas the cross-market approach does [sic] not. Last, while the cross-market approach will help to prevent aberrant volatility, it applies only to S&P 500 Index securities, thus it will not address aberrant volatility in the majority of NASDAQ-listed securities. Adoption of Rule 4753(c) will allow NASDAQ to extend the rule's protections to its listed securities trading on NASDAQ, with such protections initially applying to the 100 pilot securities [11] but with the goal of applying the rule to all NASDAQ-listed securities.

The following examples illustrate how Rule 4753(c) would operate in relation to the new cross-market single stock pause. In this sequence of events, the Rule 4753(c) pause is triggered prior to the cross-market trading pause process:

WXYZ is NASDAQ-listed and included in the S&P 500 Index.

- 2:00:00 p.m., WXYZ trades at $300 on NASDAQ, which is also the consolidated last sale price
  - 2:00:30 p.m., WXYZ trades below $291 on NASDAQ
    - WXYZ is paused pursuant to Rule 4753(c)
    - WXYZ continues to trade elsewhere
- 2:01:30 p.m., WXYZ resumes trading on NASDAQ at $295
- 2:02:00 p.m., WXYZ trades below 286.15 on NASDAQ
  - WXYZ is again paused pursuant to Rule 4753(c)
  - WXYZ continues to trade elsewhere
- 2:03:00 p.m., WXYZ resumes trading on NASDAQ at $288;
- 2:03:30 p.m., WXYZ trades below 279.36 on NASDAQ;
  - WXYZ is again paused pursuant to Rule 4753(c)
  - WXYZ continues to trade elsewhere
- 2:04:00 p.m., WXYZ consolidated last sale price reaches $270
  - The cross-market trading pause process is triggered
  - NASDAQ abandons the Rule 4753(c) and now follows the cross-market trading pause process

The following sequence of events illustrates a situation whereby a NASDAQ-listed security that is also covered by the cross-market trading pause process triggers both processes simultaneously:

WXYZ is NASDAQ-listed and included in the S&P 500 Index.

- 2:00:00 p.m., WXYZ trades at $20 on NASDAQ, which is also the consolidated last sale price;
- 2:00:30 p.m., WXYZ trades at $17 on NASDAQ;
  - Because the execution price exceeds both the 10 percent tiers of the cross-market pause process and Rule 4753(c), the cross-market process is followed
  - WXYZ is paused on all markets

The following sequence of events illustrates a situation whereby a NASDAQ-listed security may fall greater than 15 percent, yet does not trigger the cross-market trading pause process:

WXYZ is NASDAQ-listed, but not included in the S&P 500 Index.

- 2:00:00 p.m., WXYZ trades at $1.50 on NASDAQ, which is also the consolidated last sale price;
- 2:00:30 p.m., WXYZ trades below $1.275 on NASDAQ;
  - Although the security dropped more than 10 percent, the cross-market trading pause process would not triggered, since the security is not included in the S&P 500 Index
  - WXYZ is paused pursuant to Rule 4753(c) because the security dropped greater than 15 percent in the prior 30 seconds
  - WXYZ continues to trade elsewhere

The examples above show that, although Rule 4753(c) operates independently from the cross-market trading pause process, both trade pause processes work efficiently along side of each other to dampen aberrant volatility.

Other Market's Approach

NASDAQ notes that another market has adopted a similar process whereby the market's listed securities each may be temporarily removed from automatic trading when the trading exceeds certain average daily volume-, price-, and volatility-based criteria.[12] Although dissimilar in process due to the differing nature of the markets, the pause under Rule 4753(c) is designed to achieve the same goal, namely, to apply quantitative criteria to pause trading in a listed security during times of aberrant volatility so that a more representative market may develop. NASDAQ's process differs from the other market's process in that it uses completely transparent criteria and timeframes, which serve to eliminate uncertainty from the trade pause process. For example and as noted above, the Rule 4753(c) process is triggered by execution prices that are clear and available to all market participants, and the pause in trading has a fixed 60 second Display

[8] A halt pursuant to Rule 4753(c) is not considered a regulatory halt and, therefore, it does not trigger a market-wide trading halt under Section X of the NASDAQ UTP Plan. As a result, other markets are *permitted* to continue trading a NASDAQ stock that is undergoing a Market Re-Opening on NASDAQ. During the Rule 4753(c) process, NASDAQ's quotations are marked "closed," signaling to other markets that quotes and orders routed to NASDAQ will not be executed. A Rule 4753(c) trade is reported to the network processor as a single-price re-opening that is exempt from trade through restrictions pursuant to Rule 611(b)(3).

[9] NASDAQ notes that, while the market collar protections were in place during the events of May 6, 2010, only approximately five percent of the volume on NASDAQ was attributable to market orders.

[10] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; SR–CBOE–2010–047).

[11] Amendment No. 1 indicates that the pilot securities will be the NASDAQ 100 securities.

[12] NYSE Rule 1000(a)(iv).

Only period process that cannot be extended.[13] In addition, the pause will be followed by a "cross" that is predictable and well defined. As a consequence, application of the Rule 4753(c) process is automatic and precise, allowing no place for uncertainty. This will make the transition to this rule predictable and understandable. Most importantly, it will allow NASDAQ to insulate its issuers from volatility injected in the market from exchange halt programs with subjective criteria. Primary markets with responsibility to listed companies have an obligation and right to take actions to provide additional levels of protection from volatility to companies that list with it [sic].

Summary

In approving Rule 4753(c), the Commission stated that systematically suspending trading in NASDAQ-listed securities that are the subject of abrupt and significant intra-day price movements promotes fair and orderly markets and the protection of investors.[14] NASDAQ believes that adopting Rule 4753(c) is more appropriate now than it was at the time the Commission originally approved Rule 4753(c) given the need to protect investors from aberrant volatility, such as the volatility witnessed on May 6, 2010. Accordingly, NASDAQ is proposing to adopt Rule 4753(c) in identical form as originally approved by the Commission, but as a six month pilot for an initial 100 Nasdaq-listed securities. During this pilot period, NASDAQ will study the impact of the rule on the pilot securities and will provide the Commission with monthly reports detailing its ongoing review of the pilot. These reports will inform the Commission of the number of times Rule 4753(c) is triggered and the security or securities involved, and will describe any patterns that emerge during the pilot period. NASDAQ is also making a technical correction to the table found in Rule 4753(c)(1).

2. Statutory Basis

NASDAQ believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general and with Section 6(b)(5) of the Act,[16] in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is consistent with these requirements in that it will reduce the negative impacts of sudden, unanticipated volatility in individual NASDAQ Securities, and serve to restore an orderly market in a transparent and uniform manner, enhance the price-discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors.

NASDAQ notes that the proposed rule change is identical to the rule change approved by the Commission when it approved Rule 4753(c) in August 2008, except that NASDAQ plans to implement the pilot on a shorter, six month basis. In approving Rule 4753(c), the Commission acknowledged that Rule 4753(c), which systematically suspends trading in NASDAQ-listed securities that are the subject of abrupt and significant intra-day price movements, promotes fair and orderly markets and the protection of investors.[17] NASDAQ notes that the Commission received no comments on the proposed rule change that adopted Rule 4753(c) originally. NASDAQ believes that the lack of comment signaled that market participants considered the proposed new rule to be non-controversial. NASDAQ believes that, given the events of May 6, 2010, adopting Rule 4753(c) as a new pilot will ensure that covered NASDAQ Securities, and market participants trading therein on NASDAQ, are provided the needed protections of the rule.

NASDAQ notes that the proposed rule change supplements the cross-market single stock pause to be adopted by the national securities exchanges, which was approved by the Commission on June 10, 2010.[18] NASDAQ applauds the Commission's leadership in bringing the national securities exchanges together to achieve a cross-market solution to help address the issues that may have caused the events of May 6, 2010. NASDAQ is continuously assessing actions it can take to further strengthen its market. In this regard, NASDAQ believes that quickly implementing Rule 4753(c) will complement the cross-market single stock pause by serving to better protect all of NASDAQ's listed securities covered by the pilot trading on NASDAQ during times of aberrant volatility, such as the volatility witnessed on May 6, 2010. NASDAQ notes that Rule 4753(c) in no way conflicts with the new cross-market single stock pause, but rather applies, in some cases, more stringent criteria to pause a broader range of securities on NASDAQ only. In addition, should a cross-market single stock pause be initiated in a NASDAQ Security during a Rule 4753(c) pause, the security would be subject to the cross-market single stock pause process.

NASDAQ has an obligation to adopt rules that protect investors and the public interest, which include rules that protect its listed securities and those that trade in them. Instituting Rule 4753(c) will serve to protect market participants within the scope of NASDAQ's authority under the Act. NASDAQ notes that market participants would be able to trade in securities subject to a Rule 4753(c) pause at other market venues, should they so choose.[19]

Last, NASDAQ notes that, in approving another market's approach to dealing with abnormal volatility in its listed securities, the Commission stated that precluding automatic executions under certain circumstances is warranted.[20] Like that market's process, the proposed change to NASDAQ Rule 4753(c) will extend the rule's halt process to all listed securities traded on NASDAQ and will likewise serve to dampen volatility, thus providing market participants with time to react to achieve a more natural trading pattern of a particular security.

NASDAQ will keep the Commission apprised of the use of Rule 4753(c) as part of NASDAQ's ongoing review of the pilot. In this regard, during the pilot period NASDAQ will provide the Commission with monthly reports detailing the use of Rule 4753(c) and describing any patterns that may develop. As such, NASDAQ believes that the proposed rule change is consistent with the protection of investors and the public interest, and does not raise any novel regulatory issues.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any

[13] NYSE's LRP process has an indeterminate length, but can last several minutes during which the NYSE is not transmitting a protected quote in the affected security.

[14] *Supra* note 4 at 50381.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(5).

[17] *Supra* note 4 at 50381.

[18] *Supra* note 10.

[19] *Supra* note 8.

[20] Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353, 16377–78 (March 31, 2006) (SR–NYSE–2004–05).

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning all aspects of the foregoing, including whether the proposed rule change is consistent with the Act. A stated purpose of the proposal is to protect Nasdaq-listed securities and market participants from "aberrant" volatility, such as that which occurred on May 6, 2010 and may be caused by operational or structural factors beyond the control of issuers and individual markets. To what extent do the price changes that would trigger a trading halt under the proposal indicate the potential existence of "aberrant" volatility, as opposed to the normal operation of the markets? If these price changes indicate potentially "aberrant" volatility, to what extent will the proposal address such volatility in a manner appropriate and consistent with the purposes of the Act? Will a trading halt at Nasdaq under the proposal restrict liquidity or increase volatility in the affected stock, since other markets can continue to trade the stock and may not have comparable volatility halts? In what respects are the consequences of this proposal likely to be similar to, or different from, the effects of other exchange-specific mechanisms that currently restrict trading on the relevant exchange under certain circumstances? More generally, to what extent is it appropriate for different exchanges to adopt different and potentially inconsistent approaches to trading pauses or restrictions that might affect the same stock? To what extent does the answer change based on whether the affected stock is already subject to a market-wide single-stock circuit breaker that applies consistently across all trading venues?

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–2010–074 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–Nasdaq–2010–074. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Nasdaq–2010–074 and should be submitted on or before August 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17191 Filed 7–14–10; 8:45 am]

BILLING CODE 8010–01–P

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62480; File No. SR–FINRA–2010–022]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating To Amending the Codes of Arbitration Procedure To Increase the Number of Arbitrators on Lists Generated by the Neutral List Selection System

July 9, 2010.

On April 29, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change. The proposed rule change was published for comment in the **Federal Register** on May 26, 2010.[3] The Commission received six comments on the rule proposal.[4]

I. Description of the Proposed Rule Change

FINRA proposed to amend Rules 12403 and 12404 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rules 13403 and 13404 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to increase

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Rel. No. 62134 (May 19, 2010), 75 FR 29594 (May 26, 2010) (File No. SR–FINRA–2010–022).

[4] *See* Submission via SEC WebForm from A. M. Miller, dated May 6, 2010 ("Miller comments"); Submission via SEC WebForm from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated May 27, 2010 ("Caruso comments"); Letter to Elizabeth M. Murphy, Secretary, Commission from Patricia Cowart, Chair, Arbitration Committee, Securities Industry and Financial Markets Association, dated May 27, 2010 ("SIFMA letter"); Submission via SEC WebForm from Leonard Steiner, Steiner & Libo, P.C., dated May 27, 2010 ("Steiner comments"); Letter to Elizabeth M. Murphy, Secretary, Commission from Scott R. Shewan, President, Public Investors Arbitration Bar Association, dated June 14, 2010 ("PIABA letter"); and Letter to Elizabeth M. Murphy, Secretary, Commission from Jill I. Gross, Director, Ed Pekarek, Clinical Law Fellow, and Jeffrey Gorenstein, Student Intern, Pace Law School Investor Rights Clinic, dated June 16, 2010 ("PIRC letter").

the number of arbitrators on each list generated by the Neutral List Selection System ("NLSS").

The NLSS is a computer system that generates, on a random basis, lists of arbitrators from FINRA's rosters of arbitrators (*i.e.,* public, non-public, and chair rosters) for each arbitration case. The parties select their panel through a process of striking and ranking the arbitrators on the lists. Currently, FINRA sends the parties lists of available arbitrators, along with detailed biographical information on each arbitrator. In a three-arbitrator case, other than one involving a dispute among members, the parties receive three lists of eight arbitrators each—one public, one chair-qualified and one non-public. Each party is permitted to strike up to four of the eight names on each list and ranks the remaining names in order of preference. FINRA appoints the panel from among the names remaining on the lists that the parties return.[5]

When there are no names remaining on a list, or when a mutually acceptable arbitrator is unable to serve, a random selection is made to "extend the list" by generating names of additional arbitrators to complete the panel. Parties may not strike the arbitrators on the extended lists, but they may challenge an arbitrator for cause (*e.g.,* on the basis of conflict of interest).

Prior to 2007, FINRA permitted parties unlimited strikes of proposed arbitrators on lists. This often resulted in parties collectively striking all of the arbitrators on each list generated through NLSS. When this occurred, staff would use NLSS to "extend the list" by generating names of additional arbitrators to complete the panel. Parties expressed concern about extended list arbitrator appointments because they could not strike arbitrators from an extended list. In response to this concern, in 2007, FINRA changed the arbitrator appointment process through a rule change that limited the number of strikes each party may exercise to four, in an effort to reduce the frequency of extended list appointments.[6] Under the current rule, FINRA permits each party to strike up to four arbitrators from each list of eight arbitrators generated through NLSS and up to eight arbitrators from each list of 16 arbitrators generated through NLSS. The rules limiting strikes have significantly reduced extended lists and thus increased the percentage of cases in which FINRA initially appoints arbitrators from the parties' ranking lists. However, after each side exercises its strikes, typically only one or two persons remain eligible to serve on a case. Therefore, when FINRA grants a challenge for cause or an arbitrator withdraws, FINRA often must appoint the replacement arbitrator using an extended list. Forum users, including both investor and industry parties, continue to express concerns about extended list appointments.[7]

As a result of these concerns, FINRA proposed to amend Rule 12403 of the Customer Code to expand the number of arbitrators on each list (public, non-public, and public chairperson) generated through NLSS from eight arbitrators to 10 arbitrators. Thus, in every two party case, at least two arbitrators would remain on each list after strikes.[8] FINRA stated that the additional number of arbitrators will increase the likelihood that the parties will get panelists they chose and ranked, even when FINRA must appoint a replacement arbitrator. FINRA also stated that, in cases with more than two parties, expanding the lists from eight to 10 arbitrators should significantly reduce the number of arbitrator appointments needed from extended lists.[9]

FINRA also proposed to amend Rule 13403 of the Industry Code to expand the number of arbitrators on lists generated through NLSS.[10] For disputes between members, FINRA would expand the number of arbitrators on the non-public chairperson list generated through NLSS from eight arbitrators to 10 arbitrators and the number of arbitrators on the non-public list from 16 arbitrators to 20 arbitrators. For disputes between associated persons, or between or among members and associated persons, FINRA would expand the number of arbitrators on each list (public, non-public, and public chairperson) generated through NLSS from eight arbitrators to 10 arbitrators.

FINRA considered whether increasing each list of arbitrators would be unduly burdensome for parties since parties would be reviewing the backgrounds of additional arbitrators during the ranking and striking stage of the arbitrator appointment process. In instances where FINRA appoints arbitrators by extended lists, parties still need to review arbitrators' backgrounds to determine, for example, whether to challenge an extended list arbitrator for cause. FINRA staff discussed expanding the lists with both investor and industry representatives, and asked the representatives to address the potential burden of reviewing additional arbitrators. The representatives uniformly stated that they would prefer to review additional arbitrators at the ranking and striking stage of the arbitrator appointment process in order to reduce the incidences of extended list appointments.

II. Summary of Comments

The Commission received six comments regarding the proposed rule change. On June 21, 2010, FINRA submitted a response to the comments.[11]

All of the commenters support the proposed rule change, either in whole or with certain modifications. The PIABA letter states that "this rule change is important because it will reduce the number of instances in which an arbitrator is appointed with no input from or approval by the parties." The SIFMA letter states that the proposal "will increase the likelihood that all arbitrators appointed to a case will have been selected by the parties, result in fewer administrative 'extended list' appointments, and enhance party choice and satisfaction with the selection process." Likewise, PIRC supports the proposal "because it increases the parties' ability to present their dispute to an arbitrator of their own choosing,"[12] and the Caruso comments state that the proposed rule change "would provide investors with greater control and choice over the individuals who will ultimately be appointed to serve on the arbitration panels" and urges the Commission to approve the proposal on an expedited basis.

[5] In an arbitration between members, the panel consists of non-public arbitrators, and so the parties receive a list of 16 arbitrators from the FINRA non-public roster, and a list of eight non-public arbitrators from the FINRA non-public chairperson roster. *See* FINRA Rules 13402 and 13403. Each separately represented party may strike up to eight of the arbitrators from the non-public list and up to four of the arbitrators from the non-public chairperson list. *See* FINRA Rule 13404.

[6] Exchange Act Release No. 55158 (January 24, 2007), 72 FR 4574 (January 31, 2007) (File No. SR–NASD–2003–158).

[7] The rationale for the proposed rule change was confirmed in a telephone conversation between Margo Hassan, FINRA Dispute Resolution, and Joanne Rutkowski, Division of Trading and Markets, Commission, May 18, 2010.

[8] FINRA did not propose to expand the number of allowable strikes for each party.

[9] Under the rules, each "separately represented" party is entitled to strike four arbitrators from an eight arbitrator list. If, for example, a case involves a customer, a member and an associated person, and each party is separately represented, even with 10 arbitrators there is a chance that all of the arbitrators will be stricken from the list.

[10] Again, FINRA did not propose to expand the number of allowable strikes for each party.

[11] *See* Letter to Elizabeth M. Murphy, Secretary, Commission from Margo A. Hassan, Assistant Chief Counsel, FINRA Dispute Resolution, Financial Industry Regulatory Authority, dated June 21, 2010 ("FINRA response").

[12] *See* PIRC letter.

The Steiner comments suggest limiting the current proposal to cases in which there is only one respondent or multiple respondents being represented by only one attorney.[13] The Steiner comments also ask that: (1) FINRA be ordered to effectuate immediately additional modifications to eliminate the portions of Rule 12404 that give each separately represented respondent a separate set of strikes, and to replace those portions with provisions that the amount of strikes that may be exercised by respondents in total cannot exceed the amount of strikes that can be exercised in total by the claimant; (2) that FINRA be ordered immediately to rescind its interpretation of Rule 12404 that permits even non-appearing respondents from participating in the arbitrator selection process; and (3) that FINRA be ordered to immediately propose a rule change providing that instead of appointing a cram down arbitrator that a new selection list be sent to the parties. FINRA notes that it is not proposing to amend its rules relating to party strikes, participation in arbitrator selection, or extended list appointments and that, therefore, the comments are outside the scope of the proposed rule change.[14]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[16] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will protect investors and the public interest by providing investors greater control in the arbitrator selection process. Forum users have criticized extended list appointments and asked FINRA to reduce the number of arbitrators appointed in this way. Expanding the number of arbitrators on lists generated through NLSS should help to reduce extended list appointments and so increase the likelihood that arbitrators from each initial list would remain on the list after the parties complete the striking and ranking process. This, in turn, should enhance investor and industry participants' confidence in the arbitration process. Concerning the requests in the Steiner comments that FINRA be ordered to take certain actions, the Commission finds that requested actions are beyond the scope of the current rulemaking.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–FINRA–2010–022) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17275 Filed 7–14–10; 8:45 am]

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[13] PIRC supports the proposed rule change, and advocates a further rule revision that would give four strikes per side, rather than to each "separately represented party." *See id.*

[14] *See* FINRA response.

[15] In approving the proposed rule change, the Commission has considered the rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78o–3(b)(6).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

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; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Notice; correction.

SUMMARY: The Securities and Exchange Commission published a document in the **Federal Register** of July 8, 2010, concerning a Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amending the Direct Edge ECN Fee Schedule by the International Securities Exchange, LLC; The document contained a typographical error in several section designations.

FOR FURTHER INFORMATION CONTACT: Yvonne Fraticelli, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549, (202) 551–5654.

Correction

In the **Federal Register** of July 8, 2010, in FR Doc. 2010–16668, on page 39313, in the first line of the second column, correct the section designation to read "II.", and on page 39314, fifth line from the bottom of the first column and in the Solicitation of Comments heading in the second column, correct the section designations to read "III." and "IV.", respectively.

Dated: July 9, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17215 Filed 7–14–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62479; File No. SR–NYSEAmex–2010–31]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Amendment Nos. 2 and 3, and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To Adopt as a Pilot Program a New Rule Series for the Trading of Securities Listed on the Nasdaq Stock Market Pursuant to Unlisted Trading Privileges, and Amending Existing NYSE Amex Equities Rules as Needed To Accommodate the Trading of Nasdaq-Listed Securities on the Exchange

July 9, 2010.

I. Introduction

On March 26, 2010, NYSE Amex LLC ("Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Adopt, as a pilot program, a new NYSE Amex Equities Rule Series (Rules 500–525) for the trading of securities listed on the Nasdaq Stock Market ("Nasdaq") pursuant to unlisted trading privileges ("UTP"); and (2) amend existing NYSE Amex Equities rules to accommodate the trading of Nasdaq-listed securities on the Exchange. Subsequently, on April 6, 2010, NYSE Amex filed Amendment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

No. 1 to the proposed rule change. The proposed rule change, as amended, was published in the **Federal Register** on April 19, 2010.[3] The Commission received no comments on the proposal. On June 21, 2010, NYSE Amex filed Amendment No. 2 to the proposed rule change. On July 9, 2010, NYSE Amex filed Amendment No. 3 to the proposed rule change. This order provides notice of filing of Amendment Nos. 2 and 3, and grants accelerated approval to the proposed rule change, as modified by Amendment Nos. 1, 2, and 3.

II. Description of the Proposal

A. Overview

The Exchange proposes to adopt, as a pilot program, a new NYSE Amex Equities Rule Series to specifically govern the trading of any security listed on the Nasdaq that (1) is designated as an "eligible security" under the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, as amended ("UTP Plan"); and (2) has been admitted to dealings on the Exchange pursuant to UTP in accordance with Section 12(f) of the Act[4] (collectively, "Nasdaq Securities"). The Exchange proposes to trade Nasdaq Securities on the same systems and facilities it uses to trade its listed securities in accordance with the same trading rules, subject to certain exceptions:

- There will not be an opening or closing auction for Nasdaq Securities traded on the Exchange. Trading in Nasdaq Securities will open on a quote at 9:30 a.m. and will close at 4 p.m., or immediately thereafter under certain circumstances, using the last sale on the Exchange as the Closing Price.
- "Good 'til Canceled" ("GTC") Orders and "Stop" Orders for Nasdaq Securities will be modified to provide that any GTC or Stop Orders that are unexecuted at the close of trading will be treated as Day Orders and canceled. In addition, the Exchange will not accept limit or market "At the Close" ("MOC/LOC"), "At the Opening" ("OPG"), "Closing Offset" ("CO") or "Good 'til Cross" ("GTX") Orders for the trading of Nasdaq Securities. All other order types will be accepted.
- Each Nasdaq Security will be assigned one Designated Market Maker ("DMM") Unit, though the allocation process will be streamlined to follow the approach used by the Exchange for Supplemental Liquidity Providers ("SLPs").
- For those Nasdaq Securities in which it is registered, a DMM Unit will be responsible for the affirmative obligation of maintaining a fair and orderly market in accordance with Exchange rules, subject to an enhanced quoting requirement and a phased-in implementation of Depth Guidelines and Price Participation Points ("PPPs") to enable the Exchange to collect trading data adequate to calculate such guidelines.
- Trading in Nasdaq Securities will be subject to rules that are substantially similar to FINRA's "Manning Rule," rather than Rule 92—NYSE Amex Equities.
- The Exchange's audit trail rules, including Rules 123– and 132B–NYSE Amex Equities, will apply to the trading of Nasdaq Securities on the Exchange, except that those members and member organizations that are also FINRA members and subject to FINRA's Rule 7400 Series ("Order Audit Trail System" or "OATS") will be exempt from Rules 123– and 132B–NYSE Amex Equities.

NYSE Amex will trade Nasdaq-listed equities and any other Nasdaq-listed security that trades like an equity security (*e.g.*, rights, warrants), and will also trade one Nasdaq-listed exchange traded fund ("ETF"), the Invesco PowerShares QQQ™ Exchange Traded Fund ("QQQs").

The Exchange intends to implement trading of Nasdaq Securities using a phased-in approach, and to expand the program to eventually include all securities listed on Nasdaq. The Exchange proposes that this pilot program commence on the date the Commission approves the proposed rule change, and that it continue until the earlier of the Commission's approval to make such pilot program permanent or September 30, 2010.

B. Applicability and Trading Hours

Trading of Nasdaq Securities on the Exchange shall be governed by existing NYSE Amex Equities rules, as well as the new Rule 500 Series. To the extent the existing rules conflict with the Rule 500 Series, the Rule 500 series will control.

Pursuant to proposed Rule 502, the Exchange will trade Nasdaq Securities during regular trading hours in accordance with existing Rule 51. The Exchange also will permit Nasdaq Securities to trade in the Exchange's "Off-Hours Trading Facility." Due to modifications to the opening and closing for Nasdaq Securities, a member or member organization will not be permitted to make any bid, offer, or transaction for a Nasdaq Security on Exchange systems, or route an order for a Nasdaq Security to another market center from Exchange systems, before 9:30 a.m. or after the close of the Off-Hours Trading session.

C. Assignment of Nasdaq Securities to DMMs and SLPs

The Exchange proposes to trade Nasdaq Securities within the existing DMM and SLP framework used to trade its listed securities. The Exchange will create a "Nasdaq Securities Liaison Committee," consisting of NYSE Euronext employees of the Operations and U.S. Markets Divisions,[5] which will be responsible for reviewing and admitting Nasdaq Securities for trading on the Exchange. After admitting a Nasdaq Security to dealings on the Exchange, the Nasdaq Securities Liaison Committee also will assign the security to a DMM Unit and one or more SLPs.[6] No more than one DMM Unit will be assigned to any Nasdaq Security, and a member organization will not be permitted to be registered as both the DMM Unit and an SLP for the same Nasdaq Security. In its discretion, the Nasdaq Securities Liaison Committee also may reassign one or more Nasdaq Securities to a different DMM Unit or to a different SLP or SLPs.

Existing Exchange DMM Units will be automatically eligible for the assignment of Nasdaq Securities, so long as they qualify in accordance with Rules 98– and 103B(II)–NYSE Amex Equities, and proposed Rule 504(b)—NYSE Amex Equities.[7]

The Exchange intends to admit the QQQ to trading, and has proposed a set of special requirements governing the assignment of the QQQs and its component securities.[8]

D. Integration of NYSE Amex-Listed Securities and Nasdaq Securities at Posts on the Trading Floor

The Exchange anticipates that some DMM Units currently registered on the NYSE will seek to register as DMM

[3] *See* Securities Exchange Act Release No. 61890 (April 12, 2010), 75 FR 20401 ("Notice").

[4] 15 U.S.C. 78*l*(f).

[5] A representative of NYSE Regulation Inc. ("NYSER") would act as an *ad hoc* member of the Committee.

[6] *See* proposed NYSE Amex Equities Rule 501.

[7] The Exchange proposes to amend Rules 98(b)(2) (definition of "DMM unit") and 98(b)(15) (definition of "Related products")—NYSE Amex Equities to accommodate the trading of Nasdaq Securities on the Exchange.

[8] *See* proposed Rule 504—NYSE Amex Equities. The Exchange stated that it will review proposed Rule 504—NYSE Amex Equities and the provisions governing the allocation of the QQQs and its component securities if the Exchange's share of the market for the Nasdaq Securities it trades exceeds 10% of the consolidated Tape C aggregate average daily trading volume. *See id.,* 75 FR at 20405.

Units on the Exchange to trade Nasdaq Securities. Under Exchange rules, all current NYSE members and member organizations are deemed members and member organizations of the Exchange, and DMM Units are automatically granted an NYSE Amex Equities trading license.[9] An NYSE DMM Unit that wishes to trade Nasdaq Securities and that is not already registered as a DMM Unit on the Exchange will need to register as such with the Exchange to ensure proper tracking and systems configuration. Similarly, each DMM will need to register with the Exchange to confirm that it meets all applicable registration requirements and to ensure proper tracking and systems set-up. In addition, an NYSE DMM Unit seeking to register as a DMM Unit on the Exchange will also need to advise FINRA, so that FINRA can assess whether such registration triggers different and/or additional financial and operational requirements, including but not limited to those pertaining to net capital.

Proposed Rules 103B(IX) and 504(d)–NYSE Amex Equities will require that Nasdaq Securities be allocated for trading, and DMM Units shall trade such securities, only at panels exclusively designated for trading listed and/or Nasdaq Securities on the Exchange.

Exchange-listed equities securities currently trade on Posts 1 and 2 on the Trading Floor. However, there are not enough panels on those posts to accommodate the trading of additional hundreds of Nasdaq Securities. To accommodate the trading of Nasdaq Securities, the Exchange needs to trade Exchange-listed and Nasdaq Securities on additional posts. Therefore, the Exchange proposes to amend Rule 103B–NYSE Amex Equities to permit Exchange-listed securities and securities admitted to dealings on the Exchange on a UTP basis to trade on posts throughout the Trading Floor. To prevent any confusion that could arise among members trading both NYSE-listed and Exchange-listed or traded securities, which trade under different rules, proposed Rule 103B(IX) would provide that Exchange-listed and/or traded (*i.e.* Nasdaq Securities) securities shall be assigned only to panels designated for the trading of such securities.

A DMM Unit that is registered to trade NYSE- and Exchange-listed securities, as well as Nasdaq Securities, could trade all such securities at the same post. However, a DMM Unit staff person would not be permitted to simultaneously trade both NYSE and NYSE Amex/Nasdaq securities, and the DMM Unit would need to commit staff to trade NYSE-listed securities separate from staff committed to trade Exchange-listed or traded securities at any given time during the trading day. However, intraday staff moves between panels would be permitted.

E. Security Allocation and Reallocation

Rule 103B–NYSE Amex Equities prescribes the criteria and procedures for the allocation and/or reallocation of NYSE Amex-listed equities securities to registered and qualified DMM Units. In particular, part IX of the rule currently provides that Exchange-listed equity securities must be allocated to posts on the Trading Floor that are exclusively designated for the trading of NYSE Amex securities.

F. Assignments to SLPs

An Exchange member or member organization may apply to be an SLP in Nasdaq Securities and will be eligible for the assignment of Nasdaq Securities once it registers and qualifies as an SLP in accordance with Rule 107B–NYSE Amex Equities. As with NYSE-registered DMMs and DMM Units, an NYSE-registered SLP is automatically deemed a member organization of NYSE Amex Equities under Rule 2.10–NYSE Amex Equities. An NYSE-registered SLP that wishes to trade Nasdaq Securities as an NYSE Amex SLP must register with and be approved by the Exchange as an SLP in accordance with all applicable NYSE Amex Equities Rules.

The Nasdaq Securities Liaison Committee will assign one or more SLPs to Nasdaq Securities for trading on the Exchange. A member organization cannot be both the DMM Unit and an SLP for the same Nasdaq Security. If an SLP withdraws from its status as an SLP, its Nasdaq Securities will be reassigned to a different SLP(s) in accordance with Rule 107B–NYSE Amex Equities.

G. Units of Trading; Bids and Offers; Dissemination of Quotations; Priority

Proposed Rule 506–NYSE Amex Equities prescribes the basic unit of trading for Nasdaq Securities, and addresses some requirements for bids and offers, the dissemination of quotations, and priority and parity of executions of Nasdaq Securities. Nasdaq Securities will be traded almost exactly as the Exchange's listed securities.[10]

H. Openings and Closings

The Exchange will not conduct an opening or closing auction in Nasdaq Securities. Instead, NYSE Amex will open trading on a quote at 9:30 a.m. and close on the last sale on the Exchange at 4 p.m.

1. Openings

Under proposed Rule 508(a), trading in each Nasdaq Security will open at 9:30 a.m. or as soon thereafter as possible, or at such other time as may be specified by the Exchange, based on a quote published by the DMM Unit assigned to the security. Because Nasdaq Securities will open on a quote, DMM Units will not be permitted or required to provide pre-opening or opening indications as prescribed by Rules 15– and 123D–NYSE Amex Equities. In addition, because the Exchange will not conduct an opening auction for Nasdaq Securities, DMM Units will not be permitted or required to hold or represent orders for Nasdaq Securities pursuant to Rule 115A.20–NYSE Amex Equities. Orders for Nasdaq Securities shall not be accepted by the Exchange, and will be systemically blocked, before trading opens on any business day.[11]

2. Closings

Under Rule 508(b), trading in Nasdaq Securities will not close based on a closing auction, but will instead close at the end of the regular trading session at 4 p.m., or at such other time as may be specified by the Exchange. Except for "aggregate-price orders"[12] or "closing-price orders" entered to offset an error entered in the "Off-Hours Trading Facility" in accordance with proposed Rule 511–NYSE Amex Equities, orders for Nasdaq Securities will not be accepted by the Exchange after the regular trading session on any business day.[13]

The "Closing Price" for a Nasdaq Security will be the price of its last sale on the Exchange at or prior to the close

[9] *See* Rules 2.10– and 2.20–NYSE Amex Equities.

[10] *See* Notice, *supra* note 3, 75 FR at 20405–06, for a detailed discussion of the trading rules applicable to Nasdaq Securities.

[11] The Exchange has filed a proposed rule change to incorporate the receipt and execution of odd-lot interest into the round lot market ("trading-in-shares") and to decommission the use of the odd-lot system. *See* Securities Exchange Act Release No. 62303 (June 16, 2010), 75 FR 35865 (June 23, 2010) (SR–NYSEAmex–2010–53). However, until the implementation of trading-in-shares by the Exchange, odd-lot orders in Nasdaq Securities that are received by the Exchange prior to the opening of trading in those securities on the Exchange will be held and will not be executed until the first round-lot transaction in each particular security. *See* section II.U *infra*. Open odd-lot orders may be cancelled by the entering firm at any time.

[12] The Exchange is proposing to amend the definition of "aggregate-price order" under Rule 900–NYSE Amex Equities to accommodate trading Nasdaq Securities in the Off-Hours Trading Facility.

[13] These terms are defined under Rule 900–NYSE Amex Equities.

of regular trading at 4 p.m.[14] Orders for Nasdaq Securities that are unexecuted at the close of trading at 4 p.m. shall be cancelled.

When the market for a Nasdaq Security is slow at the close of trading because of a gap quote situation, the DMM Unit must execute the final trade in the security in a manner consistent with a fair and orderly market, with reference to the trading characteristics of the security at issue, including its price, average daily trading volume ("ADTV"), average volatility, the prior sale of the security on the Exchange, and the closing price on the UTP Listing Market.[15] To ensure this, Floor Governor approval is required to close a Nasdaq Security that is "slow." In such circumstances, the DMM will pair off liquidity to the extent available, and then execute a final trade at or immediately after the close that will set the Closing Price. All residual marketable interest for that security received prior to the close of trading shall first be executed at the Closing Price and then all unexecuted interest for the security shall be cancelled.

If an extreme order imbalance at or near the close of the regular trading session could result in a Closing Price dislocation, the procedures of Rule 123C(9)–NYSE Amex Equities, which permit the Exchange to temporarily suspend the hours of operation for the solicitation and entry of orders into Exchange systems, shall apply. However, because the Exchange will not conduct a closing auction in Nasdaq Securities, no other procedures of Rule 123C–NYSE Amex Equities shall apply to trading in Nasdaq Securities.

The proposed modifications to the opening and closing of the trading of Nasdaq Securities require corresponding modifications to the "GTC" and "Stop" order types. Specifically, GTC Orders and unelected Stop Orders for Nasdaq Securities that are not fully executed at the close of the regular trading session shall be treated as Day Orders and shall be cancelled; they will not remain on the Exchange's systems overnight. In addition, because the Exchange will not conduct either an opening or closing auction in Nasdaq Securities, the Exchange will not accept MOC/LOC, OPG, CO, or GTX Orders for Nasdaq Securities. All other order types noted in Rule 13–NYSE Amex Equities will be permitted for the trading of Nasdaq Securities.[16]

I. Dealings of DMM Units and SLPs

As noted above, the Exchange proposes to trade Nasdaq Securities using the same DMM/SLP framework as currently used for its listed securities.

1. DMM Units

DMM Units registered to trade Nasdaq Securities on the Exchange will be required to fulfill their responsibilities and duties for those securities in accordance with all applicable Exchange rules and requirements ("DMM rules"),[17] subject to two modifications. First, in lieu of the tiered quoting requirement (5% and 10%) currently in place for listed securities under Rule 104(a)(1)(A)—NYSE Amex Equities, proposed Rule 509(a)(1) requires a DMM Unit to have a bid or offer at the national best bid or national best offer ("inside") in each assigned Nasdaq Security an average of at least 10% of the time, or more, during the regular business hours of the Exchange for each calendar month.[18] Second, pursuant to Rules 104(f)(ii)– and (iii)–NYSE Amex Equities, a DMM Unit is responsible for maintaining price continuity with reasonable depth for its registered Nasdaq Securities, in accordance with Depth Guidelines to be published by the Exchange. However, to give the Exchange time to phase-in appropriate Depth Guidelines and PPPs, these provisions will not be operative until 18 weeks after the approval of the proposed rule change by the Commission.[19]

As is the case with listed securities, a DMM Unit also will be responsible for facilitating openings, reopenings, and closings for each of the Nasdaq Securities in which it is registered, in accordance with applicable NYSE Amex Equities rules, including the procedures of proposed Rules 508– and 515–NYSE Amex Equities.[20] A DMM Unit also will be responsible for facilitating trading when the market is "slow" (such as during a gap quote)[21] and helping to close Nasdaq Securities that are subject to an imbalance. Other obligations would apply, including providing contra side liquidity as needed for the execution of odd-lot orders in Nasdaq Securities, meeting stabilization and re-entry requirements, and complying with the net capital requirements under the Act and Rules 103.20–, 4110–, and 4120–NYSE Amex Equities.

The DMM would be the sole market maker on the Exchange in its registered Nasdaq Securities. The Exchange believes that, because it would retain obligations that other market participants, both on the Exchange and in other markets, do not have, a DMM Unit should retain the benefits of parity and liquidity incentives, as well as the ability to use the Capital Commitment Schedule ("CCS"),[22] when trading Nasdaq Securities.[23]

In addition, other provisions of existing Exchange rules related to DMM responsibilities and obligations would be modified:

- DMMs will not be required to obtain Floor Official approval prior to engaging as a dealer in transactions for Nasdaq Securities that fall under Rule 79A.20–NYSE Amex Equities.
- Notwithstanding the prescriptions of Rule 36.30–NYSE Amex Equities governing communications to and from the DMM Unit post on the Trading Floor, an individual DMM registered in an ETF may use a telephone connection or order entry terminal at the DMM Unit's post to enter a proprietary order in the ETF in another market center, in a component security of such ETF, or in an option or futures contract related to such ETF, and may use the post

[14] *See* Rules 502– and 508– NYSE Amex Equities. *See also* proposed Rule 501–NYSE Amex Equities.

[15] Under proposed Rule 501–NYSE Amex Equities, the Exchange defines the term "UTP Listing Market" to have the same meaning as the term "Listing Market," as defined under the "UTP Plan" (also defined therein).

[16] *See* proposed Rule 501—NYSE Amex Equities.

[17] The term "DMM rules" is defined in Rule 98—NYSE Amex Equities.

[18] Credit will be given for executions for the liquidity provided by the DMM Unit. Reserve or other hidden orders entered by the DMM Unit will not be included in the inside quote calculations.

[19] The Exchange believes that a phased-in approach is appropriate so that Depth Guidelines and PPPs may be calculated based on actual trading data of Nasdaq Securities on the Exchange. Accordingly, following implementation and roll-out of the pilot program, NYSE Amex would collect and analyze 60 days of trade data and would then implement these guidelines for trading Nasdaq Securities on the Exchange within 30 calendar days. The 18-week phase-in period contemplates a two-week period to roll out the pilot program.

[20] However, because proposed rules do not provide for opening and closing auctions in Nasdaq Securities, DMMs would not be responsible for facilitating openings and closings. The Exchange has represented that, if it were to amend its rules to provide for openings and closing in Nasdaq Securities, a DMM would be responsible for facilitating openings and closings in its assigned securities.

[21] A DMM Unit facilitates trading in slow markets by either conducting an auction or trading out of the slow market to resume a "fast" (*i.e.* quote-protected) market. It does not mean, however, that a DMM Unit must participate on the contra-side of the market when it is slow.

[22] *See* Rule 1000(d)—NYSE Amex Equities.

[23] The Exchange has stated that it will submit a separate fee filing detailing the rebate structure for trading Nasdaq Securities at a later date. The Exchange has represented that, although the price levels will likely differ from the rebate in place for trading in listed equities, the structure will be similar—specifically, that rebates will be paid to DMMs, SLPs, and other members (including Floor brokers) who provide liquidity on the Exchange. Telephone conversation between Jason Harman, Consultant, NYSE Amex, and Nathan Saunders, Special Counsel, Division of Trading and Markets, Commission, on June 9, 2010.

telephone to obtain public market information with respect to such ETF, options, futures, or component securities. If the order in the component security of the ETF is to be executed on the Exchange, the order must be entered and executed in compliance with Rule 112–NYSE Amex Equities and Rule 11a2–2(T) under the Act, and must be entered only for the purpose of creating a bona fide hedge for a position in the ETF. The Exchange is proposing to add this provision to permit DMM Units registered in an ETF to execute more efficiently hedging transactions for the security.[24]

2. SLPs

An SLP registered in one or more Nasdaq Securities must fulfill its responsibilities and duties for those securities in accordance with all applicable Exchange rules, including, but not limited to, Rule 107B–NYSE Amex Equities. The SLP quoting requirements for Nasdaq Securities shall be the same as for securities listed on the Exchange.

J. Derivative Securities Products

The Exchange also proposes some specific additional provisions that will apply to ETFs that are "new derivative securities products" traded pursuant to Rule 19b–4(e) under the Act.[25]

For each such ETF, the Exchange must file a Form 19b–4(e) with the Commission. In addition, the Exchange will distribute an information circular prior to the commencement of trading in each such product that generally includes the same information as contained in the information circular provided by the UTP Listing Market for the product, including: (a) The special risks of trading the new product; (b) the Exchange rules that will apply to the new product, including Rule 405–NYSE Amex Equities; (c) information about the dissemination of the value of the underlying assets or indexes; and (d) the risks of trading outside of the regular trading session for the product due to the lack of calculation or dissemination of the value of the underlying assets or index, the intra-day indicative value, or a similar value.

Members and member organizations that trade these ETFs will be subject to the prospectus delivery requirements of the Securities Act of 1933, unless the product is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 or the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. As a result, members and member organizations will be required to provide all purchasers of such an ETF with a written description of the terms and characteristics of the product at the time confirmation of the first transaction in the product is delivered to the purchaser. In addition, members and member organizations will be required to include a written description with any sales material relating to the product that they provide to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to the ETF as an investment vehicle must include a statement that such materials are available.

Members or member organizations carrying omnibus accounts for non-members will be required to inform non-members that execution of an order to purchase an ETF for the omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this Rule. Upon request of a customer, a member or member organization shall also provide a prospectus for the particular product.

To accommodate the trading of ETFs that qualify under this rule, the Exchange also proposes additional requirements for trading halts. If a temporary interruption occurs in the calculation or wide dissemination of the intraday indicative value, the value of the underlying index, portfolio or instrument, or similar value of a product and the UTP Listing Market halts trading in the product, the Exchange, upon notification by the UTP Listing Market of such halt due to such temporary interruption, shall also immediately halt trading in that product.

If the interruption in the calculation or wide dissemination of the intraday indicative value, the value of the underlying index, portfolio or instrument, or similar value continues as of the commencement of trading on the Exchange on the next business day, the Exchange shall not commence trading of the product on that day. If the interruption in the calculation or wide dissemination of the intraday indicative value, the value of the underlying index, portfolio or instrument, or similar value continues, the Exchange may resume trading in the product only if calculation and wide dissemination of the intraday indicative value, the value of the underlying index, portfolio or instrument, or similar value resumes or trading in the product resumes on the UTP Listing Market.

For an ETF where a net asset value or disclosed portfolio is disseminated, the Exchange will immediately halt trading in such product upon notification by the UTP Listing Market that the net asset value or disclosed portfolio is not being disseminated to all market participants at the same time. The Exchange may resume trading in the product only when dissemination of the net asset value or disclosed portfolio to all market participants at the same time resumes or trading in the product resumes on the UTP Listing Market.

In addition, the Exchange will enter into a comprehensive surveillance sharing agreement with any market trading components of the index or portfolio on which the product is based to the same extent as the UTP Listing Market's rules require the UTP Listing Market to enter into a comprehensive surveillance sharing agreement with such markets.

K. Off-Hours Trading

The Exchange proposes to amend the definition of "aggregate-price order" under Rule 900–NYSE Amex Equities to accommodate trading of Nasdaq Securities in the Off-Hours Trading Facility. Nasdaq Securities will be accepted by the Exchange's Off-Hours Trading Facility as part of an aggregate-price order, or as a closing-price order entered to offset a transaction made in error, as those terms are defined under Rule 900–NYSE Amex Equities.

L. LRPs

In its original proposal, the Exchange proposed to modify the rules developed for its primary market to add values used to calculate LRPs for Nasdaq Securities traded on the Exchange. However, in Amendment No. 3, NYSE Arca revised the proposal to provide that LRPs would not apply to Nasdaq Securities.

M. Trading Ahead of Customer Limit Orders and Customer Market Orders

Proposed Rules 513– and 514–NYSE Amex Equities prescribe limits on proprietary trading by a member or member organization holding an unexecuted customer order in a Nasdaq Security. Generally, that member or member organization would not be permitted to execute a proprietary trade for that security at a price that would

[24] The Exchange modeled this provision after a provision in NYSE Rule 36.30. *See* Securities Exchange Act Release No. 44616 (July 30, 2001), 66 FR 40761 (August 3, 2001) (SR–NYSE–2001–08) (order approving amendments to NYSE Rule 36.30).

[25] 17 CFR 240.19b–4(e).

satisfy the customer's order without executing the customer's order at that price. These rules are based on substantially similar existing FINRA rules and interpretations that prohibit trading ahead of customer orders.[26]

N. Trading Halts

Generally, as prescribed in proposed Rule 515–NYSE Amex Equities, the Exchange will follow all applicable NYSE Amex Equities Rules governing halts or suspensions, for both regulatory and/or non-regulatory purposes, of the trading of Nasdaq Securities on the Exchange, including Rules 51–, 80B–, 80C–, 123D–, and 510–NYSE Amex Equities.

In addition, the Exchange will halt or suspend trading in a Nasdaq Security when trading in that security has been halted or suspended by the UTP Listing Market for regulatory reasons in accordance with its rules and/or the UTP Plan. The Exchange will also halt or suspend trading in a Nasdaq Security when the authority under which the security trades on the Exchange or the UTP Listing Market has been revoked. This can occur when the Nasdaq Security is no longer designated as an "eligible security" pursuant to the UTP Plan or is no longer listed by the UTP Listing Market. Also, if the Exchange has removed a Nasdaq Security from dealings, trading will be halted or suspended.

If trading of a Nasdaq Security is halted or suspended pursuant to proposed Rule 515–NYSE Amex Equities, trading of the affected security on the Exchange will resume in accordance with the procedures of applicable NYSE Amex Equities rules, including Rule 508–NYSE Amex Equities, the rules of the UTP Listing Market, and/or the UTP Plan. Any orders for a Nasdaq Security that are unexecuted at the time trading is halted on the Exchange shall be cancelled, and the Exchange shall not accept any new orders for the affected security for the duration of the halt.

O. Reporting and Recordkeeping

Under the Exchange's current rules, members and member organizations are required to record and maintain certain details of an order in an electronic order tracking system ("OTS"). Additionally, members and member organizations that act as Floor brokers must record and maintain certain details of an order in the Exchange's Front-End System Capture ("FESC"). Currently, most of the Exchange's members and member organizations are FINRA members, and FINRA requires that any order in a Nasdaq-listed security by a member be reported to OATS, regardless of where the order is executed. According to the Exchange, although OATS, OTS, and FESC contain substantially the same order information, the data are in different formats and the systems are not directly compatible.

To overcome this technical obstacle, the Exchange proposed Rule 516–NYSE Amex Equities. This rule would exempt Exchange members or member organizations that are also FINRA members and subject to OATS reporting[27] from the requirements of Rules 123– and 132B–NYSE Amex Equities. This provision is designed to assist dual NYSE Amex/FINRA members and member organizations that intend to enter and/or execute orders in Nasdaq Securities on both the Exchange and other markets.

For dual NYSE Amex/FINRA members, FINRA's OATS rules will apply to an order in a Nasdaq Security up to when it is routed to the Exchange. At that point, if the order is transmitted to a Floor broker via an Exchange system, the Exchange's OTS and FESC requirements will apply to the order and capture its subsequent handling and execution on the Exchange.[28] All Exchange-only, non-FINRA members or member organizations will be subject to the Exchange's OTS and FESC requirements exclusively throughout the handling of an order for a Nasdaq Security.

The Exchange proposes to amend Rules 123–, 132B–, 342–, and 351–NYSE Amex Equities, which require members and member organizations to provide any trading information requested by the Exchange, to specify that they apply to both securities listed on the Exchange and securities "traded" on the Exchange, which include Nasdaq Securities.

P. Clearance and Settlement

Under proposed Rule 518—NYSE Amex Equities, members and member organizations that conduct transactions involving Nasdaq Securities on the Exchange will be required to comply with all applicable NYSE Amex Equities rules related to clearance and settlement of such transactions.

Q. Limitation of Liability

The Exchange will be relying on data feeds from the UTP Listing Market for the trading of Nasdaq Securities. As a result, the Exchange proposes to include a specific provision limiting liability for any loss, damage, claim, or expense arising from any inaccuracy, error, delay, or omission of any data regarding Nasdaq Securities, including, but not limited to, the collection, calculation, compilation, reporting, or dissemination of any Nasdaq Security Information, as defined in Rule 522—NYSE Amex Equities, except as provided in Rules 17– and 18– NYSE Amex Equities. In addition, the Exchange also expressly disclaims making any express or implied warranties with respect to any Nasdaq Security, any Nasdaq Security Information, or the underlying index, portfolio, or instrument that is the basis for determining the component securities of an ETF.

R. Jurisdiction

Rule 2A(b)—NYSE Amex Equities currently provides that the Exchange has jurisdiction to approve listings applications for securities admitted to dealings on the Exchange and may also suspend or remove such securities from trading. The Exchange proposes to amend this rule to include the admission of Nasdaq Securities to dealings on the Exchange on a UTP basis.

S. Proposed Amendments to Non-NYSE Amex Equities Rule 476A

The Exchange proposes to amend Non-NYSE Amex Equities Rule 476A Part 1A to include certain of the proposed NYSE Amex Equities Rule 500 Series in the Exchange's Minor Rule Violation Plan ("MRVP"). Included are:

- Rule 502—NYSE Amex Equities prohibition on making a bid, offer, or transaction, or routing an order, for a Nasdaq Security on or from Exchange systems before 9:30 a.m. or after the close of the Off-Hours Trading session.
- Rule 504(b)(5)—NYSE Amex Equities requirement for a DMM Unit registered in a Nasdaq Security that is an ETF to report the listed concentration measures.
- Rule 504(b)(6)—NYSE Amex Equities requirement to commit staff for the trading of NYSE-listed securities separate from that for the trading of Exchange-listed securities and/or Nasdaq Securities and prohibition on

[26] *See* FINRA/NASD Interpretive Material (IM) 2110–2 (Trading Ahead of Customer Limit Order) and FINRA/NASD Rule 2111 (Trading Ahead of Customer Market Orders).

[27] *See* FINRA Rule 7400 ("Order Audit Trail System").

[28] The Exchange has sought and received interpretive guidance from FINRA that FINRA Rule 7440(c)(6) exempts from FINRA's OATS requirements those orders in Nasdaq Securities received by a Floor broker that are first routed to the Exchange through Exchange systems, such as the Common Customer Gateway. *See* Letter from Brant K. Brown, Associate General Counsel, FINRA, to Claudia Crowley, NYSE Regulation, Inc., dated May 21, 2010 (filed with the Commission as Exhibit 3 to Partial Amendment No. 2 to SR–NYSE–2010–31, dated June 21, 2010).

trading NYSE-listed securities together with Exchange-listed securities and/or Nasdaq Securities at the same time.

- Rule 508(a)(2)—NYSE Amex Equities requirement for a DMM Unit to open trading in Nasdaq Securities at 9:30 a.m. or as soon thereafter as possible.
- Rule 508(b)(2)—NYSE Amex Equities requirements for closing a Nasdaq Security in a manual or slow market.
- Rule 509(a)—NYSE Amex Equities requirements for DMM Units.
- Rule 509(b)—NYSE Amex Equities requirements for DMM communications from the Floor.
- Rule 510(c)—NYSE Amex Equities requirements for dissemination and distribution of information for Nasdaq Securities that are derivative securities products.
- Rule 516—NYSE Amex Equities requirements for reporting and recordkeeping of transactions in Nasdaq Securities.
- Rule 518—NYSE Amex Equities requirements for clearance and settlement of transactions in Nasdaq Securities.

Violations of these Rules will be subject to the fine schedule in Rule 476A.[29]

T. Amendment No. 2

In Amendment No. 2, the Exchange eliminated proposed Rules 513– and 514–NYSE Amex Equities, regarding prohibitions on proprietary trading ahead of customer orders, from the proposed MRVP. Also in Amendment No. 2, the Exchange clarified that it has received interpretive guidance from FINRA regarding OATS recording and reporting obligations for Exchange Floor brokers.[30]

U. Amendment No. 3

In Amendment No. 3, the Exchange revised the proposal to: (1) Clarify that, until the implementation of its "trading-in-shares," odd-lot orders in Nasdaq Securities that are received by the Exchange prior to the opening of trading in those securities on the Exchange will be held and will not be executed until the first round-lot transaction in each particular security; and (2) clarifying that trading in Nasdaq Securities will reopen following a trading halt, suspension, or pause in the same manner that trading opens at the beginning of the trading day (*i.e.,* the DMM Unit publishes a quote); (3) amend proposed Rule 509(a)—NYSE Amex Equities to correct a drafting error, and clarify that a DMM Unit must maintain a continuous two-sided quote with reasonable size; (4) delay implementation of the certain provisions concerning PPPs; (5) remove the application of LRPs to trading in Nasdaq Securities; (6) add new Rule 508(a)(3)—NYSE Amex Equities to the Exchange's MRVP under Rule 476A; (7) incorporate new Rule 80C—NYSE Amex Equities, which governs trading pauses, into proposed Rule 515—NYSE Amex Equities; and (8) provide that DMMs do not need Floor Official approval for trading halts of Nasdaq Securities under Rule 123D—NYSE Amex Equities.

III. Discussion and Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[31] In particular, the Commission finds that the proposed rule change is consistent with: (1) Section 6(b)(5) of the Act,[32] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; (2) Section 11A(a)(1) of the Act,[33] in that it seeks to ensure the economically efficient execution of securities transactions and fair competition among brokers and dealers and among exchange markets; and (3) Section 12(f) of the Act,[34] which governs the trading of securities pursuant to UTP consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the impact of extending the existing markets for such securities.

Under this proposal, Nasdaq Securities will trade on the Exchange pursuant to rules governing the trading of Exchange-listed securities that previously have been approved by the Commission.[35] NYSE Amex is making certain minor modifications to the operation of these rules, and adding certain new rules, to accommodate the trading of Nasdaq Securities on a UTP basis. The Commission is approving all of these modifications and additions described in the proposed rule change, although only certain aspects of the proposal are highlighted in the following discussion.

A. Benefits and Obligations of Market Makers

In its approval of NYSE's new market model pilot program, the Commission recognized that the participation of market makers in exchange markets may benefit public customers by promoting more liquid and efficient trading, and that an exchange may legitimately confer benefits on market participants willing to accept substantial responsibilities to contribute to market quality.[36] While the rules of an exchange may confer special or unique benefits to certain types of participants, they also must ensure, among other things, that investors and the public interest are protected.[37] In addition, such rewards must not be disproportionate to the services provided.[38]

In considering NYSE Amex's proposal to permit trading of Nasdaq Securities on a UTP basis based on the new market model trading rules used by NYSE and NYSE Amex for their listed equity securities, we have considered whether the rewards granted to DMMs in Nasdaq Securities are commensurate with their obligations. The proposed obligations and benefits of DMMs in Nasdaq Securities closely track those applicable to DMMs in listed equities, which the Commission has approved on a pilot basis. Proposed Rule 509—NYSE Amex Equities requires a DMM Unit registered in one or more Nasdaq Securities to comply with all rules that govern DMM conduct or trading (subject to a few modifications, discussed below), including Rule 104—NYSE Amex Equities ("Dealings and Responsibilities of DMMs"), which sets forth the obligations of DMMs for Exchange-listed securities. Thus, a DMM in Nasdaq Securities would have an affirmative obligation to engage in a course of

[29] For individuals, first offenses may be charged $500, second offenses may be charged $1,000, and subsequent offenses may be charged $2,500. For member firms, first offenses may be charged $1,000, second offenses may be charged $2,500, and subsequent offenses may be charged $5,000.

[30] *See supra* note 28.

[31] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78k–1(a)(1).

[34] 15 U.S.C. 78*l*(f).

[35] *See* Securities Exchange Act Releases No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) and 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10).

[36] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379, 64388 (October 29, 2008) (SR–NYSE–2008–46).

[37] *See* 15 U.S.C. 78f(b)(5).

[38] *See* Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144, 40148 (July 11, 2008) ("Market makers can play an important role in providing liquidity to the market, and an exchange can appropriately reward them for that as well as the services they provide to the exchange's market, so long as the rewards are not disproportionate to the services provided.") (citation omitted).

dealings for its own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable.[39] In addition, a DMM in Nasdaq Securities would be required to facilitate trading (including supplying liquidity as needed), during re-openings following a trading halt, when a "gap" quote procedure is being used, and when a manual block trade is being executed.[40] Similarly, pursuant to Proposed Rule 509—NYSE Amex Equities, the rules which grant benefits, such as parity with Floor broker and customer interest[41] and the CCS, to DMMs would be applicable to DMMs in Nasdaq Securities.

As discussed above,[42] the obligations proposed for DMMs in Nasdaq Securities are slightly different that those that apply to Exchange DMMs and NYSE DMMs in listed securities. First, in lieu of the tiered quoting requirement (5% and 10%) currently in place for DMMs in listed securities, DMMs in Nasdaq Securities would be required to maintain a bid or offer at the NBB or NBO in each assigned Nasdaq Security an average of at least 10% of the time during the regular business hours of the Exchange for each calendar month. As clarified in Amendment No. 3, DMM Units will be required to maintain a continuous two-sided quote with reasonable size in their registered Nasdaq Securities. Second, Depth Guidelines and PPPs, which serve as guidelines that identify the price at or before which a DMM Unit is expected to re-enter the market after effecting a Conditional Transaction,[43] similar to those applicable to listed securities on NYSE Amex,[44] would apply to DMMs in Nasdaq Securities, but would not be operative until 18 weeks after the approval of the proposed rule change by the Commission in order to give the Exchange time to develop and phase in appropriate guidelines for Nasdaq Securities. Finally, because the proposed rules do not provide for opening and closing auctions in Nasdaq Securities, DMMs in Nasdaq Securities would not be responsible for facilitating openings and closings, as DMMs in listed equities are.[45]

After careful consideration, the Commission finds that the proposed rules relating to DMM benefits and duties in trading Nasdaq Securities on the Exchange pursuant to UTP are consistent with the Act. We note that this proposal is very similar to the previously-approved new market model pilot program currently operated by NYSE and NYSE Amex in listed securities (particularly with respect to DMM obligations and benefits).[46] In addition, like the new market model, this proposal is subject to a pilot program scheduled to end on September 30, 2010. Finally, the Commission believes that differences between the proposed rules for DMMs in Nasdaq Securities and those in effect for listed securities on NYSE and NYSE Amex are reasonable and consistent with the Act. While DMMs are not responsible for opening and closing auctions, the DMM quoting obligation is 10% in all securities, compared to 5% in more active securities and 10% in less active securities for DMMs in listed equities. Moreover, we note that the quoting obligation for Nasdaq Securities would apply to each assigned Nasdaq Security, rather than to the aggregated average of all the DMM's more-active or all the DMM's less-active assigned securities, as is the case for DMMs in listed securities. Finally, the delay in providing depth guidelines and implementing PPPs will allow the Exchange to obtain trading data for Nasdaq Securities to determine where the levels should be set, and appears to be of reasonable duration. In light of the foregoing, the Commission believes that the proposed rules regarding DMM benefits and obligations are consistent with the Act.

B. Nasdaq Securities Assignments

1. DMMs and SLP Assignments

The Exchange's Nasdaq Securities Liaison Committee will assign Nasdaq Securities to DMM Units for trading on the Exchange. No more than one DMM Unit will be assigned to any Nasdaq Security and a member organization will not be permitted to be registered as both the DMM Unit and an SLP for the same Nasdaq Security. Existing NYSE Amex Equities DMM Units will be automatically eligible for the assignment of Nasdaq Securities, so long as they qualify in accordance with the applicable NYSE Amex Equities rules.[47]

The Nasdaq Securities Liaison Committee will assign one or more SLPs to Nasdaq Securities for trading on the Exchange. NYSE Amex Equities members and member organizations may apply to be SLPs in Nasdaq Securities and will be eligible for the assignment of Nasdaq Securities in accordance with applicable NYSE Amex Equities Rules.[48] Like their counterparts in listed equities, SLPs in Nasdaq Securities will not be required to have a presence on the Trading Floor, and most will operate remotely. Therefore, the Exchange has concluded that the limitations in place regarding assignment of ETFs and their component securities to DMM Units[49] are unnecessary for SLPs.

The Commission finds that this aspect of the proposal is consistent with the Act. These proposed rules are substantially similar to existing rules for the assignment of securities to DMMs and SLPs in listed equities on NYSE and NYSE Amex that we have previously approved.[50]

2. QQQ and Component Securities

As part of this proposed rule change, NYSE Amex proposes requirements governing the assignment of the QQQs and its component securities.[51] Under proposed Rule 504—NYSE Amex Equities, a DMM Unit may be registered in both the QQQs and a component security or securities provided that, at the time of assignment, no single component in which the DMM Unit is registered exceeds 10% of the index or portfolio underlying the QQQs, and all components in which the DMM Unit is registered do not in the aggregate exceed 20% of the index or portfolio underlying the QQQs.[52] The Exchange will review its rules governing the allocation of the QQQs and component securities in the event that its market share of the Nasdaq Securities that it trades exceeds 10% of the consolidated Tape C aggregate average daily trading volume for these securities. In addition,

[39] *See* Rule 104(a)—NYSE Amex Equities.

[40] *See* Rule 104(a)(2), (4), and (5)—NYSE Amex Equities.

[41] *See* Rule 72(c)—NYSE Amex Equities.

[42] *See supra* notes 18–19 and accompanying text.

[43] The term "Conditional Transaction" is defined under Rule 104(h)(i) as "a DMM's transaction in a security that establishes or increases a position and reaches across the market to trade as the contra-side to the Exchange published bid or offer."

[44] *See* Rules 104(f)(ii)—and (iii)—NYSE Amex Equities.

[45] However, the Exchange has represented that, if it were to amend its rules to provide for openings and closing in Nasdaq Securities, a DMM would be responsible for facilitating openings and closings in its assigned securities.

[46] *See* Securities Exchange Act Release No. 58845, *supra* note 36, at 64387–89.

[47] *See supra* note 7 and accompanying text.

[48] *See* Notice, *supra* note 3, 75 FR at 20405.

[49] *See* proposed Rule 504(b)(5)—NYSE Amex Equities.

[50] *See, e.g.,* Securities Exchange Act Releases No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46); and 58877 (October 29, 2008), 73 FR 65904 (November 6, 2008) (SR–NYSE–2008–108).

[51] *See* Notice, *supra* note 3, 75 FR at 20403–05.

[52] Proposed Rule 504—NYSE Amex Equities also requires the DMM Unit registered in the QQQs to calculate, monitor, and report these components and percentages on a monthly basis. If these levels are exceeded, the DMM Unit will be required to report this to the Exchange as soon as possible. The Exchange also represented that it will calculate and monitor these levels and report them to the Nasdaq Liaison Committee. *See* Notice, *supra* note 3, 75 FR at 20403.

the Exchange will also require the DMM Unit to have policies and procedures to detect and deter violations of the Act including manipulation, front-running, and wash sales.[53]

The Commission finds that the proposal relating to the assignment of QQQs and its component securities is consistent with Section 6(b)(5) of the Act.[54] The Commission notes that the current proposal applies to only one ETF, the QQQs, which the Exchange has represented meets the composition and concentration measures to be classified as a broad-based ETF.[55] The Commission believes that, when the securities underlying an ETF consist of a number of liquid and well-capitalized stocks, the likelihood that a market participant will be able to manipulate the price of the ETF is reduced. In addition, the Commission notes that the Exchange will require the DMM Unit in the QQQs to implement policies and procedures to detect and deter inappropriate access to information about pending block trades from other business units of the DMM in the component securities, potential front-running, manipulation, intentional wash sales, and of other violations of Section 9 of the Act.[56] The Commission also notes that the DMM will be required to conduct surveillance to detect patterns of trading that are indicative of these violations.

C. Trading Posts for Nasdaq Securities

The Exchange proposes to amend Rule 103B—NYSE Amex Equities to permit Exchange-listed securities and Nasdaq Securities to trade on posts throughout the Trading Floor. Under the proposed rule, a DMM Unit that is registered to trade NYSE and NYSE Amex-listed securities, as well as Nasdaq Securities, could trade all these securities at the same post. However, NYSE Amex-listed and/or traded securities, such as Nasdaq Securities, would be assigned to specific panels. The DMM Unit would be required to commit staff to trade NYSE-listed securities that are separate from the staff committed to trade NYSE Amex-listed or traded securities at any time during the trading day. The Commission believes that these arrangements are reasonable and consistent with the Act.

D. Limits on Proprietary Trading By Members Holding Unexecuted Orders in Nasdaq Securities

Proposed Rules 513— and 514—NYSE Amex Equities provide that a member firm handling an unexecuted customer order in a Nasdaq Security may not execute a proprietary trade for that security at a price that would satisfy the customer's order, without executing the customer's order at that price. The Commission believes that these proposed rules appear reasonably designed to protect customer orders, and thus should benefit investors and the public interest. These rules are substantially similar to existing FINRA rules and interpretations that prohibit trading ahead of customer orders,[57] and thus are consistent with the Act.

E. Reporting and Recordkeeping

The Commission finds that the proposed audit trail requirements are consistent with the Act. Generally, the proposed rules subject members and member organizations trading Nasdaq Securities on the Exchange to the Exchange's audit trail requirements.

Most of the Exchange's members and member organizations also are FINRA members. FINRA requires all trades in Nasdaq-listed securities by its members, regardless of the market, to be reported to OATS. Some members and member organizations may wish to enter and/or execute orders in Nasdaq Securities on both the Exchange and other markets, which would require them to comply with the Exchange's audit trail requirements and OATS. Additionally, because Nasdaq-listed securities have not previously traded on the Exchange, some members and member organizations, particularly Floor brokers that have previously only conducted transactions in Exchange-listed securities, do not have OATS-compliant systems and procedures.

Proposed Rule 516—NYSE Amex Equities eliminates duplicative reporting by exempting from the Exchange's audit trail provisions a member or member organization that is a FINRA member subject to OATS reporting. This exception is designed to spare members and member organizations that wish to trade Nasdaq Securities on multiple markets (including the Exchange) the unnecessary expense and/or delay associated with converting to OATS-compliant systems.[58] Notwithstanding that exception, a Floor broker that receives an order in a Nasdaq Security from another member must comply with the Exchange's audit trail requirements, regardless of FINRA membership status and the applicability of an OATS reporting obligation. The Exchange has represented that it will have full access to a complete audit trail and there will be no gap in regulatory oversight.[59]

F. Trading of New Derivative Securities Products

The Exchange's proposed rules governing the trading of new derivative securities products pursuant to Rule 19b–4(e) under the Act[60] are based on similar rules adopted by other national securities exchanges.[61] The Commission believes that proposed Rule 510(d)—NYSE Amex Equities is reasonably designed to prevent trading in new derivative securities products when transparency is impaired. In addition, proposed Rule 510(e)—NYSE Amex Equities requires that the Exchange enter into a comprehensive surveillance sharing agreement ("CSSA") with markets trading components of the index or portfolio on which the new derivative securities product is based to the same extent as the listing exchange's rules require the listing market to enter into a CSSA with such markets. This provision should assist the Exchange in fulfilling its regulatory obligations under Section 19(g)(1) of the Act.[62]

[53] With respect to the potential for wash sales, the Exchange has represented that virtually all DMM interest is entered through its algorithmic trading system ("SAPI"), and that the SAPI prevents trading interest of the DMM Unit from executing against its own quotes or its other trading interest on the Exchange. While a DMM Unit could enter a proprietary order in one of its assigned securities through a system other than the SAPI, DMM Units are required to have policies and procedures in place that are reasonably designed to prevent violations of Exchange rules and the federal securities laws, including the prohibition on wash sales pursuant to Section 9 of the Act, 15 U.S.C. 78i.

[54] 15 U.S.C. 78f(b)(5).

[55] The Commission has previously approved side-by-side trading and integrated market-making for broad-based ETFs and related options, in part because the individual components of broad-based ETFs are sufficiently liquid and well-capitalized, and the composition of the ETF as a whole does not focus on one security or group of securities. *See* Securities Exchange Act Release No. 46213 (July 16, 2002), 67 FR 48232 (July 23, 2002) (SR–Amex–2002–21).

[56] Such policies and procedures will have to meet the requirements of Rule 98–NYSE Amex Equities. *See* Notice, *supra* note 3, 75 FR at 20405 n.16.

[57] *See* FINRA/NASD Interpretive Material (IM) 2110–2 (Trading Ahead of Customer Limit Order) and FINRA/NASD Rule 2111 (Trading Ahead of Customer Market Orders).

[58] The Exchange states that, although OATS contains substantially the same order information as the Exchange's electronic order tracking system ("OTS") and the Exchange's Front-End System Capture ("FESC"), OATS data are in a different format from the data recorded by OTS and FESC, and the systems are not directly compatible. *See* Notice, *supra* note 3, 75 FR at 20410–11.

[59] *See* Notice, *supra* note 3, 75 FR at 20411.

[60] 17 CFR 240.19b–4(e).

[61] *See, e.g.,* Securities Exchange Act Release No. 57448 (March 6, 2008), 73 FR 13597 (March 13, 2008) (SR–NSX–2008–05) (order approving NSX Rule 15.9); Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR–Nasdaq–2009–018) (notice of filing and immediate effectiveness for Nasdaq Rule 5740).

[62] 15 U.S.C. 78s(g)(1).

G. Additions to the MRVP

The Commission further finds that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[63] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. These proposed changes to the MRVP should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. Therefore, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[64] which governs minor rule violation plans.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with Exchange rules and all other rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires formal disciplinary action under NYSE Amex Rule 476.

H. Accelerated Approval

Amendment No. 2 did not materially alter the proposal, which had already undergone a full notice period, during which no comments were received. In Amendment No. 2, the Exchange revised the proposal to remove two rules from the Exchange's MRVP, and provided clarification on FINRA's guidance regarding the OATS recording and recordkeeping obligations for NYSE Amex Floor brokers. In Amendment No. 3, the Exchange revised the proposal to provide that LRPs would not be used for trading in Nasdaq Securities, and made certain minor changes to the proposal that do not raise material issues. The Commission finds that good cause exists, consistent with Section 19(b) of the Act,[65] for approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 prior to the thirtieth day after publication of notice of filing of Amendment Nos. 2 and No. 3 in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and No. 3, including whether those amendments are 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–2010–31 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–2010–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–31 and should be submitted on or before August 5, 2010.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[66] and Rule 19d–1(c)(2) under the Act,[67] that the proposed rule change, as modified by Amendment Nos. 1, 2 and 3 thereto (SR–NYSEAmex–2010–31), be, and it hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17274 Filed 7–14–10; 8:45 am]

BILLING CODE 8010–01–P

[63] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[64] 17 CFR 240.19d–1(c)(2).

[65] 15 U.S.C. 78s(b).

[66] 15 U.S.C. 78s(b)(2).

[67] 17 CFR 240.19d–1(c)(2).

[68] 17 CFR 200.30–3(a)(12) and 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Fineline Holdings, Inc., Order of Suspension of Trading

July 13, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fineline Holdings, Inc. because it has not filed any periodic reports since the period ended September 30, 2004.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on July 13, 2010, through 11:59 p.m. EDT on July 26, 2010.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17359 Filed 7–13–10; 11:15 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice: 7089]

Culturally Significant Objects Imported for Exhibition Determinations: "The World of Khubilai Khan: Chinese Art in the Yuan Dynasty"

ACTION: Notice, correction.

SUMMARY: On April 15, 2010, notice was published on pages 19668–19669 of the **Federal Register** (volume 75, number 72) of determination made by the Department of State pertaining to the exhibit "From Xanadu to Dadu: The World of Khubilai Khan." The reference notice is corrected to accommodate additional objects to be included in the exhibition, and the exhibit name is now titled, "The World of Khubilai Khan: Chinese Art in the Yuan Dynasty." Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the additional objects to be included in the exhibition "The World of Khubilai Khan: Chinese Art in the Yuan Dynasty," imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the additional exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about September 28, 2010, until on or about January 2, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 9, 2010.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–17308 Filed 7–14–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7088]

Culturally Significant Objects Imported for Exhibition Determinations: "The Art of Ancient Greek Theater"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "The Art of Ancient Greek Theater," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Pacific Palisades, CA, from on or about August 26, 2010, until on or about January 3, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 9, 2010.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–17311 Filed 7–14–10; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Announcing the Initiation of the 2010 Annual GSP Product Review and Deadlines for Filing Petitions

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation for public petitions.

SUMMARY: This notice announces that the Office of the United States Trade Representative (USTR) will receive petitions to modify the list of products that are eligible for duty-free treatment under the Generalized System of Preferences (GSP) program. This notice determines that the deadline for submission of product petitions, other than those requesting competitive need limitation (CNL) waivers, is 5 p.m., Tuesday, August 3, 2010. The deadline for submission of petitions requesting CNL waivers is 5 p.m., Tuesday, November 16, 2010. The lists of product petitions accepted for review will be announced in the **Federal Register** at a later date.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of the United States Trade Representative, 1724 F Street, NW., Room 601, Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the e-mail address is *Tameka_Cooper@ustr.eop.gov.*

Public versions of the product and CNL waiver petitions submitted for the August 3, 2010, deadline will be available in docket USTR–2010–0017 at *http://www.regulations.gov.* Public versions of all documents relating to this review will be made available for public viewing at *http://www.regulations.gov* upon completion of processing and no later than approximately two weeks after the relevant due date.

I. 2010 Annual GSP Review

The GSP regulations (15 CFR part 2007) provide the timetable for conducting an annual review, unless otherwise specified by **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2010 Annual GSP Product Review, all petitions to modify the list of articles eligible for duty-free treatment under GSP must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. on Tuesday, August 3, 2010. Petitions requesting CNL waivers must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. on Tuesday, November 16, 2010, in order to be considered in the 2010 Annual Review. Petitions submitted after the respective deadlines will not be considered for review. The deadline for receipt of petitions for the Country Practices Eligibility Review and related public hearing date will be announced in the **Federal Register** at a later date.

GSP Product Review Petitions

Interested parties, including foreign governments, may submit petitions to: (1) Designate additional articles as eligible for duty-free treatment under GSP, including to designate articles as eligible for GSP only for countries designated as least-developed beneficiary developing countries, or only for countries designated as beneficiary sub-Saharan African countries under the African Growth and Opportunity Act (AGOA); (2) withdraw, suspend or limit the application of duty-free treatment accorded under the GSP with respect to any article, either for all beneficiary developing countries, least-developed beneficiary developing countries or beneficiary sub-Saharan African countries, or for any of these countries individually; (3) waive the "competitive need limitations" for individual beneficiary developing countries with respect to specific GSP-eligible articles (these limits do not apply to either least-developed beneficiary developing countries or AGOA beneficiary sub-Saharan African countries); and (4) otherwise modify GSP coverage.

Petitions requesting CNL waivers for GSP-eligible articles from beneficiary developing countries that exceed the CNLs in 2010 must be filed in the 2010 Annual Review. In order to allow petitioners an opportunity to review additional 2010 U.S. import statistics, these petitions may be filed after Tuesday, August 3, 2010, but must be received on or before the Tuesday, November 16, 2010 deadline described above in order to be considered in the 2010 Annual Review. Public versions of these petitions will be made available for public inspection at *http://www.regulations.gov* after the November 16, 2010, deadline.

II. Public Comments

Requirements for Submissions

All submissions for the GSP Product Review must conform to the GSP regulations set forth at 15 CFR part 2007, except as modified below. These regulations are available on the USTR Web site at *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf.*

As specified in 15 CFR 2007.1, all product petitions must include a detailed description of the product and the 8-digit subheading of the Harmonized Tariff Schedule of the United States (HTSUS) under which the product is classified. Additional information requirements for product petitions are also specified in 15 CFR 2007.1. Submissions that do not provide the information required by section 2007.1 of the GSP regulations will not be accepted for review, except upon a detailed showing in the submission that the petitioner made a good faith effort to obtain the information required. Any person or party making a submission is strongly advised to review the GSP regulations. An outline of the information required in product petitions is included in the U.S. Generalized System of Preferences Guidebook, available at: *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf.*

To ensure their timely and expeditious receipt and consideration, product petitions provided in response to this notice, with the exception of business confidential submissions, must be submitted online at *http://www.regulations.gov,* docket number USTR–2010–0017. Hand-delivered submissions will not be accepted. Submissions must be submitted in English to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, by the applicable deadlines set forth in this notice.

To make a submission using *http://www.regulations.gov,* enter docket number USTR–2010–0017 on the home page and click "go." The site will list all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search results page, and click on the link entitled "Send a Comment or Submission." The *http://www.regulations.gov* website offers the option of providing comments by filling in a "General Comments" field or by attaching a document. Submissions must be in English, with the total submission not to exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Given the detailed nature of the information sought by the GSP Subcommittee, it is expected that most comments and submissions will be provided in an attached document. When attaching a document, type: (1) The eight-digit HTSUS subheading number, and (2) "See attached" in the "General Comments" field on the online submission form, and indicate on the attachment that the document is a "Product Review Petition" for [HTSUS Subheading Number], [Product Name], and, if pertinent, [Country].

Petitions submitted in response to this notice must include on the first page (if provided in an attachment, or at the beginning of the submission, if not provided in an attachment), the following text (in bold and underlined): (1) "2010 GSP Annual Review"; (2) the eight-digit HTSUS subheading number in which the product is classified (3) the requested action; and (4) if applicable, the beneficiary developing country.

Each submitter will receive a submission tracking number upon completion of the submissions procedure at *http://www.regulations.gov.* The tracking number will be the submitter's confirmation that the submission was received, and it should be kept for the submitter's records. USTR is not able to provide technical assistance for the website. Documents not submitted in accordance with these instructions may not be considered in this review. If unable to provide submissions as requested, please contact the GSP Program to arrange for an alternative method of transmission.

III. Business Confidential Comments

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such, the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, "Business Confidential" must be included in the "Type Comment & Upload File" field. Anyone submitting a comment containing business confidential information must also submit as a separate submission a non-confidential version of the confidential submission, indicating where confidential information has been redacted. The non-confidential version will be placed in the docket and open to public inspection.

IV. Public Viewing of Review Submissions

Submissions in response to this notice, except for information granted "business confidential" status under 15 CFR 2003.6, will be available for public viewing pursuant to 15 CFR 2007.6 at *http://www.regulations.gov* upon completion of processing and no later than approximately two weeks after the relevant due date. Petitions submitted

by the August 3, 2010 deadline may be viewed by entering the docket number USTR–2010–0017 in the search field at: *http://www.regulations.gov.*

Seth Vaughn,

Director, GSP Program; Chairman, GSP Subcommittee of the Trade Policy Staff Committee; Office of the U.S. Trade Representative.

[FR Doc. 2010–17221 Filed 7–14–10; 8:45 am]

BILLING CODE P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC–11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of an opened meeting.

SUMMARY: The Industry Trade Advisory Committee on Small and Minority Business (ITAC–11) will hold a meeting on Monday, August 9, 2010, from 11 a.m. to 4 p.m. The meeting will be opened to the public from 11 a.m. to 4 p.m.

DATES: The meeting is scheduled for August 9, 2010, unless otherwise notified.

ADDRESSES: The meeting will be held at the Big Sky Resort, located at 1 Lone Mountain Trail, Big Sky, Montana 59716.

FOR FURTHER INFORMATION CONTACT: Laura Hellstern, DFO for ITAC–11 at (202) 482–3222, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Agenda topic to be discussed is:

—Overview of the Congressional Trade Agenda
—Impact of Upcoming Legislation on Trade Competitiveness
—Free Trade Agreements pending before Congress (Colombia, Panama and South Korea)
—Generalized System of Preferences
—Mexican Trucking/Retaliation Issue
—U.S.-China Trade Issues, including China Currency, Export Subsidies, Indigenous Innovation, IPR, and other issues.
—Trade Promotion
—Export Finance

Myesha T. Ward,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Engagement.

[FR Doc. 2010–17222 Filed 7–14–10; 8:45 am]

BILLING CODE 3190–W9–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on April 16, 2010 and expired on June 15, 2010. No comments were received.

DATES: Comments must be submitted on or before August 16, 2010.

FOR FURTHER INFORMATION CONTACT: Anne Dougherty, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5469; or E–MAIL: *anne.dougherty@dot.gov.*

SUPPLEMENTARY INFORMATION: Maritime Administration.

Title: Information to Determine Seamen's Re-employment Rights—National Emergency.

OMB Control No.: 2133–0526.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. merchant seamen who have completed designated national service during a time of maritime mobilization need and are seeking re-employment with a prior employer.

Forms: None.

Abstract: This collection is needed in order to implement provisions of the Maritime Security Act of 1996. These provisions grant re-employment rights and other benefits to certain merchant seamen serving aboard vessels used by the United States during times of national emergencies. The Maritime Security Act of 1996 establishes the procedures for obtaining the necessary Maritime Administration certification for re-employment rights and other benefits.

Need and Use of the Information: The Maritime Administration will use the information to determine if U.S. civilian mariners are eligible for re-employment rights under the Maritime Security Act of 1996.

Annual Estimated Burden Hours: 10 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Maritime Administration Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect, if OMB receives it within 30 days of publication.

(Authority: 49 CFR 1.66)

Issued in Washington, DC on July 8, 2010.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–17246 Filed 7–14–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35384]

US Rail Partners, Ltd. and Blackwell Northern Gateway Railroad Company—Continuance in Control Exemption—Eastern Berks Gateway Railroad Company

US Rail Partners, Ltd. (USRP), a noncarrier holding company, and Blackwell Northern Gateway Railroad Company (BNGR), a Class III carrier, have filed a verified notice of exemption to continue in control of Eastern Berks Gateway Railroad Company (EBGR), upon EBGR's becoming a rail carrier.[1]

USRP and BNGR state that the transaction is expected to be consummated on August 1, 2010. The earliest this transaction may be consummated is July 29, 2010, the effective date of the exemption (30 days after the exemption was filed).

Applicants state that EBGR intends to file a notice for a modified certificate of public convenience and necessity in STB Finance Docket No. 35383, *Eastern Berks Gateway Railroad Company*—

[1] EBGR is wholly owned by BNGR and indirectly controlled by USRP.

Modified Rail Certificate, wherein EBGR seeks to lease and operate approximately 8.6 miles of railroad, known as the Colebrookdale Line, from Berks County, Pa.

USRP currently controls through stock ownership two Class III rail carriers: BNGR and the Eastern Washington Gateway Railroad Company (EWGR). BNGR operates approximately 35 miles of rail line between Wellington, Kan., and Blackwell, Okla. EWGR operates approximately 114 miles of rail line in the State of Washington.

USRP and BNGR state that: (i) The railroads will not connect with each other or any railroads within its corporate family, (ii) the transaction is not a part of a series of anticipated transactions that would connect any of these railroads with one another or any other railroad, and (iii) the transaction does not involve a Class I railroad. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than July 22, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35384, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on William C. Sippel, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 12, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–17252 Filed 7–14–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 319X); Docket No. AB 1060X]

Central of Georgia Railroad Company—Discontinuance of Service Exemption—Newton County, GA; Great Walton Railroad Company—Discontinuance of Operations Exemption—Newton County, GA

Central of Georgia Railroad Company (CGA) [1] and Great Walton Railroad Company (GRWR) (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for CGA to discontinue service, and for GRWR to discontinue operating rights under a lease, over a 14.90-mile line of railroad between milepost E 65.80 at Newton, Ga., and the end of the line at milepost E 80.70 at Covington, Ga., in Newton County, Ga. The line traverses United States Postal Service Zip Codes 30014, 30055 and 30056.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on August 14, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) [2] must be filed by July 26, 2010.[3] Petitions to reopen must be filed by August 4, 2010, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: For CGA, Daniel G. Kruger, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510; and for GRWR, Richard H. Streeter, Barnes & Thornburg, LLP, 750 17th Street, NW., Suite 900, Washington, DC 20006.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 8, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–17206 Filed 7–14–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the California Department of Transportation (Caltrans) pursuant to its assigned responsibilities under 23 U.S.C. 327 that are final within the meaning of 23 U.S.C. 139(*l*)(1). These actions relate to the Interstate 80/San Pablo Dam Road Interchange project, located between the El Portal Drive and McBryde Avenue interterchanges Post

[1] CGA is a wholly owned subsidiary of Norfolk Southern Railway Company.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2 (f)(25).

[3] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required here under 49 CFR 1105.6(c) and 49 CFR 1105.8(b), respectively.

Miles 3.8 to 5.3), in Contra Costa County, State of California. These actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 11, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Melanie Brent, Chief, Office of Environmental Analysis, District 4, 111 Grand Avenue, Oakland, 9 a.m. to 4 p.m., 510–286–5231, *melanie_brent@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that Caltrans, pursuant to its assigned responsibilities under 23 U.S.C. 327, and certain Federal agencies have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by approving the I–80/San Pablo Dam Road Interchange project in the State of California. The project will reconstruct the I–80/San Pablo Dam Road overcrossing structure, replacing it with a 6-lane bridge that is skewed to the north to separate the Amador Street and eastbound I–80 on-ramp intersections at San Pablo Dam Road. The bridge design will allow for left turns from westbound San Pablo Dam Road onto Amador Street, it will increase the height of the bridge over I–80 to achieve vertical clearance standards that are not currently met, and will minimize encroachment into an unstable slope east of the interchange. The El Portal Drive westbound on-ramp will be closed, and a new westbound on-ramp built at the location of the I–80/El Portal Drive overcrossing. A westbound auxiliary lane will be added between the new El Portal Drive on-ramp and the westbound San Pablo Dam Road off-ramp. The McBryde Avenue off-ramp will be closed, and replaced with a new westbound frontage road that will extend from the San Pablo Dam Road interchange to McBryde Avenue. Bicycle lanes will be provided on the shoulders of the San Pablo Dam Road Overcrossing of I–80. Pedestrian sidewalks will be provided on both sides of the San Pablo Dam Road overcrossing, and along Amador Street within the limits of project construction near San Pablo Dam Road. An existing pedestrian overcrossing of I–80 at Riverside Avenue will be replaced with a new structure that extends across both the freeway and Amador Street, providing a safer crossing for Riverside Elementary School children and other pedestrians. The length of the project is 1.47 miles and the purpose is to improve traffic operations and bicycle/pedestrian access. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Initial Study with Negative Declaration/Environmental Assessment for the project, approved on February 25, 2010 in the FHWA Finding of No Significant Impact (FONSI) issued on February 25, 2010, and in other documents in the FHWA project records. The Initial Study with Negative Declaration/Environmental Assessment, FONSI, and other project records are available by contacting Caltrans at the address provided above. The FHWA FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist4/envdocs.htm.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].
3. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].
4. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; The Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, 42 U.S.C. Chapter 61 [Pub. L. 91–646] [Pub. L. 100–17].
5. Water: Clean Water Act [33 U.S.C. 1342]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)].
6. Noise: Noise Control Act of 1972 [42 U.S.C. 4901 *et seq*].
7. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: July 9, 2010.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2010–17240 Filed 7–14–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Idaho

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, US–95 Garwood to Sagle Environmental Study in Bonner and Kootenai Counties in the State of Idaho, FHWA–ID–EIS–06–F Federal-Aid project number NH–5110(141), Idaho Transportation Department Key Number 9779.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or prior to January 11, 2011. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Peter J. Hartman, Division Administrator, Federal Highway Administration, 3050 Lake Harbor Lane, Suite 126, Boise, Idaho 83703; telephone: (208) 334–9180; e-mail: *Idaho.FHWA@dot.gov.* The FHWA Idaho Division Office's normal business hours are 7 a.m. to 4:30 p.m. (Mountain Standard Time). For ITD: Ms. Sue Sullivan, Environmental Section Manager, Idaho Transportation Department, 3311 W. State St., Boise, ID 83703–1129, telephone: (208) 334–8203; e-mail: *sue.sullivan@itd.idaho.gov.* Normal business hours are 8 a.m. to 5 p.m. (Mountain Standard Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following highway project in the State of Idaho: US–95 Garwood to Sagle Environmental Study, in Bonner and Kootenai Counties. The project will be

approximately 31.5 miles long extending from Garwood (MP 438.24) to Sagle (MP 469.75) and will upgrade the existing predominantly two-lane highway to a fully controlled access, four-lane divided freeway with interchanges and frontage roads. The Draft Environmental Impact Statement (DEIS), Final Environmental Impact Statement (FEIS), Record of Decision (ROD) and published information regarding this project are posted and updated on the Idaho Transportation Department (ITD) Web site at *http://itd.idaho.gov/projects/d1.* Select "U.S. 95, Garwood to Sagle Environmental Study."

The actions by the FHWA, and the laws under which such actions were taken, are described in the FEIS for the project approved on March 26, 2010. FHWA issued a Record of Decision (ROD) on July 2, 2010. The DEIS, FEIS, and other project records are available by contacting the FHWA or the Idaho Transportation Department at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; Public Hearing [23 U.S.C. 128]. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [23 U.S.C. 139]

Air and Noise: Clean Air Act [42 U.S.C. 7401–7671(q)]; Intermodal Surface Transportation Efficiency Act of 1991, Congestion Mitigation and Air Quality Improvement Program (Sec 1008 U.S.C. 149); Noise Standards: [23 U.S.C. 109(i) (Pub. L. 91–605) (Pub. L. 93–87)].

Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]; Bald and Golden Eagle Protection Act of 1940 [16 U.S.C. 668–668d]

Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act of 1974 [16 U.S.C. 469–469(c)].

Land: Section 4(f) of The Department of Transportation Act: [23 CFR 774]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 [42 U.S.C. 6901, *et seq.*]

Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Uniform Relocation Assistance and Real Property Acquisition Act of 1970 [42 U.S.C. 4601 *et seq.,* Pub. L. 91–646] as amended by the Uniform Relocation Act Amendments of 1987 (Pub. L. 100–17).

Wetlands and Water Resources: Clean Water Act [33 U.S.C.]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)]: Compensatory Mitigation for Losses of Aquatic Resources 2008 [40 CFR 230].

Executive Orders: E.O. 11988 Floodplain Management. E.O. 11990 Protection of Wetlands; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species;.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Peter J. Hartman,

Division Administrator, FHWA—Idaho Division.

[FR Doc. 2010–17223 Filed 7–14–10; 8:45 am]

BILLING CODE P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Request for public comment.

SUMMARY: On April 29, 2010, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2010, unless Congress acts to the contrary. Such amendments and the reasons for amendment subsequently were published in the **Federal Register**. 75 FR 27388 (May 14, 2010). One of the amendments, specifically Amendment 5 pertaining to the use of recency as a factor in the calculation of the criminal history score, has the effect of lowering guideline ranges. The Commission requests comment regarding whether that amendment should be included in subsection (c) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants.

DATES: Public comment should be received on or before September 13, 2010.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs-Retroactivity Public Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202–502–4597.

SUPPLEMENTARY INFORMATION: Section 3582(c)(2) of title 18, United States Code, provides that "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

The Commission lists in § 1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(c). To the extent practicable, public comment should address each of these factors.

The text of the amendments referenced in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (u); USSC Rules of Practice and Procedure 4.1, 4.3.

William K. Sessions III,

Chair.

[FR Doc. 2010–17291 Filed 7–14–10; 8:45 am]

BILLING CODE 2210–40–P

Federal Register

Thursday,
July 15, 2010

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 213 and 237
Bridge Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 213 and 237

[Docket No. FRA 2009–0014, Notice No. 2]

RIN 2130–AC04

Bridge Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is establishing Federal safety requirements for railroad bridges. This final rule requires track owners to implement bridge management programs, which include annual inspections of railroad bridges, and to audit the programs. This final rule also requires track owners to know the safe load capacity of bridges and to conduct special inspections if the weather or other conditions warrant such inspections.

DATES: This final rule is effective September 13, 2010.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Chief Engineer—Structures, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493–6320); or Sarah Grimmer Yurasko, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20950 (telephone: (202) 493–6390).

SUPPLEMENTARY INFORMATION:

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Background

I. The Safety of Railroad Bridges

A. General

There are nearly 100,000 railroad bridges in the United States. These bridges are owned by over 600 different entities. The bridges vary in length, load capacity, design, and construction material. Everything that is shipped or transported via rail likely travels across one or more railroad bridges. Thus, everything from intermodal goods, automobiles, grain, coal, hazardous materials, and passengers is transported on the nation's rail system and therefore across railroad bridges.

The structural integrity of bridges that carry railroad tracks is important to the safety of railroad employees and to the public. The responsibility for the safety of railroad bridges rests with the owner of the track carried by the bridge, together with any other party to whom that responsibility has been assigned by the track owner. The severity of a train accident is usually compounded when a bridge is involved, regardless of the cause of the accident.

Beginning in 1991, FRA conducted a review of the safety of railroad bridges. The review was prompted by the agency's perception that the bridge population was aging, traffic density and loads were increasing on many routes, and the consequences of a bridge failure could be catastrophic. During the past five decades, not one fatality has been caused by the structural failure of a railroad bridge. Train accidents caused by the structural failure of railroad bridges have been extremely rare.

Although the average construction date of railroad bridges predates most highway bridges by several decades, the older railroad bridges were designed to carry heavy steam locomotives. Design factors were generally conservative, and the bridges' functional designs permit repairs and reinforcements when necessary to maintain their viability. Railroad bridges are most often privately, rather than publicly, owned. Their owners seem to recognize the economic consequences of neglecting important maintenance. Private ownership enables the railroads to control the loads that operate over their bridges. Cars and locomotives exceeding the nominal capacity of a bridge are allowed on a bridge only with permission from the responsible bridge engineers, and then only under restrictions and conditions that protect the integrity of the bridge.

Many railroad bridges display superficial signs of deterioration but still retain the capacity to safely carry their loads. Corrosion on a bridge is not a safety issue unless a critical area sees significant loss of material. Routine inspections are prescribed to detect this condition, but determination of its effect requires a detailed inspection and analysis of the bridge. In general, timber bridges continue to function safely, and masonry structures built as early as the 1830s remain functional and safe for their traffic. Of the few train accidents that involved bridges, most have not been caused by structural failure. FRA accident records for the 27 years 1982 through 2008 show 58 train accidents that were caused by the structural failure of railroad bridges. These accidents resulted in nine reportable injuries and a reported $26,555,878 in damages to railroad facilities, cars and locomotives.

B. Guidelines

On April 27, 1995, FRA issued an Interim Statement of Policy on the Safety of Railroad Bridges. Published in the **Federal Register** at 60 FR 20654, the interim statement included a request for comments to be submitted to FRA during a 60-day period following publication. On August 30, 2000, FRA published a Final Statement of Agency Policy on the Safety of Railroad Bridges ("policy statement"). See 65 FR 52667. With the policy, FRA established criteria for railroads to use to ensure the structural integrity of bridges that carry railroad tracks, which reflected minor changes following public comment on the interim statement. Unlike regulations under which FRA ordinarily issues violations and assesses civil penalties, the policy statement contained guidelines for the proper maintenance of bridge structures and is advisory in nature.

On October 16, 2008, President Bush signed into law, the Railroad Safety Improvement Act of 2008, Public Law 110–432, Division A ("RSIA"). Section 417 of the RSIA directs FRA to issue regulations requiring railroad track owners to adopt and follow specific procedures to protect the safety of their bridges. Prior to the passage of the RSIA, FRA had already begun work on revising the policy statement. On January 13, 2009, FRA published an amendment to the policy statement by incorporating changes proposed by the Railroad Safety Advisory Committee ("RSAC") on September 10, 2008. RSAC developed a list of essential elements of railroad bridge management programs ("essential elements") which make up the bulk of the amendment. See 74 FR 157. All aspects of the policy statement that are not incorporated into the regulatory text of part 237 are now found in its appendix A.

C. Regulatory History

On August 17, 2009, FRA issued a Notice of Proposed Rulemaking (NPRM) as a first step in the agency's promulgation of bridge safety

regulations as mandated by the RSIA. See 74 FR 41558. FRA received comments from eight parties, including two professional engineers, the Alaska Railroad Corporation, Maryland Department of Transportation ("Maryland DOT"), Iowa Department of Transportation ("Iowa DOT"), RailAmerica, the American Short Line and Regional Railroad Association (ASLRRA), and the Association of American Railroads (AAR). FRA will address the concerns raised by the comments in the text below.

This final rule is the culmination of FRA's efforts to develop and promulgate bridge safety standards. In the Section-by-Section Analysis, below, FRA will discuss how the regulatory text addresses each portion of the RSIA.

II. Railroad Safety Advisory Committee (RSAC) Overview

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The RSAC includes representation from all of the industry's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of RSAC members follows:

American Association of Private Railroad Car Owners (AARPCO);
American Association of State Highway & Transportation Officials (AASHTO);
American Chemistry Council;
American Petrochemical Institute;
American Public Transportation Association (APTA);
American Short Line and Regional Railroad Association (ASLRRA);
American Train Dispatchers Association (ATDA);
Association of American Railroads (AAR);
Association of Railway Museums (ARM);
Association of State Rail Safety Managers (ASRSM);
Brotherhood of Locomotive Engineers and Trainmen (BLET);
Brotherhood of Maintenance of Way Employees Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
Chlorine Institute;
Federal Transit Administration (FTA)*;
Fertilizer Institute;
High Speed Ground Transportation Association (HSGTA);
Institute of Makers of Explosives;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Electrical Workers (IBEW);
Labor Council for Latin American Advancement (LCLAA)*;
League of Railway Industry Women*;
National Association of Railroad Passengers (NARP);
National Association of Railway Business Women*;
National Conference of Firemen & Oilers;
National Railroad Construction and Maintenance Association;
National Railroad Passenger Corporation (Amtrak);
National Transportation Safety Board (NTSB)*;
Railway Supply Institute (RSI);
Safe Travel America (STA);
Secretaria de Comunicaciones y Transporte*;
Sheet Metal Workers International Association (SMWIA);
Tourist Railway Association Inc.;
Transport Canada*;
Transport Workers Union of America (TWU);
Transportation Communications International Union/BRC (TCIU/BRC);
Transportation Security Administration (TSA); and
United Transportation Union (UTU).
*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff plays an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation.

However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

III. RSAC Railroad Bridge Working Group

RSAC on February 20, 2008, agreed to accept the task of reviewing FRA's railroad bridge safety policies and activities, and to make appropriate recommendations to FRA to improve the bridge safety program. RSAC accordingly established a Railroad Bridge Working Group (Working Group), composed of representatives of the various organizations on the RSAC and including persons with particular expertise in railroad bridge safety and management. The Working Group met on April 24–25, 2008, June 12, 2008, and August 7, 2008. On September 10, 2008, the full RSAC voted on the Working Group's report, Essential Elements of Railroad Bridge Management Programs, and recommended that FRA incorporate it into FRA's Statement of Agency Policy on the Safety of Railroad Bridges. The Working Group met again on January 28–29, 2009, and February 23–24, 2009, to recommend rule text to address the RSIA's mandate to FRA in Section 417 to promulgate bridge safety regulations. The Working Group reached consensus on proposed regulatory text which made up most of the provisions of the NPRM.

After the NPRM comment period closed, the Working Group reconvened on December 15, 2009, to review the comments and offer additional advice on how FRA should proceed with the final rule. Due to time constraints, FRA elected to seek advice from the Working Group regarding the public comments and possible revisions to the NPRM rather than asking the group and the full RSAC to formally provide recommendations regarding the final rule.

IV. Response to Public Comment

As mentioned above, FRA received eight comments to the NPRM. Comments were submitted by a variety of affected parties, including individual professional engineers, the Alaska Railroad Corporation, RailAmerica, two state DOTs, the AAR and the ASLRRA. FRA reviewed the comments with the Working Group and FRA staff also extensively reviewed and evaluated the

comments. In this section, FRA will respond to comments regarding the application of the bridge rule, the responsibility for compliance, definitions, adoption of bridge management programs, the definition of a railroad bridge engineer, the determination of bridge load capacities, bridge inspection records, and other general comments. FRA is also responding to some of the smaller concerns within the section-by-section analysis.

Application

Mr. Wayne Duffet, P.E., commented that FRA proposed that this part apply to tourist railroads because the passengers on those railroads are entitled to the protection afforded by this rule. He observed that, as written, the rule applies to every bridge with a gauge of two feet or more, that handles trains, regardless of whether part of the general railroad system. The comment requests clarification on two points: whether the rule applies to a tourist railroad that is not part of the general railroad system, and whether the rule applies to a two-foot gage bridge within an amusement park.

FRA notes that a "tourist railroad" comes under the uniform FRA definition of the term "railroad" as found at 49 CFR 209.3 and within the meaning of the Federal railroad safety statutes as found at 49 U.S.C. 20102(1)(A). Tourist railroads move passengers by the use of track and equipment that, taken together, would commonly be described as a "railroad," and their operations pose a distinct risk to the safety of the public. "An installation which is not part of the general railroad system of transportation and over which trains are not run by a railroad" refers to tracks located within an industrial operation where rolling equipment is moved only by and for the account of that particular industry. If a railroad as defined in 49 CFR 209.3 operates over a bridge inside such an installation, then this regulation applies to that bridge and to the owner of track on that bridge.

Specifically as to tourist railroad operations, FRA exercises jurisdiction over tourist operations whether or not they are conducted on the "general railroad system of transportation" ("general system"), which is defined as "the network of standard gage track over which goods may be transported throughout the nation." Appendix A to 49 CFR part 209. The only exceptions where FRA typically does not exercise jurisdiction are for tourist operations on track gage that is less than 24 inches and tourist operations that are off of the general system and are "insular." A tourist operation is considered "insular" if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public—except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser—would be affected by the operation. Appendix A to 49 CFR part 209. FRA does, however, exercise limited jurisdiction over tourist railroads that do not operate on the general system, but that are non-insular. Specifically, FRA will consider a railroad to be non-insular if one or more of the following exist on its line: A public highway-rail crossing that is in use; an at-grade rail crossing that is in use; a bridge over a public road or waters used for commercial navigation; or a common corridor with another railroad. Appendix A to 49 CFR part 209. With respect to this rule, FRA is exercising jurisdiction over all tourist and excursion operations regardless of whether they are insular or not.

Maryland DOT requested an explanation of the definition of the "general railroad system of transportation" as it applies to urban rapid transit operations as set forth in the rule. FRA replies that § 237.1(b) is consistent with 49 U.S.C. 20102(1)(B) and 49 CFR 213.3(b)(2), which exempt "track used exclusively for rapid transit operations in urban areas that are not connected with the general system of transportation" from the application of that regulation. If an urban rapid transit system operates over the general system, FRA will exercise jurisdiction over the urban rapid transit operation to the extent that it is connected to the general system. In situations in which an urban rapid transit operation has a minor connection to the general system, i.e., at a highway-rail grade crossing, FRA will exercise limited jurisdiction over the urban rapid transit system and only to the extent necessary to ensure safety at the points of connection for that system, the general system, and the public.

Responsibility for compliance

AAR noted that there are numerous tracks on railroad bridges that have been leased by their owners to other companies. The proposed bridge rule attempted to account for these historical leases by providing that where an owner of the track over the bridge has assigned responsibility for the track to another company and FRA has been notified pursuant to 49 CFR 213.5(c), additional notification under part 237 for the bridge is not needed. This is because part 237 places responsibility for the bridge with the person to whom responsibility for the track has been assigned and recognized pursuant to part 213. AAR is concerned that there will be situations where notification pursuant to § 213.5(c) has not taken place, and argues that notification might not have taken place because the lease was entered into before § 213.5 was adopted. AAR explains that there might be other reasons notification did not take place or a railroad might simply be unable to determine whether notification occurred. If it cannot be established that notification did occur, AAR argues that the rule, literally interpreted, might not permit FRA to hold the lessee responsible for compliance even though, as a practical matter, the lessee controls the track and bridge and is performing all functions related to track and bridge safety. AAR suggests FRA address the issue of historical leases by adding regulatory text which states that FRA may hold a lessee of track to which this part applies responsible for compliance with this part where the lessee exercises control over the track.

This provision follows the use of the term "owner of track" in the Track Safety Standards at 49 CFR part 213. FRA believes that it would be confusing and inconsistent for FRA to define an "owner of track" differently in two different parts of the Rail Safety Standards. FRA advises an owner of track to resubmit a notification of assignment if the owner is uncertain whether an assignment has been made. However, assignment does not relieve a track owner of compliance with part 237, as § 237.3(c) states that FRA can always hold the track owner responsible for compliance with the bridge safety standards.

Maryland DOT noted that its state highway administration, and several counties in the state, own and inspect several railroad-carrying bridges. Unstated, but implicit in the comment, is that while the state highway administration owns the bridge, the track is owned by a third party. Maryland DOT states that in accordance with this section, however, the state highway administration would not be responsible for compliance with this rule, since the "track owner" is responsible. In addition, several counties own railroad-carrying bridges as well.

FRA replies that the rule does not alter the financial responsibility of a highway agency that owns, inspects and maintains railroad bridges. The rule does, however, hold the track owner responsible to assure that the inspections and maintenance are performed correctly by qualified and

designated persons. The track owner would be permitted to accept work performed by a highway agency provided that it conforms to the requirements of this part. FRA also notes that instances have arisen in which state agencies have performed inspections and evaluations in which a state-owned railroad bridge was found to be seriously deficient, and where the operating railroad was never notified or advised of the problem. FRA accident records include at least one such instance in which the bridge failed under a train, resulting in a catastrophic train accident, an accident which occurred on the Southern Railroad of New Jersey on August 12, 1999. This provision is intended, partly, to prevent such a loss of vital communication among the concerned parties

Maryland DOT also questions whether the track owner could assign responsibility to someone else. If one of these railroads requests the state agency to be the responsible party for the FRA inspection, they would consider refusing the request because they would have to be in compliance with the whole program, which would require a railroad bridge engineer, railroad bridge inspectors and a railroad bridge management program.

FRA responds that, in any case of assignment of responsibility, the assignee must first accept the assignment before it can become effective. See § 237.3(b)(6). The final rule states that the track owner must send a written notification of assignment to FRA at least 30 days in advance of the assignment, and that the notification must include a statement signed by the assignee acknowledging the assignment. A notification that did not include an acknowledging statement would not comply with § 237.3(b)(6), and FRA would disregard the assignment.

Definitions

FRA received three comments regarding the definition of a railroad bridge. The comments suggested that the definition of a railroad bridge is either not broad enough or too broad and that there is an inconsistency between the definition of a railroad bridge and the Federal Highway Administration's (FHWA) definition of a bridge. FRA intends the explanations in this response to clarify that the definition of a railroad bridge is consistent with long-held industry practice and is neither too broad nor too narrow.

One commenter suggested that the definition of a bridge be changed to "any structure with an open deck." FRA replies that the regulatory definition of a bridge includes open decks, ballast decks, and solid decks. Essentially, a bridge deck is the component of the bridge upon which the track is supported, and which is subject to bending stresses from trains moving over it.

Another comment requests an explanation of an apparent inconsistency between the definition of a railroad bridge in this rule, and the definition of a bridge used by the FHWA, which defines a bridge as a structure with a span length of 20 feet or more. FRA responds that railroad bridges differ greatly from highway bridges in many respects, particularly in regard to the nature of the heavy live load which they support. This definition represents the consensus of all parties in the Working Group and is consistent with long-held railroad industry practice.

A third commenter suggests that the railroad bridge definition is broad and potentially includes types of structures that are affected by track live loads that have not previously been managed as bridges. These structures may include waterfront structures such as piers and wharves, mechanical shop structures including drop tables and inspection pits, as well as scales, large culverts and potentially even various types of retaining walls that have under-grade structural layout features that could be interpreted to be span lengths of 10 feet or more.

FRA replies that piers and wharves, scales, and other structures that carry railroad track and meet the span definition of a bridge are included under this regulation. Retaining walls and other roadbed structures are not included, because they do not carry track on a span over a gap. Additionally, culverts with a span of 10 feet or greater are also subject to this regulation and must be included in track owner's bridge management program.

Adoption of Bridge Management Programs

Three comments addressed concerns with the adoption of bridge management programs. Maryland DOT asked if the regulations "distinguish between Transit Railroads or short-lines, or rail traffic volume," and requested that FRA define Class I and II carriers and the general railroad system. ASLRRA remarks that some design documents for each bridge might be difficult, if not impossible, to obtain. ASLRRA proposes that all documentation required by the rule be completed no later than five years following the program's adoption. This would allow for the search and retrieval, or replication, of required documentation over more realistic time frames, as well as the allocation of necessary expense over a longer, and possibly less impacting, period of time. The Alaska Railroad Corporation requests that the bridge management program adoption time be extended to the effective date of the final rule plus one year. The additional time is necessary for inventory and database development of all structures covered by the regulation, as seasonal climatic conditions will potentially make some of these structures on the Alaska Railroad inaccessible until early summer 2010.

With regard to the first concern, FRA replies that the Surface Transportation Board defines the class of railroad at 49 CFR part 1201, based on the carrier's annual operating revenue. This section specifies time periods for program adoption according to the type of railroad, not according to railroad traffic volume or load intensity. By "general railroad system of transportation," FRA refers to the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas. See appendix A to 49 CFR part 209.

Regarding the second comment, ASLRRA's proposal is consistent with the proposed rule. Pursuant to § 237.33(c), the program, when adopted by a track owner, need only incorporate a provision to obtain and maintain the design documents of each bridge if available, and to document all repairs, modifications, and inspections of each bridge. There is no deadline for acquisition of these documents. FRA anticipates that the priorities for acquisition of archived bridge design documents would closely follow their usefulness in determining bridge capacities.

To address the Alaska Railroad Corporation's concerns, FRA replies that the bridge inventory need not be complete in all of its details at the time of adoption of a railroad's bridge management program. It is reasonable to expect that an adopted program would specify the format for recording the inventory information, or "bridge list," and that information readily available from existing records, such as valuation maps, could be used to initially populate the data base. After that, additions and refinements to that information would be generated by normal inspection work.

Railroad Bridge Engineer

AAR noted in its comment that the NPRM reference to the "Accreditation Board for Engineering and Technology (ABET)" is obsolete in that the organization has changed its name to ABET, Inc. AAR further notes that ABET Inc. only accredits engineering education programs in the United States, but mutually recognizes programs accredited by corresponding organizations in other nations. The same commenter notes an ambiguity in the term "licensed scope of practice" as it applies to the professional practice of engineering.

FRA acknowledges the concern regarding ABET, Inc., and has changed the reference in the regulatory text to ABET, Inc., or its successor. FRA did not intend to exclude engineers who received their education in other nations from being recognized as railroad bridge engineers, and has amended the text to specify that, in order to fulfill the educational requirements of this section, a railroad bridge engineer can also have received a degree from a program accredited as a professional engineering curriculum by a foreign organization recognized by ABET, Inc. or its successor. FRA has clarified the ambiguity commented on in the language of the NPRM by stating that a railroad bridge engineer can also be considered to have fulfilled the educational requirements of this section if he or she is currently registered as a professional engineer. FRA notes that state law governing the professional practice of engineering requires that professional engineers limit the subject of their practice to areas in which they are competent.

RailAmerica commented that nothing in this section speaks to the competence of an engineer as a railroad bridge engineer. FRA replies that the determination of the competence of a railroad bridge engineer is left to the track owner. FRA does not intend to engage in qualifying individuals to perform those functions. That determination will have to be made by the track owner after review of the engineer's qualifications and experience in the light of the qualification requirements of this part. The employer or the client of an engineer has always had the prerogative and responsibility to determine the qualifications of that individual, and FRA does not propose to alter that relationship.

Determination of Bridge Load Capacities

One commenter remarked on the difficulty of assigning a precise capacity rating to a timber bridge owing to the wide variations in the properties of timber material and the changes that occur to timber components over time. FRA recognizes that the evaluation of timber trestles is not an exact science. Although theoretical values of safe forces and stresses can be placed on individual timber components, the actual nature of wood varies widely, even within the same species. In addition, timber deteriorates over time and under repeated loads. Some timber bridge components are not easily inspected, especially where faces of the members are hidden by other adjacent or supported members. A load rating on a timber bridge must also account for time and for expected costs to maintain the bridge under its rated traffic. An engineer can raise the capacity of a timber trestle from 263,000- to 286,000-pound cars, for instance, but the owner must be advised that increased maintenance costs will probably result, and that a more intensive inspection program must be instituted for that bridge, owing to the more rapid deterioration that will occur.

The same commenter also suggested that a revised rating not be required where an existing, valid rating provides a large margin of capacity above the loads that are actually operated. The rule text has been slightly modified to address that issue with a realistic solution. FRA has revised § 237.71(f) to state that a new bridge load capacity shall be determined, if, in the opinion of the railroad bridge engineer, a bridge inspection reveals that the condition of a bridge or a bridge component might adversely affect the ability of the bridge to carry the traffic being operated. This issue is also addressed further in the section-by-section analysis, below.

The same commenter also noted the difficulty of assigning a precise rating to many older concrete and masonry structures that are not well documented, and of which the internal configuration cannot be easily determined. FRA recognizes that many older concrete and masonry structures are not documented. Especially in the case of reinforced concrete, the configuration of reinforcing steel greatly affects the calculated capacity of the bridge. The analysis of brick and stone arches is possible, but the unknown variables can produce widely differing results. The practice to date in the railroad bridge engineering profession has been to observe these structures for any obvious signs of distress, and to rate them based on their condition at the time of inspection. FRA will accept the reasonable application of present methods for evaluating and managing these structures, because there is not a history of sudden catastrophic failure, absent sudden damage from severe weather conditions or heavy water flows.

ASLRRA commented that "an individual trained as a bridge supervisor and inspector with many years of experience inspecting a bridge that itself has been in place for many years, is fully qualified to determine whether that bridge has the capacity to carry the loads for which it is rated. Under normal bridge inspection procedures, if the bridge shows signs of problems, a bridge inspector usually 'rates' a bridge each time he inspects it. If problems are encountered, additional steps will be taken to address the problem in accordance with these regulations. Rating an old masonry arch or bridge span may be difficult to do even for a railroad bridge engineer. While a number of bridges have been upgraded on many short lines and capacity rating calculations are available for those bridges, many more have not been upgraded and are performing well." FRA responds that there is a clear distinction between what some consider a "condition rating" ascribed to a bridge by an inspector, and a "capacity rating" which is determined by a qualified engineer. The term "rating" in the context of this rule refers only to a "capacity rating." This rule does not address a "condition rating" to be applied to a bridge.

A bridge inspector or supervisor who is not an engineer can certainly determine by observation and measurement whether the condition and configuration of a bridge corresponds with its state when it was rated by an engineer for capacity. However, if the bridge displays a condition or deterioration that materially affects its capacity, as by increasing the stress intensity in one or more components of the bridge, accurate determination of the revised capacity requires the experience, education and training of a competent railroad bridge engineer. In the same manner, the determination of the capacity of an existing bridge requires that the engineer should consider all available information related to the configuration and condition of the bridge, including all available design and modification documents and current reports of inspections. These determinations of bridge capacity ratings are usually performed in an office environment, and only seldom in the field.

RailAmerica commented that the rule would require bridge ratings to be completed within 5 years of the adoption of a Bridge Management System. This provision would penalize

those railroads which have adopted a bridge management program before the final date required in the rule. FRA agrees with this comment. The rule has been modified so that the determinations of load capacity are required within five years of the required date for adoption of the bridge management program, rather than the actual date of adoption if earlier than required.

Bridge Inspection Records

Several commenters suggested that the interim bridge inspection report be deleted from the rule, or that the time period for its submission be extended. Several also suggested that the time period for submission of the complete inspection report be extended. FRA understands that the regulated community is reluctant to see the imposition of record-keeping requirements that might not correspond with their current practices. However, bridge inspections performed by or for the track owner are a critical function which must be monitored in the enforcement process. Since FRA cannot be present on-site at each bridge inspection, the agency must see a record that shows that the inspection was performed, when and by whom it was performed, and the conditions found in the inspection. If there were no time requirements for recording inspections, it would be impossible for FRA to effectively monitor this vital function.

FRA views the interim report as a management tool in the bridge program audit to show whether bridge inspections are being performed at or near their scheduled frequency, with ample time to permit adjustments as necessary in the inspection program. Most railroad bridge inspection programs at present do not incorporate an interim inspection report. The time between an inspection and the filing of the inspection report is found to vary. An effective bridge management program requires that the person in charge of the program have reasonably current information on the progress of the vital function of bridge inspection. The proposed time frame of 14 days has been extended to 30 days in the final rule because FRA now believes that the 30-day time period is sufficient for effective management by the railroad and effective compliance monitoring by FRA.

Two commenters requested that the time period for submission of the complete inspection report be extended from 45 to 90 days, and one commenter requested 120 days. FRA understands the circumstances in which a consultant is engaged to conduct detailed bridge inspections and evaluations. Some of those evaluations include a considerable amount of engineering work that is performed in an office rather than in the field, and several months are often used in preparing the complete report. The extension of the time period for filing the report is intended to allow the most efficient use of inspection and engineering resources, while still providing effective input for management by the bridge owner and monitoring by FRA.

In light of the reasons given, and discussion at the RSAC Railroad Bridge Working Group, FRA finds that a 120-day period for submission of the complete report would be reasonable and effective.

Two commenters noted that the proposed requirement to retain inspection reports until the completion of the next two following inspections of the same type would be burdensome and ineffective in the case of certain special inspections. For instance, if a highway vehicle strike occasions a special inspection, it would have been necessary to retain the records of the special inspection until the bridge had twice again been struck by a highway vehicle and inspected. This is not realistic, so the final rule simply requires that records of inspections be retained for two years following completion of the inspection, and that records of underwater inspections be retained until the completion and review of the next underwater inspection of the same components of the bridge.

Additionally, the final rule also accommodates instances in which a bridge inspection does not encompass the entire bridge. It also includes a clarification that when a complete report is filed before an interim report is due, the interim report is not required.

Other Comments

FRA received a number of comments that did not pertain to specific sections of the rule text. FRA will address these concerns below.

Maryland DOT suggested that FRA consider whether it would be beneficial to have the same inspection frequency criteria for all rail and transit lines or whether it is relevant to distinguish between Class I railroads, short lines, and transit lines, or to factor in rail traffic volume in general. Maryland DOT also states that it already has a detailed structural inspection program and database. It recommends that the new regulations not require replacement of existing agency programs, reporting forms, etc., to be in accordance with a national standard. Additionally, Maryland DOT asks whether FRA will compensate state agencies for the cost of overhauling their structural inspection program and database, and for the additional expense of conducting annual rather than biennial inspections. Finally, Maryland DOT asked if any regulations are proposed for tunnel, station or other miscellaneous structural inspections.

With respect to the first question, FRA has not distinguished among railroads of different sizes because the size of the railroad is in no way related to the physical attributes of a bridge and the loads that it carries. As noted above, this rule does not affect transit lines. The only criterion related to inspection frequency in this rule is a minimum of one inspection per year. As this provision is found in the RSIA, FRA has no option in this regard. *See* Section 417(b)(5), Public Law 110–432, 122 Stat. 4890 (49 U.S.C. 20103, note). With regard to the second concern, the rule does not require replacement of existing programs as long as they comply with the requirements of the rule. In response to the third concern, FRA is not aware of any Congressional appropriation of funds to provide assistance in order for regulated entities to comply with bridge safety regulations and thus FRA will not be providing any funding for that purpose. Finally, tunnels, stations, and other structures were not addressed in the proposed rule and thus are not addressed in this final rule.

Iowa DOT commented on the various types of ownership and maintenance agreements in place between highway agencies and railroads that cross those highways on bridges. Iowa DOT stated that "it would be more logical and provide a more consistent bridge safety program if the responsibility for inspection, load capacity ratings, and other aspects of the bridge safety program were fully retained by the track owner and not by the party that is financially responsible for maintenance. Where no agreement exists there can be a conflict over the responsibilities, therefore having the track owner fully responsible for the bridge safety program aspects would prevent any bridge from 'falling through the cracks' due to that conflict." Iowa DOT would like to see the final rule assign track owners the full responsibility for the bridge safety program, regardless of who is financially responsible for the structure's maintenance. Finally, the comment also states that, although the agency's bridge inspectors are fully qualified to inspect railroad bridges, determine load capacities, etc., they would not have the experience or

knowledge to translate the load capacities into railroad operational terms as required by the rule.

FRA notes that the final rule holds the track owner responsible for compliance, which is consistent with the commenter's request. The regulation does not address the question of financial responsibility or apportionment of expenses for bridge management or maintenance. That issue would continue to be governed by the terms of any agreements between the track owner and bridge owner. The rule does not assign or apportion financial or functional responsibility for inspection or maintenance of railroad bridges. The rule simply holds the track owner responsible for the adequate and safe support of its track on bridges. FRA does not specify who will perform those functions, so long as they are performed correctly by qualified individuals designated by the track owner. That designated individual may accept work performed by others, such as a state agency, if it is acceptable to them and can be adequately verified.

Regarding the last concern, bridge inspectors do not normally calculate the load capacities of a railroad bridge, unless they also happen to be competent railroad bridge engineers. Moreover, an engineer who cannot translate load capacities into railroad operational terms is not qualified to prescribe the loadings for a railroad bridge. The rule places the responsibility upon the track owner to have this done by a designated, competent railroad bridge engineer.

V. Section-by-Section Analysis

Amendment to 49 CFR Part 213, Track Safety Standards

Appendix C to Part 213—Statement of Agency Policy on the Safety of Railroad Bridges

FRA is removing appendix C to part 213, which is FRA's Statement of Agency Policy on the Safety of Railroad Bridges ("policy statement"). As many portions of the text in the policy statement are covered in part 237, it would be redundant and confusing to leave them in the policy statement as currently published in part 213. With regard to the portions of the policy statement that are advisory in nature, FRA is publishing them in a new appendix to part 237, which will be discussed further below.

Addition of 49 CFR Part 237, Bridge Safety Standards

Subpart A—General

This part prescribes minimum safety requirements for the management of railroad bridges that support one or more tracks. Track owners may adopt more stringent standards as long as they are in accordance with this part. FRA notes that it expressed these statements in proposed § 237.1, Scope of part, in the NPRM. See 74 FR 41560, 41573. FRA does not believe it necessary to include these explanatory statements directly in a section of the rule text, however, and is retaining them here instead.

Separately, FRA has removed proposed § 237.3, Preemptive effect. See 74 FR 41573. One commenter questioned whether the provisions in the proposed section were necessary, and whether they were inconsistent with other regulations. This section has been removed; discussion of the federalism implications of the rulemaking is found under Regulatory Impact and Notices, below. The sections in subpart A have been renumbered, accordingly.

Section 237.1 Application

This rule applies to all owners of track carried on railroad bridges with certain exceptions as outlined or explained in following subsections. As delineated in FRA's Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws at appendix A of 49 CFR part 209, FRA exercises jurisdiction over tourist, scenic, and excursion railroad operations whether or not they are conducted on the general railroad system. This part applies to both insular and non-insular tourist railroads because the passengers on those railroads are entitled to the protection afforded by this rule. As a matter of policy, FRA does not consider devices that run on rails in amusement parks to be railroads.

Paragraph (b). This part does not apply to bridges on track used exclusively for rapid transit operations in urban areas that are not connected with the general system of transportation. This is in accordance with 49 U.S.C. 20103 and appendix A of 49 CFR part 209.

Paragraph (c). This part does not apply to bridges located in an installation which is not a part of the general railroad system of transportation and over which trains are not operated by a railroad.

Section 237.3 Responsibility for Compliance

The responsibility for the safety of trains on any track lies with the owner of that track. Therefore, the track owner is responsible for complying with the bridge safety standards promulgated in this part. If a bridge carries tracks owned by two or more owners, then the track owners can choose to make an assignment of responsibility for compliance with this part. The assignment process, delineated in paragraphs (b) through (d) of this section, is similar to the assignment process detailed in 49 CFR 213.5. However, FRA will hold the track owner or the assignee, or both, responsible for compliance with this part and subject to penalties under § 237.7. FRA intends that the responsibility for compliance with this part will follow, as closely as practicable, the responsibility for compliance with the Federal Track Safety Standards, and that where such responsibility is already established, it would not be necessary for the track owner to file an additional assignment of responsibility. As in part 213, FRA intends that "person" means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track or facilities; any independent contractor providing goods or services to a railroad; any employee of such owner, manufacturer, lessor, lessee, or independent contractor; and anyone held by FRA to be responsible for compliance with this part.

Paragraph (d). As described in 49 CFR part 213, a common carrier by railroad which is directed by the Surface Transportation Board to provide service over the track of another railroad under 49 U.S.C. 11123 is considered the owner of that track for the purposes of the application of this part during the period the directed service order remains in effect. On rare occasions, such as a cessation of service by a railroad, the Surface Transportation Board has directed a railroad other than the track owner to provide service. In such cases, the designated operator shall be considered the owner for purposes of compliance with the bridge safety regulations.

Paragraph (e). This paragraph requires any person, including a state agency, who performs a function on a railroad bridge that is required by this part to perform that function in accordance with this part. Instances have occurred

in which state agencies have performed bridge inspections and evaluations in which the bridge was found to be seriously deficient, and where the operating railroad was never notified or advised of the problem. FRA accident records include at least one such instance in which the bridge failed under a train, resulting in a catastrophic train accident. Section 237.109 requires that the track owner keep the bridge inspection reports, and must therefore obtain them from a state agency or any other party that performs bridge inspections in conformance with the requirements of these regulations. This provision will prevent a loss of vital communication among concerned parties.

Paragraph (f). Where an owner of track to which this part applies has previously assigned responsibility for a segment of track to another person as prescribed in 49 CFR 213.5(c), additional notification to FRA is not required.

Paragraph (g). This paragraph provides that FRA reserves the right to reject an assignment of responsibility under § 237.3(b) for cause shown. As stated in paragraph (c) of this section, FRA may hold the track owner or the assignee, or both, responsible for compliance with this part and subject to penalties under § 237.7. Consequently, if FRA rejects an assignment of responsibility, FRA will not consider the rejected assignee responsible for compliance with part 237 pursuant to paragraph (c) of this section.

Section 237.5 Definitions

The definitions in this section are only intended to apply to this part, and not to alter the same terminology wherever used outside this part for other purposes.

Bridge modification and bridge repair. "Bridge modification" means a change to the configuration of a railroad bridge that affects the load capacity of the bridge, while "bridge repair" means remediation of damage or deterioration which has affected the structural integrity of a railroad bridge. This part requires that modifications and repairs to bridges be designed by railroad bridge engineers, and the work supervised by designated railroad bridge supervisors. This definition clarifies that minor modifications and repairs, such as replacing a wire rope handrail with one made of pipe, or painting a bridge, do not need to be designed and supervised pursuant to this part. However, this does not exempt the track owner from properly supervising the personal safety of the individuals performing the work because that issue is addressed in other rules.

Railroad bridge. A "railroad bridge" is any structure which spans an opening under the track except for a small culvert, pipe, or other such structure that is located so far below the track that it only carries dead load from soil pressure and is not subjected to measurable bending, tension or compression stresses from passing trains. Unloading pits, track scales, and waterfront structures such as piers and wharves that fall within the definition of a "railroad bridge" are considered bridges for purposes of this part.

FRA does not intend to relieve a railroad from taking any action necessary to protect the safety of trains in the case of any structure, including small culverts, retaining walls, tunnels or overhead structures by providing for their inspection and maintenance, but it exempts them from the specific requirements of this regulation. A structure in a locomotive or car maintenance facility which is used to support cars or locomotives for maintenance is not included in the specific requirements of this regulation.

Section 237.7 Penalties

This provision conforms to provisions of the enabling legislation and stated agency policy. Consistent with FRA's Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, a penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Section 237.9 Waivers

This section provides that each petition for a waiver under this part shall be filed in the manner and contain the information required by 49 CFR part 211, which prescribes rules of practice that apply to waiver proceedings. The processing of petitions for waiver of safety rules is found at subpart C to part 211.

Subpart B—Railroad Bridge Safety Assurance

This subpart prescribes minimum requirements for persons responsible for railroad bridges to implement programs to assure the structural integrity of those bridges and to protect the safe operation of trains over those bridges. The responsibility for the safety of a railroad bridge rests with the owner of the track supported by that bridge, who relies upon the work of the engineer who makes the critical decisions regarding the management and use of that bridge.

Section 237.31 Adoption of Bridge Management Programs

Congress mandated that FRA "promulgate a regulation requiring owners of track carried on one or more railroad bridges to adopt a bridge safety management program to prevent the deterioration of railroad bridges and reduce the risk of human casualties, environmental damage, and disruption to the Nation's railroad transportation system that would result from a catastrophic bridge failure." Section 417(a), Public Law 110–432, 122 Stat. 4890 (49 U.S.C. 20103, note). This section requires track owners to adopt a bridge safety management program that prevents the deterioration of railroad bridges by preserving their capability to safely carry the traffic to be operated over them. Class I carriers and owners of track segments which are part of the general railroad system of transportation and which carry more than ten scheduled passengers trains per week shall implement their bridge safety programs no later than March 14, 2011. Class II carriers which carry ten or fewer scheduled passenger trains per week shall implement their bridge safety programs no later than September 13, 2011. All other track owners subject to this part shall implement their bridge safety programs no later than September 13, 2012.

FRA considers this implementation schedule to be realistic and effective, with priorities given to railroads with the highest levels of freight or passenger traffic. The implementation dates apply to the track owner, not to specific track segments. However, it is reasonable to consider that the specific provisions of each program will be implemented in a manner that accords higher priority to individual track segments with high volumes of freight or passenger traffic.

Section 237.33 Content of Bridge Management Programs

Certain elements of a bridge management program are essential to its effectiveness. Those elements are enumerated in this section. Track owners and individuals responsible for the safety of railroad bridges are encouraged to adapt these elements to the needs of their areas of responsibility, and to adopt additional elements not inconsistent with the requirements of this part.

Paragraph (a). Congress mandated that the new regulations require each track owner to "develop and maintain an accurate inventory of its railroad bridges, which shall identify the

location of each bridge, its configuration, type of construction, number of spans, span lengths, and all other information necessary to provide for the safe management of the bridges." Section 417(b)(1), Public Law 110–432, 122 Stat. 4890 (49 U.S.C. 20103, note). This paragraph requires that such an inventory be maintained. An accurate inventory of any property to be managed is essential so that the responsible individuals may schedule and track inspection, maintenance, and repair of the property units.

Paragraph (b). Congress mandated that the new regulations require that the track owner "maintain, and update as appropriate, a record of the safe capacity of each bridge which carries its track and, if available, maintain the original design documents of each bridge and a documentation of all repairs, modifications, and inspections of the bridge." Section 417(b)(3), Public Law 110–432, 122 Stat. 4890 (49 U.S.C. 20103, note). This paragraph requires that a record of the safe load capacity of each bridge be established. The operation of excessively heavy loads over a bridge will seriously shorten a bridge's useful life and will reduce or even eliminate the margin of safety between structural integrity and catastrophic failure. It is essential that the track owner should know that the loads permitted to be operated on a bridge are within the safe limits of the bridge.

Paragraph (c). The track owner must obtain and maintain the design documents of each bridge, if available, and document all repairs, modifications, and inspections of each bridge. The determination of safe load capacity requires knowledge of the configuration of the bridge and the materials of which it is constructed. Although the configuration may be determined by actual measurements of all of the components, that procedure can be tedious and expensive. Good documentation of the design and history of a bridge will facilitate more rapid and accurate determination of bridge capacity when such calculations are needed, as well as determination of the maintenance and service history of a bridge to detect and correct possible deterioration of its components. If the design documents for a bridge cannot be located, the track owner must measure and document the configuration of the bridge in sufficient detail to enable an accurate determination of the safe capacity of the bridge.

Paragraph (d). Bridge inspection is absolutely essential to an effective bridge management program. In this paragraph, FRA requires that the track owner's bridge management program contain a bridge inspection program. Items (1) through (6) should be addressed in the program to a degree that promotes effective and efficient conduct of the inspection program. With regard to item (1), bridge inspection can present certain risks that are inherent in working at heights and around moving vehicles. A bridge inspection program should at least address the unique hazards associated with the process. With regard to item (2), a bridge inspection program should incorporate standards for the procedures and required details of any different types of inspection that are referenced in the program, such as annual inspections, post-event inspections, rating inspections, and intermediate periodic inspections. A large railroad might find it convenient to describe the standard procedures for various types of inspections in some detail, while a small railroad that normally conducts only annual inspections might describe only that procedure as well as post-event special inspections, and then issue instructions of particular applicability for other types of inspections that occur only infrequently. With regard to items (3) through (6), use of a standard method of describing the condition of components promotes effective and efficient communication between the inspector and those persons who review and evaluate a bridge using information from the inspection.

Subpart C—Qualifications and Designations of Responsible Persons

In subpart C, FRA establishes minimum standards for incorporation in railroad bridge management programs for qualification and designations of persons who perform safety critical functions that affect the integrity and safety of railroad bridges. Many aspects of railroad bridge work differ from other fields of engineering, inspection and maintenance. It is essential that the individuals who are responsible for these safety-critical functions be qualified by education, training and experience to perform them correctly.

Section 237.51 Railroad Bridge Engineers

This section sets forth the minimum standards that a railroad bridge engineer must meet. Congress directed FRA to "ensure that an engineer who is competent in the field of railroad bridge engineering" is responsible for the development of all inspection procedures, reviews all inspection reports, and determines whether bridges are being inspected according to the applicable procedures and frequency, and reviews any items noted by an inspector as exceptions. See Section 417(b)(7) of the RSIA. Railroad bridge engineering is based on the same principles of engineering as all other structural engineering work, but the application of many of those principles is unique to this particular field. The live loads carried on railroad bridges are generally much higher than the loads on highway bridges or other transportation structures. Overall configuration and details of construction of railroad bridges differ greatly from other classes of structures, to the extent that dealing with these features requires some experience with them as well as an understanding of the fundamentals of engineering.

FRA understands that not all railroad bridge engineers will be faced with all aspects of railroad bridge engineering. For example, an engineer engaged to prescribe safe loads for short steel spans and timber trestles on a particular railroad might never have to perform a detailed analysis of a large truss bridge. The basic premise is that the engineer be competent to perform the functions that are encompassed by that individual's employment. The determination of qualifications by the track owner includes employment of the engineer by the track owner, and designation of the engineer to exercise the authority called for in this part. By employment, FRA includes both engineers who are employees of the track owner as well as those engaged under a consulting contract.

A railroad bridge engineer must also have either: (1) A degree in engineering granted by a school of engineering with at least one program accredited by ABET, Inc. or its successor organization, as a professional engineering curriculum, or a degree from a program accredited as a professional engineering curriculum by a foreign organization recognized by ABET, Inc. or its successor; or (2) current registration as a professional engineer.

FRA believes that the critical nature of railroad bridge engineering work called for in this rule requires persons to meet a minimal educational or experience standard which is common to the engineering profession and which is necessary for an individual who will perform the functions of an engineer as called for in this rule.

In paragraph (c), FRA states that nothing in this part affects the States' authority to regulate the professional practice of engineering. This section represents a minimum standard to be attained by engineers who perform the functions called for in this regulation.

Recognition by FRA as a railroad bridge engineer would not enable a person to provide professional engineering services in violation of a state law or regulation. FRA does not intend to preempt or interfere with any state laws regarding the professional practice of engineering. For example, a person registered as a professional engineer in Maryland could not work as a professional engineer in Virginia under this regulation in violation of Virginia law if such work violated Virginia law regarding the practice of engineering.

Section 237.53 Railroad Bridge Inspectors

In this section, FRA establishes the minimum standards that a railroad bridge inspector must meet. Effective inspection of bridges is essential to preserving their integrity and serviceability. Inspectors must be able to understand and carry out the inspection procedures, including accessing inspection points on a bridge, measuring components and any changes, describing conditions found in a standard, unambiguous manner, and detecting the development of conditions that are critical to the safety of the bridge. It is essential that an inspector who detects a potential hazard to the safe operation of trains be authorized by the track owner to place appropriate restrictions on the operation of railroad traffic, pending review as necessary by a railroad bridge engineer. An individual who is not competent in railroad bridge work cannot overrule a determination made by a designated bridge inspector, supervisor, or engineer.

Section 237.55 Railroad Bridge Supervisors

In this section, FRA establishes minimum standards that a railroad bridge supervisor must meet. Individuals who supervise and take responsibility for construction, repair and modification of railroad bridges must be competent to ensure that the work is performed in accordance with valid standards and any specific specifications, plans and instructions applicable to the work to be performed. This provision applies to any such individual, regardless of job title, who directly oversees such work and approves or restricts the movement of railroad traffic during the progress of the work.

Section 237.57 Designations of Individuals

In the RSIA, Congress mandated that the bridge regulations designate qualified bridge inspectors or maintenance personnel to authorize the operation of trains on bridges following repairs, damage, or indications of potential structural problems. See Section 417(b)(8), Public Law 110–432, 122 Stat 4890 (49 U.S.C. 20103, note). In this section, FRA requires that each track owner designate certain individuals as qualified railroad bridge engineers, inspectors, and supervisors, and provide a recorded basis for each designation in effect. The track owner must record designations of individuals, whether employees, consultants or contractors. If a consultant or contractor has several individuals performing the described functions then one or more individuals should be designated as being responsible to the track owner for the work performed under that engagement, with the others working under the responsible charge of that individual.

Subpart D—Capacity of Bridges

In subpart D, FRA prescribes minimum standards to be incorporated in railroad bridge management programs to prevent the operation of equipment that could damage a bridge by exceeding safe stress levels in bridge components or by extending beyond the horizontal or vertical clearance limits of the bridge. Protection of bridges and bridge components from overstress is essential to the continued integrity and serviceability of the bridge. It is also essential that equipment or loads that exceed the clearance limits of a bridge not be operated owing to the potential for severe damage to the bridge.

Section 237.71 Determination of Bridge Load Capacities

Paragraph (a). Each track owner must determine the load capacity of each of its railroad bridges. It is essential that the track owner know that loads operated over a bridge do not exceed the safe capacity of that bridge. However, once it is determined that a bridge has adequate capacity to carry the loads being operated, the regulation does not require that the track owner precisely calculate the additional capacity of that bridge, although that could be useful from a planning or economic standpoint.

Paragraph (b). This paragraph requires that the load capacity of each bridge be documented in the track owner's bridge management program, together with the method by which the capacity was determined. Once the load capacity is determined, the value must be recorded in order for it to be useful. Examples of methods of determination could be the original design documents, recalculation, or rating inspection.

Paragraph (c). In the RSIA, Congress mandated that a professional engineer competent in the field of railroad bridge engineering, or a qualified person under the supervision of the track owner, determine bridge capacity. See Section 417(b)(2), Public Law 110–432, 122 Stat. 4890 (49 U.S.C. 20103, note). Load capacity determination in most instances requires the education, experience and training of an engineer who is familiar with railroad bridges and the standard practices that are unique to that class of structure.

The present standard references for railroad bridge design and analysis are found in the "Manual for Railway Engineering" of the American Railway Engineering and Maintenance-of-Way Association (AREMA). The chapters in this Manual dealing with Timber, Concrete and Steel structures, and Seismic Design, are under continuous review by committees consisting of leading engineers in the railroad bridge profession, including representatives of FRA. Although bridges exist that were designed using different or earlier references, they can still be evaluated by use of the AREMA Manual.

Paragraph (d). This paragraph permits bridge load capacity to be determined from existing design and modification records of a bridge, provided that the bridge substantially conforms to its records configuration. Determination of bridge load capacity requires information on the configuration of the bridge and the dimensions and material of its component parts. If the bridge is found to conform to the drawings of its original design and modifications, those drawings may serve as the basis for any rating calculation that might be performed, thus simplifying the process. Lacking that prior information, it is necessary that the configuration, dimensions, condition and properties of the bridge and its components be determined by on-site measurement of the bridge as it currently exists.

FRA recognizes that a rigorous, exact method of rating is not practicable with several types of bridges, including some massive concrete or masonry bridges and many timber trestles. The railroad bridge engineer will necessarily use judgment in determining the loads which should be permitted to operate over these bridges, and assuring that adequate inspections are performed so that any developing deterioration or signs of overload are detected before they progress to become a serious problem.

Paragraph (e). In this paragraph, FRA requires a track owner to schedule the evaluation of bridges for which the load capacity has not already been

determined. This section provides for a phase-in period for determination of bridge capacities. There is probably not sufficient engineering expertise available in the United States for immediate rating of all unrated railroad bridges. This will provide a reasonable time period for track owners to accomplish this work. It is intended that the unrated bridges be given relative priority for rating, based on the judgment of a railroad bridge engineer. This prioritization can be accomplished either by observation or by evaluation of certain critical members of a bridge, as determined by the engineer using professional judgment.

Paragraph (f). A new capacity must be determined by a railroad bridge engineer when a bridge inspection record reveals that the condition of a bridge or a bridge component might affect the load capacity of the bridge. Accurate determination of current bridge capacity depends on accurate information about the current configuration and condition of the bridge. The railroad bridge engineer might determine that a change in condition or configuration calls for a revised rating calculation.

Paragraph (g). In this paragraph, FRA states that bridge load capacity may be expressed in terms of numerical values related to a standard system of bridge loads, but shall in any case be stated in terms of weight and length of individual or combined cars and locomotives, for the use of transportation personnel. Engineers use standard definitions of loading combinations for design and rating of bridges. Common among these standard definitions is a series of proportional loads known as the Cooper System. The capacity of a bridge and its components can be described in terms of a Cooper Rating, and the effect of rail equipment on a bridge can also be related to a Cooper System value.

Proper application of this system requires a full understanding of its use and limitations. However, the results of its application can be translated into terms of equipment weights and configurations that can be effectively applied by persons who manage regular transportation operations of the railroad. This enables them to determine if a given locomotive, car, or combination can be operated on a bridge with no further consideration, or if the equipment must be evaluated as an exceptional movement.

Paragraph (h). FRA states that bridge load capacity may be expressed in terms of both normal and maximum load conditions. Normal bridge ratings generally define the loads that can be operated on a bridge for an indefinite period without damaging the bridge. In some cases, mostly involving steel or iron bridges, a higher rating, up to a maximum rating, can be given to the bridge to permit the operation of heavier loads on an infrequent basis. These heavier loads should not, in themselves, damage the bridge, but the cumulative effect of the higher resulting stresses in bridge members could cause their eventual deterioration.

Paragraph (h) also states that operation of equipment that produces forces greater than the normal capacity shall be subject to any restrictions or conditions that may be prescribed by a railroad bridge engineer. A railroad bridge engineer can often prescribe compensating conditions that will permit the movement of equipment that is heavier than normal. Examples include speed restrictions to reduce the impact factor of the rolling load, the insertion of lighter-weight spacer cars between the heavier cars in a train, or the installation of temporary bents or other supports under specific points on the bridge.

Section 237.73 Protection of Bridges From Over-Weight and Over-Dimension Loads

Bridges can be seriously damaged by the operation of loads that exceed their capacity. Movement of equipment that exceeds the clear space on a bridge is an obvious safety hazard. In this section, FRA addresses Congress' mandate in the RSIA that the track owner "develop, maintain, and enforce a written procedure that will ensure that its bridges are not loaded beyond their capacities." See Section 417(b)(4), Public Law 110–432, 122 Stat. 4890 (49 U.S.C. 20103, note).

Paragraph (a). In this paragraph, FRA requires that each track owner issue instructions to its personnel who are responsible for the configuration and operation of trains over its bridges to prevent the operation of cars, locomotives and other equipment that would exceed the capacity or dimensions of its bridges. Transportation personnel of a railroad are ultimately responsible for the movement of trains, cars and locomotives. It is essential that they should know and follow any restrictions that are placed on those movements.

Paragraph (b). In this paragraph, FRA states that the instructions regarding weight shall be expressed in terms of maximum equipment weights, and either minimum equipment lengths or axle spacing. Transportation personnel have information on the weights and configuration of cars and locomotives, and they must be able to relate that information to any restrictions placed on the movement of that equipment.

Paragraph (c). In this paragraph, FRA states that the instructions regarding dimensions shall be expressed in terms of feet and inches of cross section and equipment length, in conformance with common railroad industry practice for reporting dimensions of exceptional equipment in interchange in which height above top-of-rail is shown for each cross section measurement, followed by the width of the car or the shipment at that height. In the industry, a standard format exists for the exchange of information on dimensions of railroad equipment. This standard practice is practical, even if it is not intuitive. Use of the industry practice is necessary to avoid error and confusion.

Paragraph (d). In this paragraph, FRA states that the instructions may apply to individual structures or to a defined line segment or groups of line segments where the published capacities and dimensions are within the limits of all structures on the subject line segments. Railroads commonly issue instructions related to equipment weights and dimensions to be effective on line segments of various lengths. It is not necessary that transportation personnel be advised of the capacity of every bridge as long as each bridge in the line segment has the capacity to safely carry the loads permitted on that line.

Subpart E—Bridge Inspection

In subpart E, FRA establishes minimum standards to be incorporated into railroad bridge management programs to provide for an effective program of bridge inspections.

Bridge inspection is a vital component in any bridge management program. A bridge with undetected or unreported damage or deterioration can present a serious hazard to the safe operation of trains. Bridge inspection and evaluation is a multi-tiered process, unlike many other types of inspection on a railroad. While track, equipment and signal inspectors usually can compare measurements against common standards to determine whether the inspected feature complies with the standards, such is not the case with most bridges. The evaluation of a bridge requires the application of engineering principles by a competent person, who is usually not present during the inspection. It is therefore necessary that an inspection report should show any conditions on the bridge that might lead to a reduction in capacity, initiation of repair work, or a more detailed inspection to further characterize the condition.

Section 237.101 Scheduling of Bridge Inspections

Paragraph (a). In this paragraph, FRA establishes regulations to address Congress' mandate that the track owner "conduct regular comprehensive inspections of each bridge, at least once every year, and maintain records of those inspections that include the date on which the inspection was performed, the precise identification of the bridge inspected, the items inspected, and accurate description of the condition of those items, and a narrative of any inspection item that is found by the inspector to be a potential problem." Section 417(b)(5), Public Law 110–432, 122 Stat. 4890 (49 U.S.C. 20103, note). Annual inspection of bridges has been an industry practice for over a century, and has proven to be an effective tool of bridge management. Even where a bridge sees very low levels of railroad traffic, the potential still exists for damage from external sources or natural deterioration. This paragraph calls for one inspection per calendar year, with not more than 540 days between successive inspections. Both criteria apply. For example, if a bridge is inspected on January 3, 2011, it becomes overdue for inspection on June 27, 2012, 541 days later. If it is inspected on December 18, 2011, it becomes overdue on January 1, 2013, since it was not inspected in calendar year 2012.

One commenter requested that FRA clarify what constitutes a yearly inspection. The commenter asked if this means a "hands-on" type of inspection, or a routine cursory type of inspection. FRA responds that the rule does not prescribe an inspection procedure; that decision is left to the railroad bridge engineer. It is quite likely that the engineer might prescribe varying levels of detail for inspections performed at different periods, depending on the configuration and condition of the bridge.

Paragraph (b). In this paragraph, FRA states that a bridge shall be inspected more frequently than the period referenced in paragraph (a), above, when a railroad bridge engineer determines that such inspection frequency is necessary. The responsibility for adequate inspection remains with the track owner, with the conditions prescribed by a railroad bridge engineer. The inspection regimen for every bridge should be determined from its condition, configuration, environment, and traffic levels.

Paragraph (c). FRA requires that each bridge management program define requirements for the special inspection of a bridge to be performed whenever the bridge is involved in an event which might have compromised the integrity of the bridge, including flood, fire, earthquake, derailment, or other vehicular or vessel impact. It is essential that railroad traffic be protected from possible bridge failure resulting from damage from an event caused by natural or non-railroad agents. The track owner should have in place a means to receive notice of such an event, including weather and earthquakes, and a procedure to conduct an inspection following such an event.

Paragraph (d). In this paragraph, FRA states that any railroad bridge that has not been in railroad service and has not been inspected in accordance with this section within the previous 540 days must be inspected and the inspection report reviewed by a railroad bridge engineer prior to the resumption of railroad service. The inspection frequency requirements of this section do not apply to bridges that are not in railroad service. FRA notes that although inspections are not required on out-of-service railroad bridges, state law regarding responsibility for damage to outside parties that might be caused by the condition of the bridge is not affected. If a bridge not in service has been inspected within the 540 day period, the track owner may accept that inspection and begin railroad service, subject to any determination in that regard by a railroad bridge engineer. The inspection period would date from the last inspection, with no credit for out-of-service time.

Section 237.103 Bridge Inspection Procedures

In this section, FRA requires that each bridge management program specify the procedure to be used for inspection of individual bridges or classes and types of bridges. As mandated by the RSIA, FRA states that the bridge inspection procedures must be as specified by a railroad bridge engineer who is designated as responsible for the conduct and review of the inspections. See Section 417(b)(7)(A), Public Law 110–432, 122 Stat 4890 (49 U.S.C. 20103, note). In the RSIA, Congress also mandated that the bridge safety regulations must "ensure that the level of detail and the inspection procedures are appropriate to the configuration of the bridge, conditions found during the previous inspections, and the nature of the railroad traffic moved over the bridge, including car weights, train frequency and lengths, levels of passenger and hazardous materials traffic, and vulnerability of the bridge to damage." Accordingly, FRA requires that the bridge inspection procedures must ensure that the level of detail and the inspection procedures are appropriate to the configuration of the bridge. Additionally, the bridge inspection procedures must be designed to detect, report and protect deterioration and deficiencies before they present a hazard to safe train operation. The responsibility for adequate inspection remains with the track owner, with the conditions prescribed by a railroad bridge engineer. The inspection regimen for every bridge should be determined from its condition, configuration, environment, and traffic levels. The instructions for bridge inspection may be both general, as by bridge type or line segment; and specific, as needed by particular considerations for an individual bridge.

ASLRRA commented that the rule provides that a railroad bridge engineer must direct programs, review inspections, record procedures, and undertake other similar steps. ASLRRA suggests that this seems to imply the railroad must have a railroad bridge engineer capable of designing a bridge on staff or employed as a consultant each time an inspection is made. ASLRRA contends that a railroad supervisor can implement a program, review the inspection, audit a program, and assess whether a bridge inspection exception needs to go to a railroad bridge engineer for review.

FRA responds that a bridge inspection program can be established by a railroad bridge engineer, either as an employee of or as a consultant to the track owner. The engineer is not required to be on site, or even on the property, during an inspection. A primary purpose of the audit procedure called out below is to permit the railroad bridge engineer to review and monitor the effectiveness of the bridge inspection program that has been conducted under his overall charge.

Section 237.105 Special Inspections

Paragraph (a). In this paragraph, FRA requires that each bridge management program prescribe a procedure for protection of train operations and for inspection of any bridge that might have been damaged by a natural or accidental event, including flood, fire, earthquake, derailment or vehicular or vessel impact. It is essential that railroad traffic be protected from possible bridge failure caused by damage from an event caused by natural or non-railroad agents. The track owner should have in place a means to receive notice of such an event, including weather conditions and earthquakes, and a procedure to conduct an inspection following such an event.

Paragraph (b). In this paragraph, FRA requires that each bridge management program provide for the detection of scour or deterioration of bridge components that are submerged or subject to water flow. The condition of bridge components located underwater is usually not evident from above. Means to determine their condition might be as simple as using measuring rods from the surface, or might call for periodic or special diving inspection. Advanced technology might also provide devices that can be used to determine underwater conditions.

Maryland DOT requested that FRA provide advice on a required inspection frequency for the underwater inspection, noting that FHWA requires underwater inspections at least once in every five years. FRA responds that the rule does not prescribe a particular frequency for underwater inspections; that decision is left to the railroad bridge engineer, to be based on the particular conditions at each bridge.

Section 237.107 Conduct of Bridge Inspections

In this section, FRA requires that bridge inspections be conducted under the direct supervision of a designated railroad bridge inspector, who shall be responsible for the accuracy of the results and the conformity of the inspection to the bridge management program. Bridge inspections can often require more than one person for safety and efficiency. This provision permits others to assist the designated inspector, who remains responsible for the results of the inspection.

Section 237.109 Bridge Inspection Records

In this section, FRA requires that each track owner to which this part applies keep a record of each inspection required to be performed under this part. A bridge inspection has little value unless it is recorded and reported to the individuals who are responsible for the ultimate determination of the safety of the bridge. Bridge inspectors may use a variety of methods to record their findings as they move about the bridge. These include notebooks, voice recordings, having another individual transcribe notes, and photographs. These notes and other items are usually compiled into a prescribed report format at the end of the day or at the conclusion of the inspection. In paragraph (c), FRA delineates the essential elements that must be addressed and reported in any bridge inspection.

Paragraph (d). In this paragraph, FRA requires that an initial report of each bridge inspection be placed in the location designated by the bridge management program within 30 calendar days of the completion of the field portion of the inspection. The initial report must include the information delineated in paragraph (c)(1) through (c)(5). The actual conduct of the inspection should be reported and recorded, showing the fact that the bridge was actually inspected on a certain date, the type of inspection performed, by whom it was performed, and whether or not any critical conditions were detected. Inspection and reporting procedures vary widely among different railroads and circumstances. In many cases, especially on larger railroads, an inspector would prepare the report before leaving the bridge. The reports might be forwarded by mail, by electronic means, or by hand delivery. They might be forwarded daily, weekly, or even less frequently. In other circumstances, a consulting engineer might be engaged by a small railroad to inspect all of the bridges on all or part of the line, and the final report might be prepared by the engineering firm after all of the inspections are completed. Similarly, a large railroad might begin a comprehensive inspection and evaluation of a large structure that will take several months to complete.

FRA recognizes the wide range of time periods required for these various inspections and reporting procedures, so this provision was developed as a means for the track owner to track inspection progress, bridge by bridge, with a simple line item showing:

(1) identification of the bridge inspected;

(2) date of completion of the inspection;

(3) identification of the inspector;

(4) type of inspection performed; and

(5) indication on the report as to whether any item noted thereon requires expedited or critical review by a railroad bridge engineer, and any restrictions placed at the time of the inspection.

These five items can usually be listed on a single line of a report. The initial report might include all of the bridges inspected by one individual in a week or two. FRA does not anticipate that the initial or summary report include all of the data called for in the bridge management program, together with any narrative descriptions necessary for the correct interpretation of the report. This information would be included in the complete inspection report.

Paragraph (e). In this paragraph, FRA requires that a complete report of each bridge inspection shall be placed in the location designated in the bridge management program within 120 days of the completion of the field portion of the inspection. A bridge inspection is not complete until the report of the inspection is filed and available to the persons who are responsible for the management of the bridges inspected. This time period does not include the time used by a consultant or in-house engineering group to complete an analysis of the results of the inspection, and it is not expected that the analysis need be completed within that time period. In cases where a detailed analysis is required, FRA intends that the inspection report on which the analysis is based would be separated from the analysis and filed within the required time frame.

Paragraph (f). This paragraph requires that each bridge inspection program specify the retention period and location for bridge inspection records. The retention period must be at least two years from the completion of the inspection. A comparison of successive reports can reveal any accelerating rates of deterioration or degradation of bridge components. Additionally, an audit or review of the effectiveness of a bridge inspection program requires comparison of previous inspection reports with the actual condition of a bridge included in the audit. The practice of comparing previous inspection reports with actual bridge conditions has been followed by FRA for more than a decade when evaluating railroad bridge management programs. It is a valuable factor in determining the effectiveness of a railroad's program.

Section 237.111 Review of Bridge Inspection Reports

The RSIA requires that an engineer who is competent in the field of railroad bridge engineering reviews all inspection reports and determines whether bridges are being inspected according to the applicable procedures and frequencies, and reviews any items noted by an inspector as exceptions. See Section 417(b)(7), Public Law 110–432, 122 Stat. 4890 (49 U.S.C. 20103, note). In this section, FRA requires responsible railroad bridge supervisors and railroad bridge engineers to review bridge inspection reports. Bridge inspection is usually a multi-tiered procedure. The inspector reports on the conditions noted in the inspection, but an engineer will necessarily evaluate those noted conditions and determine what, if any, further action is required.

The regulation does not require that a railroad bridge engineer review every inspection report, so long as the responsible management personnel keep

track of the conduct of inspections to see that they are performed in accordance with the schedule and other requirements of this rule and the railroad's program. It should be a simple matter for the inspector to indicate on a report whether or not the report would require higher-level or engineering review. The engineering staff would review the reports that indicate problems or issues for them to resolve. Section 237.153, "Audits of inspections," includes a provision for sampling of routine inspection reports to assure that the inspectors are properly identifying reports that require review.

Subpart F—Repair and Modification of Bridges

In subpart F, FRA establishes minimum standards to be incorporated in railroad bridge management programs to provide for adequate design and effective supervision of those bridge modifications and repairs which will materially modify the capacity of the bridge or the stresses in any primary load-carrying component of the bridge. This section provides for correct design and adequate supervision of repair and modification of bridges where the work could materially affect the capacity of the bridge, or its continued integrity. FRA does not intend that minor repairs that do not affect the capacity of the bridge must be designed by an engineer, but the supervision of that work should be performed by a person who is competent to assure that the work does not inadvertently compromise the integrity of the bridge. For instance, arc welding handrails to the members of a through truss might appear to some to be a minor repair, but it could seriously compromise the structural integrity of the bridge.

Section 237.131 Design

Design of entire railroad bridges, modifications and repairs which materially modify the capacity of the bridge or the stresses in any primary load-carrying component of the bridge require the intelligent application of the principles of engineering and can be performed only by an engineer with training and experience in the field of railroad bridges. Railroads have typically issued standard instructions for the performance of common maintenance repairs, such as replacement or upgrading of components of timber trestles. This section specifically permits such a practice. For purposes of this part, a primary load-carrying component is a railroad bridge component, the failure of which would immediately compromise the structural integrity of the bridge.

One commenter notes that the proposed rule requires that while all bridge work that eliminates a deteriorated condition requires design by a bridge engineer, for many situations ranging from cracked flange angles to failed timber caps, a simple component change-out is the most effective repair. These types of repairs have historically been performed by bridge forces without the benefit of formal design oversight. The commenter suggested that each track owner should determine what repairs require the oversight of an engineer.

FRA understands this concern, and has modified § 237.131 to read, in part, that "[e]ach repair or modification which materially modifies the capacity of a bridge or the stresses in any primary load-carrying component of a bridge shall be designed by a railroad bridge engineer."

The comment regarding simple component replacement is addressed in the last sentence of the paragraph, which states that designs and procedures for repair or modification of bridges of a common configuration, such as timber trestles, or instructions for in-kind replacement of bridge components, may be issued as a common standard. Although it may be a standard procedure, the standard should be designed and issued by a qualified railroad bridge engineer.

Section 237.133 Supervision of Repairs and Modifications

This section requires that each repair or modification pursuant to this part shall be performed under the immediate supervision of a railroad bridge supervisor as defined in § 237.55 of this part who is designated and authorized by the track owner to supervise the particular work to be performed. Modifications and repairs which materially modify the capacity of the bridge or the stresses in any primary load-carrying component of the bridge must be performed according to the specific or general specifications and instructions issued by a railroad bridge engineer. Particularly when trains are permitted to pass over a bridge which is being repaired or modified, the supervisor at the bridge must be able to make the necessary determination to either permit, restrict or halt train operation depending on the state of the bridge. As this part does not specify the employment relationship between the track owner and the bridge supervisor, the track owner may designate a contractor or a consultant as the bridge supervisor.

One commenter asked if FRA would object to a track owner designating a contractor's foreman as the bridge supervisor qualified to return a bridge to service at the end of each work window. The commenter also stated that small railroads that do not have a bridge engineer may have to designate their engineering consultant as the bridge supervisor whose full-time presence on a job will be expensive and will take money away from repairs. FRA responds that the proposed regulation does not specify the employment relationship between the track owner and a bridge supervisor. A contractor employee or a consultant may be so designated. It is necessary, however, that a qualified individual be responsible for the proper and safe performance of work on a bridge, and that the individual be authorized to perform the actions necessary to fulfill that responsibility.

Subpart G—Documentation, Records, and Audits of Bridge Management Programs

Documentation is essential to any effective management program. In subpart G, FRA establishes minimum standards to be incorporated in railroad bridge management programs to provide for verification of the effectiveness of the program and the accuracy of the information developed thereby, by the track owner and by FRA to evaluate compliance with this regulation.

Section 237.151 Audits; General

In this section, FRA requires that each program adopted to comply with this part include provisions for auditing the effectiveness of the several provisions of that program, including the validity of bridge inspection reports and bridge inventory data, and the correct application of movement restrictions to railroad equipment of exceptional weight or configuration. Effective management of a safety-critical program such as this requires an adequate level of checks to assure that the requisite work is being performed correctly.

Section 237.153 Audits of Inspections

FRA has found over the years during which it has conducted evaluations of railroad bridge programs that one of the most important indicators of the effectiveness of a program is a comparison of recent bridge inspection reports against actual conditions found at the subject bridges. This is fundamental to an effective audit of a bridge management program. Therefore, in this section, FRA states that each bridge management program incorporate provisions for an internal audit. Each

bridge management program shall incorporate provisions for an internal audit to determine whether the inspection provisions of the program are being followed, and whether the program itself is effectively providing for the continued safety of the subject bridges. Additionally, the inspection audit shall include an evaluation of a representative sampling of bridge inspection reports at the bridges noted on the reports to determine whether the reports accurately describe the condition of the bridge.

Section 237.155 Documents and Records

In this section, FRA requires each track owner required to implement a bridge management program and keep records under this part to make those program documents and records available for inspection and reproduction by FRA. This section addresses Congress' mandate in the RSIA to establish a program to periodically review bridge inspection and maintenance data from railroad carrier bridge inspectors and FRA bridge experts. See Section 417(d), Public Law 110–432, 122 Stat. 4890 (49 U.S.C. 20103, note). As in the case of all railroad safety regulations, FRA has an enforcement responsibility. FRA will require access to the vital documents and records of the various bridge management programs to enable it to carry out that responsibility.

Paragraphs (a) and (b). In these paragraphs, FRA establishes minimum standards for electronic record-keeping provisions that a track owner may elect to utilize to comply with the record-keeping provisions of this part. FRA recognizes the growing prevalence of electronic records, and acknowledges the unique challenges that electronic transmission, storage, and retrieval of records can present. To allow for future advances in technology, FRA is establishing electronic record storage provisions in these paragraphs that are technology-neutral.

For purposes of complying with the record-keeping requirements of this part, a track owner may create and maintain any of the required records through electronic transmission, storage, and retrieval, provided that certain conditions are met. Not only must the system used to generate the electronic records meet all of the requirements of this subpart and the records contain all of the information required by this subpart, but the track owner must also: monitor the electronic database through a sufficient number of monitoring indicators to ensure a high degree of the accuracy of the records; train the employees who use the system on the proper use of the system; and maintain an information technology security program adequate to ensure the integrity of the system, including the prevention of unauthorized access to the program logic or individual records.

Additionally, the integrity of the bridge inspection records must be protected by a security system that incorporates user identity and password, or a comparable method, to establish appropriate levels of program and record data access meeting all of the following standards: no two individuals can have the same electronic identity; a record cannot be deleted or altered by any individual after the record is certified by the employee who created the record; any amendment to the record must either be electronically stored apart from the record it amends, or electronically attached to the record as information without changing the original record; each amendment to a record must uniquely identify the person making the amendment; and the electronic system must provide for the maintenance of inspection records as originally submitted without corruption or loss of data.

Two commenters expressed a general concern that the security provisions of the proposed rule would preclude the modification of permanent bridge records, such as the inventory itself. As FRA responds that was not the intent, the final rule has been modified so that the data security provisions apply only to bridge inspection records.

Appendix A to Part 237—Supplemental Statement of Agency Policy on the Safety of Railroad Bridges

A Statement of Agency Policy on the Safety of Railroad Bridges was originally published by FRA in 2000 as Appendix C of the Federal Track Safety Standards, 49 CFR part 213. With the issuance of 49 CFR part 237, Bridge Safety Standards, certain non-regulatory provisions in that Policy Statement have been incorporated in that regulation. However, FRA has determined that other non-regulatory items are still useful as information and guidance. Those provisions of the Policy Statement are therefore retained and placed in this Appendix in lieu of their former location in the Track Safety Standards.

Appendix B to Part 237—Schedule of Civil Penalties

Consistent with FRA's Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, a penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

VI. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures. See 44 FR 11034; February 26, 1979. FRA has prepared and placed in the docket a regulatory impact analysis addressing the economic impacts from this final rule.

As part of the regulatory impact analysis FRA has assessed quantitative measurements of the cost and benefit streams expected from the adoption of this final rule. For the 20-year period the estimated quantified costs total $164.2 million, and have a present value (PV, 7%) of $84.4 million. For the same period of time the estimated quantified benefits total $19.4 million and have a PV(7%) of $9.8 million. These benefits are exclusive of long-term efficiencies to the railroads with respect to conservation of the capital value of the structures in question. Very often targeted repairs or restoration at an early stage in the deterioration of a bridge may significantly extend the useful life of a bridge. The benefits also do not consider the potential for a catastrophic event resulting in a bridge failure and consequent fatalities to railroad personnel, rail passengers, or persons underneath the bridge. Although FRA has verified through its bridge program that most railroads properly manage their bridges most of the time, in the recent past FRA has also determined circumstances—even on Class I railroads—where proper inspections or repairs have been inappropriately deferred. Accordingly, this final rule offers the opportunity to capture and extend the current heightened attention to bridge management achieved through industry and FRA efforts over the past several years.

B. Regulatory Flexibility Act and Executive Order 13272; Final Regulatory Flexibility Assessment

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not

have a significant impact on a substantial number of small entities. During the NPRM stage, FRA had not determined whether the proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FRA published an IRFA to aid the public in commenting on the potential small business impacts of the proposals in the NPRM. All interested parties were invited to submit data and information regarding the potential economic impact that would result from adoption of the proposals in the NPRM.

The Regulatory Flexibility Act also requires an agency to conduct a final regulatory flexibility assessment (FRFA) unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. FRA is not able to certify that the final rule will not have a significant economic impact on a substantial number of small entities due to insufficient information. FRA did not receive many comments, or data from commenters, on the IRFA, and the information that was received was not sufficient to make a determination. Thus, FRA is publishing this FRFA and will issue a small entity guidance document soon.

FRA estimates, primarily based on two facts, that approximately 70 percent of the total cost of this rulemaking (see regulatory impact analysis (RIA)) will be borne by small entities. First, larger railroads generally have more comprehensive bridge management programs and more frequent bridge inspections. Second, since FRA's RIA is an overall industry analysis, it is not immediately obvious that the incremental cost burden on small railroads is proportionally larger than for larger entities. This is because more small railroads will have to increase inspection frequency and enhance their management programs. It should be noted that the bridge populations of typical small railroads are less complex than those of larger railroads.

Below, FRA provides the rationale it used for assessing what impacts would be borne by small entities. FRA considered all comments received in the public comment process when making a determination in the FRFA.

This FRFA was developed in accordance with the Regulatory Flexibility Act.

(1) A Succinct Statement of the Need for and Objectives of the Rule

As discussed in Section I of the preamble to this rule, the structural integrity of bridges that carry railroad tracks is important because the severity of a train accident is usually compounded when a bridge is involved, regardless of the cause of the accident. In 2000, FRA published a final statement of agency policy for the safety of railroad bridges, establishing criteria to ensure the structural integrity of bridges that carry railroad tracks. The Rail Safety Improvement Act of 2008 (RSIA) directs FRA to issue, by October 16, 2009, regulations requiring railroad track owners to adopt and follow specific procedures to protect the safety of their bridges.

There are more than 100,000 railroad bridges in the United States. Federal regulations offer the benefit of uniformity that would allow railroads that operate in more than one State to develop and implement a single management program that would apply to all of its railroad bridges, supporting one or more tracks, rather than several programs tailored to meet the different requirements of each different State or local jurisdiction.

FRA is issuing this rule to promulgate minimum bridge safety standards as mandated by RSIA, Section 417, Public Law 110–432, 122 Stat. 4890 (49 U.S.C. 20103, note).

(2) 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 to the Proposed Rule as a Result of Such Comments

No comments were received that directly addressed the IRFA. However, a few comments did address items of cost used in the RIA, which are related to the IRFA for the NPRM.

(a) Security of Records

In 49 CFR 237.155, FRA proposed numerous recordkeeping requirements primarily dealing with security. The recordkeeping requirements in the proposed rule assumed that the documents would be kept electronically. One commenter noted that not all documents for small railroads would be maintained that way. Thus, the final rule has a minor revision that accommodates bridge inspection records that are not electronic. The impact of this minor change will not cause any cost calculation changes.

(b) Bridge Inspection Cost

One commenter did not agree with the average bridge inspection cost that the FRA used in its RIA. More specifically, this commenter mentioned that $750 for the average cost of a bridge inspection is not realistic. This commenter also opined that the actual cost is more excessive (in the range of $4,000 to $5,000 per bridge) for a bridge that was inspected on a 2-year cycle.

FRA disagrees with this commenter and believes that the cost used in the RIA for the NPRM is appropriate, given its understanding and interpretation of the regulatory requirements. In response, FRA emphasizes that its cost estimate is an average that includes lower cost inspections, such as that of a wood trestle bridge over a small stream, which would be less than the average cost. In addition, this commenter was basing the higher cost estimate on a more expensive, hands-on detailed bridge inspection process required on a 2-year frequency for highway bridges by FHWA. Finally, this commenter was providing comments related to experiences with inspecting a population of large highway bridges. For these reasons, FRA has not modified its cost estimate for bridge inspections.

(3) A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

The "universe" of the entities to be considered generally includes only those small entities that are reasonably expected to be directly regulated by this action. Two types of small entities are potentially affected by this rulemaking: (1) railroads that own track supported by a bridge, and (2) governmental jurisdictions of small communities that own railroad bridges.

"Small entity" is defined in 5 U.S.C. 601 as having the same meaning as "small business concern" under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) includes nonprofit enterprises that are independently owned and operated, and are not dominant in their field of operations within the definition of "small entities." Additionally, 5 U.S.C. 601(5) defines "small entities" as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The U.S. Small Business Administration (SBA) stipulates "size standards" for small entities. It provides that the largest a for-profit railroad business firm may be (and still classify as a "small entity") is 1,500 employees for "line-haul operating" railroads, and

500 employees for "shortline operating" railroads.[1]

SBA size standards may be altered by Federal agencies in consultation with SBA and in conjunction with public comment. Pursuant to the authority provided to it by SBA, FRA has published a final policy, which formally establishes small entities as railroads that meet the line haulage revenue requirements of a Class III railroad.[2] Currently, the revenue requirements are $20 million or less in annual operating revenue, adjusted annually for inflation. The $20 million limit (adjusted annually for inflation) is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment.[3] The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposed to use this definition for the rulemaking in the NPRM and received no comments on that proposal. FRA is using this definition for the final rule.

(a) Governmental Jurisdictions of Small Communities

Small entities that are classified as governmental jurisdictions of small communities may also be affected by this rulemaking. As stated above, and defined by SBA, this term refers to the governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000. The potential impact of this rulemaking to these entities is related to their ownership of a bridge, and possibly the track supported by the bridge as well. Such bridges are usually built by communities, with railroad collaboration, to achieve highway-rail grade separation. FRA does not have information regarding the number of small communities that own such bridges and received no additional information during the comment process of the NPRM.

In some cases, however, the government entity and the railroad apportion ownership, expenses, and maintenance responsibility according to the provisions of an order from the State regulatory agency that governs highway and railroad crossing improvements. It is most common for the railroad to retain the responsibility for the actual inspection and management of the bridge. To the extent that agreements which require cost-sharing and existing bridge management programs would have to be enhanced to meet the final regulation, there may be some burden passed on to small government jurisdictions; however, such burden is not expected to be substantial. To the extent that any burden does result, it is possible that insurance premiums could be adjusted to reflect the risk reduction, resulting in some level of savings in addition to the cost of the program enhancement. This would, of course, be in addition to safety benefits related to fewer accidents.

Accordingly, FRA cannot accurately assess the number of governmental jurisdictions of small communities that would be directly impacted by this regulation and what the impact would be to them. FRA requested comment from affected governmental jurisdictions as to the impact the proposed rule would have on them during the NPRM comment process. The comments received during the public comment period of the NPRM did not provide any additional data or information on this issue.

(b) Railroads

There are approximately 687 small railroads meeting the definition of "small entity" as described above. FRA estimates that approximately 95 percent of these small entities, or approximately 653, own track supported by a bridge. Because the final rule would apply to all of these small railroads, FRA has concluded that a substantial number of such entities would be impacted. Note, however, that approximately 125 of these railroads are subsidiaries of large shortline holding companies with the expertise and resources comparable to larger railroads. In the IRFA for the NPRM, FRA estimated a smaller number of subsidiaries, but since then has gained more accurate information as to the best estimate of how many small railroads are subsidiaries of larger corporations. In addition, absent this rulemaking, most railroads that own track supported by bridges, including many of the railroads identified as small entities, would to some extent voluntarily incur the expense associated with implementation of the bridge management programs in accordance with the requirements imposed by FRA to address the risk associated with structural failure of a bridge. In fact, the ASLRRA, which represents most of the small railroads impacted by this rulemaking, has developed a model bridge management program intended to keep bridge and culvert infrastructure safe and structurally sound. Member railroads are expected to take the generic plan and customize it to meet their specific circumstances and the requirements in this rule. Such initiative would minimize the program development cost. Nevertheless, program implementation costs may be substantial for those small railroads that do not currently have bridge management programs, and do not inspect railroad bridges regularly.

While FRA does recognize that some small railroads do not currently have bridge management programs, FRA believes that many railroads have already made (or are making) the transition to track structures and bridges capable of handling 286,000-pound cars in line with the general movement in the industry toward these heavier freight cars. To protect such investments, which are usually quite significant, railroads are already implementing bridge management programs.

For example, in 2005, the Texas Transportation Institute reported that 42 percent of the shortline railroad miles that were operated in Texas that year had already been upgraded, 9 percent would not need an upgrade, and 47 percent needed upgrading if they wanted to transport any type of 286,000-pound shipments.[4] In addition, the results of a 1998–1999 survey conducted by ASLRRA indicated that 41 percent of respondent shortline railroads could handle 286,000-pound rail cars and 87 percent of the respondent shortline railroads indicated that they would need to accommodate 286,000-pound railcars in the future.[5]

In addition, at least one Class I railroad has arranged for shortline and regional railroads that connect with it to send participants to several multiday bridge inspection classes this year.

In general, implementation of the final rule will likely significantly burden only a small portion of the small railroads potentially affected. FRA invited commenters to submit information that might assist us in assessing the cost impacts on small railroads of the proposals during the comment process of the NPRM; however, very little comment was received on this matter, and comments received were not sufficient to allow us to make a determination.

[1] "Table of Size Standards," U.S. Small Business Administration, January 31, 1996, 13 CFR Part 121. *See also* NAICS Codes 482111 and 482112.

[2] *See* 68 FR 24891 (May 9, 2003).

[3] For further information on the calculation of the specific dollar limit, please see 49 CFR Part 1201.

[4] Jeffrey E. Warner and Manuel Solari Terra, "Assessment of Texas Short Line Railroads," Texas Transportation Institute (November 15, 2005).

[5] The 10-Year Needs of Short Line and Regional Railroads, Standing Committee on Rail Transportation, American Association of State Highway and Transportation Officials, Washington, DC (December 1999). This report was based on a survey conducted by the ASLRRA in 1998 and 1999, with data from 1997.

(4) A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The impacts from this rulemaking will primarily result from complying with the requirements for the adoption of bridge management programs. The final rule provides affected entities 6- to 24-month periods of time in which to adopt such programs. Class III railroads will have the full 24-month period from the effective date of the final rule, unless they have more than 10 scheduled passenger trains per week operating anywhere on their system, in which case they would have only 6 months.

(a) Recordkeeping Requirements of § 237.33

The requirements in § 237.33 stipulate that each bridge management program includes an accurate inventory of railroad bridges; a record of the safe load capacity of each bridge; a provision to obtain and maintain the design documents of each bridge if available, and to document all repairs, modifications, and inspections of each bridge; and a bridge inspection program covering the method of documenting inspections, including standard forms and formats.

FRA believes that most railroads, regardless of size, already maintain an accurate inventory of their railroad bridges, records of the safe load capacity of their bridges, and design documents to the extent they are available. Likewise, because it is good business practice to do so, most railroads maintain documents related to all repairs, modifications, and inspections of bridges. The States of Ohio, Michigan, and New York have existing bridge regulations requiring railroads to maintain bridge inventories and inspect bridges annually. There are approximately 100 small railroads that operate in those States. However, some railroads may not include in their documentation some of the particular data items specified in this rule. Thus these requirements will impose a nominal additional recordkeeping burden on some small railroads.

As noted above, not all small railroads have inspection programs. ASLRRA, however, has developed a model program for its members, thus minimizing the burden associated with the development of such plans. FRA estimates that the burden for individual railroad customization of the program would range from $570, for the smaller Class III railroads, to $3,000 for the larger Class III railroads. Costs associated with maintenance, modifications, and updates to bridge management plans will average approximately 15 percent of the initial development cost, or between $85 and $450, annually. Therefore, this reporting requirement will have minimal impact on small entities.

Determination of bridge load capacity will be made by a bridge engineer. The engineer is determined by the track owner to be competent to perform the functions necessary for the determination of load capacity. Bridge inspection procedures would be specified by a railroad bridge engineer who is designated as responsible for the conduct and review of the inspections.

(b) Bridge Inspections

Bridge management programs will be required to contain bridge inspection programs. Subpart E requires calendar year inspections of bridges according to specified procedures, as well as special inspection of bridges that might be damaged by a natural or accidental event. This subpart also specifies that bridge inspections must be conducted under the direct supervision of a designated bridge inspector. The inspector is deemed technically competent to view, measure, report, and record the condition of a railroad bridge and its individual components. FRA expects there will be a significant increase in the number of bridge inspections conducted by small railroads or their contractors or consulting engineers. FRA requested comments and input regarding the extent to which Class III railroads already conduct annual inspection of bridges and the extent to which they would have to conduct additional bridge inspections. FRA did not receive any comments or information related to this request.

Most small railroads do not have bridge engineers or inspectors on staff. They contract out bridge inspections. A typical contract is for the inspection of most (if not all) the bridges the railroad owns, with delivery of a final report addressing the state of all bridges. Interim reports are provided to the railroad, or the responsible railroad bridge engineer, to record the fact that a certain bridge has actually been inspected and whether or not any significant deficiencies were noted. Some States provide shortline railroads funding via grants and loans for infrastructure improvements including bridge rehabilitation, track maintenance, and bridge inspection. For instance, the Tennessee Department of Transportation provides significant grants for such projects to most of the 20 Class III railroads in the State.[6] The Pennsylvania Department of Transportation administers a matching grant program to support freight railroad maintenance and construction costs.

FRA believes that small railroads own, or would otherwise be responsible for inspecting, approximately 20,000 bridges. FRA estimates that the average cost per bridge inspection is $750, and that approximately 10,000 bridges are being inspected less frequently than once a year, while 5,000 are not inspected at all. Most small railroads may own track supported by several bridges, especially in some areas where the terrain requires such structures. FRA requested comment regarding the level of cost burden that the annual inspection would impose. The cost for this requirement was the largest cost in FRA's RIA. FRA believes that, of the railroads which do not presently inspect their bridges on an annual basis, most are small railroads.

(c) Determination of Bridge Load Capacities

Subpart D requires the determination of bridge load capacities. FRA believes that railroad bridge owners are generally aware of bridge load capacities. Nevertheless, it is likely that some railroads will have to take action to verify this information in order to develop the type of documentation required by this subpart. Bridge load capacity information is vital to ensuring that safe capacity is not exceeded. Small railroads affected by this requirement will likely have a consulting engineer perform such calculations. Most of the bridges that do not already have load capacities calculated are smaller, less complex structures.

(d) Repair and Modification of Bridges

Subpart F prescribes minimum standards for bridge modification and repair that will materially modify the capacity of a bridge or the stresses in any primary load carrying component of the bridge. Modifications and repairs to bridges (except for minor modifications and repairs) will have to be designed by railroad bridge engineers, and the work will have to be supervised by designated bridge supervisors. Small railroads will generally contract out such modifications and repairs. As common

[6] U.S. General Accounting Office, "Railroad Bridges and Tunnels, Federal Role in Providing Safety Oversight and Freight Infrastructure Investment Could Be Better Targeted," August 2007, (GAO–07–770).

practice, consulting engineers meet the design and supervision requirements of this rule, and competent contractor employees may be designated to perform the immediate supervision of much of the modification and repair work.

(e) Audits

Each program will have to include provisions for auditing the effectiveness of several provisions of the program, including the validity of bridge inspection reports and bridge inventory data, and the correct application of movement restrictions to railroad equipment of exceptional weight or configuration. FRA anticipates that Class III railroad audits will generally be performed by a company official following guidance in the ASLRRA model program and without assistance from an external financial or engineering auditor. In general, FRA anticipates that the audit process will be simpler and consume fewer resources for small railroads than for larger railroads. This is because, by the nature of their operations, shortlines will probably have smaller and less complex bridge populations.

(5) A Description of the Steps the Agency Has Taken To Minimize the Significant Adverse Economic Impact On Small Entities Consistent With the Objectives of Applicable Statutes, Including a Statement of Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule, and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency Was Rejected

In § 237.31, FRA sets the schedule for railroads to adopt bridge safety management programs. In consideration of the impact on small railroads that may not already have such programs, this schedule generally provides small railroads with an additional 18 months more than Class I carriers, and an additional 12 months more than Class II carriers, to adopt these programs.

FRA has identified no additional, significant alternative to this final rule that satisfies the mandate of the RSIA or meets the agency's objective in promulgating this rule, and that would minimize the economic impact of the rulemaking on small entities. As in all aspects of this rulemaking, FRA requested comments on this finding of no significant alternative related to small entities. No comments were received relative to the question of what alternatives could be provided to small entities.

The process by which this final rule was developed provided outreach to small entities. As noted in Section III of this final rule, this rule was developed in consultation with industry representatives through RSAC, which includes small railroad representatives. On December 10, 2008, RSAC referred to the Working Group, established in March 2008, the task of developing a draft rule requiring the owners of track carried on one or more railroad bridges to adopt a bridge safety management program to reduce the risk of human casualties, environmental damage, and disruption to the Nation's railroad transportation system resulting from catastrophic bridge failure. The Working Group met twice, on January 28–29, 2009, and February 23–24, 2009. Small railroad representatives participated in both meetings and raised issues of concern to small railroads. Of specific concern to small railroads that own several bridges and contract out the inspection of these bridges, was the ability to continue to enter into such contractual agreements structured such that final inspection reports are submitted as part of a single report at the completion of the contract, which could span several months. After the comment period for the NPRM closed, FRA held a 1-day meeting for the Working Group to review the comments to the docket. This meeting was held in Washington, DC, on December 15, 2009. At this meeting all comments were reviewed and the Working Group provided FRA with pertinent input on potential issues. This final rule takes into account the comments and input provided by the Working Group.

C. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
237.3:				
Notifications to FRA of Assignment of Bridge Responsibility.	693 Railroads	15 notifications	90 minutes	22.5
Signed Statement by Assignee Concerning Bridge Responsibility.	693 Railroads	15 signed statements	30 minutes	7.5
237.9: Waivers—Petitions	693 Railroads	12 petitions	4 hours	48
237.31 and 237.33: Development/Adoption of Bridge Management Program.	693 Railroads	693 plans	Varies	20,100
237.57: Designation of Qualified Individuals	693 Railroads	200 designations	30 minutes	100
237.71: Determination of Bridge Load Capacities	693 Railroads	2,000 determinations	8 hours	16,000
237.73: Issuance of Instructions to Railroad Personnel by Track Owner.	693 Railroads	2,000 instructions	2 hours	4,000
237.105:				
Special Bridge Inspections and Reports/Records	693 Railroads	7,500 inspections and reports/records.	12.50 hours	93,750
Special Underwater Inspections	693 Railroads	50 inspections and reports/records.	40 hours	2,000
237.107 and 237.109:				
Nationwide Annual Bridge Inspections—Reports	693 Railroads	18,000 inspections and reports.	4 hours	72,000
Records	693 Railroads	18,000 records	1 hour	18,000

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Report of Deficient Condition on a Bridge (New from NPRM).	693 Railroads	50 reports	30 minutes	25
237.111:				
Review of Bridge Inspection Reports by Railroad Bridge Engineers.	693 Railroads	2,000 inspection report reviews.	30 minutes	1,000
Prescription of Bridge Inspection Procedure Modifications After Review.	693 Railroads	200 inspection procedure modifications.	30 minutes	100
237.131:				
Design of Bridge Modifications or Bridge Repairs	693 Railroads	1,250 designs	16 hours	20,000
Bridge Modification Repair Reviews/Supervisory Efforts	693 Railroads	1,250 bridge modification repair reviews.	1.50 hours	1,875
Common Standard Designed by Railroad Bridge Engineer (New from NPRM).	693 Railroads	50 standards	24 hours	1,200
237.153: Audits of Inspections	693 Railroads	693 inspection audits	80 hours/24 hours/6 hours.	5,470
237.155—Documents and Records:				
Establishment of Railroad Monitoring and Information Technology Security Systems for Electronic Recordkeeping.	693 Railroads	5 systems	80 hours	400
Employees Trained in System	693 Railroads	100 employees	8 hours	800

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan at 202–493–6292 or Ms. Kimberly Toone at 202–493–6132, or via e-mail at the following respective addresses: *Robert.Brogan@dot.gov;* or *Kimberly.Toone@dot.gov.*

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via e-mail to the Office of Management and Budget at the following address: *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

FRA has evaluated this final rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

E. Federalism Implications

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

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. This final rule will not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. FRA has also determined that this final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Moreover, FRA notes that RSAC, which provided advice regarding this final rule, has as permanent members, two organizations representing State and local interests: AASHTO and ASRSM. Both of these State organizations concurred with the RSAC

recommendation made in this rulemaking. RSAC regularly provides recommendations to the Administrator of FRA for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the federalism implications of this rulemaking from these representatives or from any other representatives of State government.

However, this final rule could have preemptive effect by operation of law under a provision of the former Federal Railroad Safety Act of 1970 (former FRSA), 49 U.S.C 20106 (Sec. 20106). The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "local safety or security hazard" exception to Section 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under the former FRSA. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) (currently $140,800,000) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of $140,800,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." See 66 FR 28355, May 22, 2001. Under the Executive Order a "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule is not a "significant energy action" within the meaning of the Executive Order.

H. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

List of Subjects

49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 237

Penalties, Railroad safety, Bridge safety, Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, FRA amends chapter II, subtitle B, of title 49, Code of Federal Regulations by removing appendix C to part 213 and adding part 237 as follows:

PART 213—[AMENDED]

■ 1. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Appendix C to Part 213—[Removed]

■ 2. In part 213, remove appendix C.

■ 3. Add part 237 to read as follows:

PART 237—BRIDGE SAFETY STANDARDS

Subpart A—General

Sec.
237.1 Application.
237.3 Responsibility for compliance.
237.5 Definitions.
237.7 Penalties.
237.9 Waivers.

Subpart B—Railroad Bridge Safety Assurance

237.31 Adoption of bridge management programs.
237.33 Content of bridge management programs.

Subpart C—Qualifications and Designations of Responsible Persons

237.51 Railroad bridge engineers.
237.53 Railroad bridge inspectors.
237.55 Railroad bridge supervisors.
237.57 Designation of individuals.

Subpart D—Capacity of Bridges

237.71 Determination of bridge load capacities.
237.73 Protection of bridges from over-weight and over-dimension loads.

Subpart E—Bridge Inspection

237.101 Scheduling of bridge inspections.
237.103 Bridge inspection procedures.
237.105 Special inspections.
237.107 Conduct of bridge inspections.
237.109 Bridge inspection records.
237.111 Review of bridge inspection reports.

Subpart F—Repair and Modification of Bridges

237.131 Design.
237.133 Supervision of repairs and modifications.

Subpart G—Documentation, Records, and Audits of Bridge Management Programs

237.151 Audits; general.
237.153 Audits of inspections.
237.155 Documents and records.
Appendix A—Supplemental Statement of Agency Policy on the Safety of Railroad Bridges
Appendix B—Schedule of Civil Penalties

Authority: 49 U.S.C. 20102–20114; P.L. 110–432, division A, section 417; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Subpart A—General

§ 237.1 Application.

(a) Except as provided in paragraphs (b) or (c) of this section, this part applies to all owners of railroad track with a gage of two feet or more and which is supported by a bridge.

(b) This part does not apply to bridges on track used exclusively for rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

(c) This part does not apply to bridges located within an installation which is not part of the general railroad system of transportation and over which trains are not operated by a railroad.

§ 237.3 Responsibility for compliance.

(a) Except as provided in paragraph (b) of this section, an owner of track to which this part applies is responsible for compliance.

(b) If an owner of track to which this part applies assigns responsibility for the bridges that carry the track to another person (by lease or otherwise), written notification of the assignment shall be provided to the appropriate FRA Regional Office at least 30 days in advance of the assignment. The notification may be made by any party to that assignment, but shall be in writing and include the following—

(1) The name and address of the track owner;

(2) The name and address of the person to whom responsibility is assigned (assignee);

(3) A statement of the exact relationship between the track owner and the assignee;

(4) A precise identification of the track segment and the individual bridges in the assignment;

(5) A statement as to the competence and ability of the assignee to carry out the bridge safety duties of the track owner under this part; and

(6) A statement signed by the assignee acknowledging the assignment to him of responsibility for purposes of compliance with this part.

(c) The Administrator may hold the track owner or the assignee, or both, responsible for compliance with this part and subject to penalties under § 237.7.

(d) A common carrier by railroad which is directed by the Surface Transportation Board to provide service over the track of another railroad under 49 U.S.C. 11123 is considered the owner of that track for the purposes of the application of this part during the period the directed service order remains in effect.

(e) When any person, including a contractor for a railroad or track owner, performs any function required by this part, that person is required to perform that function in accordance with this part.

(f) Where an owner of track to which this part applies has previously assigned responsibility for a segment of track to another person as prescribed in 49 CFR 213.5(c), additional notification to FRA is not required.

(g) FRA reserves the right to reject an assignment of responsibility under § 237.3(b) for cause shown.

§ 237.5 Definitions.

For the purposes of this part—

Bridge modification means a change to the configuration of a railroad bridge that affects the load capacity of the bridge.

Bridge repair means remediation of damage or deterioration which has affected the structural integrity of a railroad bridge.

Railroad bridge means any structure with a deck, regardless of length, which supports one or more railroad tracks, or any other undergrade structure with an individual span length of 10 feet or more located at such a depth that it is affected by live loads.

Track owner means a person responsible for compliance in accordance with § 237.3.

§ 237.7 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $650 and not more than $25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $100,000 per violation may be assessed. "Person" means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; any employee of such owner, manufacturer, lessor, lessee, or independent contractor; and anyone held by the Administrator of the Federal Railroad Administration to be responsible under § 237.3(d). Each day a violation continues shall constitute a separate offense. See Appendix B to this part for a statement of agency civil penalty policy.

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 237.9 Waivers.

(a) Any person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary. If a waiver is granted, the Administrator publishes a notice in the Federal Register containing the reasons for granting the waiver.

Subpart B—Railroad Bridge Safety Assurance

§ 237.31 Adoption of bridge management programs.

Each track owner shall adopt a bridge safety management program to prevent the deterioration of railroad bridges by preserving their capability to safely carry the traffic to be operated over them, and reduce the risk of human casualties, environmental damage, and disruption to the Nation's railroad transportation system that would result from a catastrophic bridge failure, not later than the dates in the following schedule:

(a) March 14, 2011: Class I carriers;

(b) March 14, 2011: Owners of track segments which are part of the general railroad system of transportation and which carry more than ten scheduled passenger trains per week;

(c) September 13, 2011: Class II carriers to which paragraph (b) of this section does not apply; and

(d) September 13, 2012: All other track owners subject to this part and not described paragraphs (a) through (c) of this section.

§ 237.33 Content of bridge management programs.

Each bridge management program adopted in compliance with this part shall include, as a minimum, the following:

(a) An accurate inventory of railroad bridges, which shall include a unique identifier for each bridge, its location,

configuration, type of construction, number of spans, span lengths, and all other information necessary to provide for the management of bridge safety;

(b) A record of the safe load capacity of each bridge;

(c) A provision to obtain and maintain the design documents of each bridge if available, and to document all repairs, modifications, and inspections of each bridge; and

(d) A bridge inspection program covering as a minimum:

(1) Inspection personnel safety considerations;

(2) Types of inspection including required detail;

(3) Definitions of defect levels along with associated condition codes if condition codes are used;

(4) The method of documenting inspections including standard forms or formats;

(5) Structure type and component nomenclature; and

(6) Numbering or identification protocol for substructure units, spans, and individual components.

Subpart C—Qualifications and Designations of Responsible Persons

§ 237.51 Railroad bridge engineers.

(a) A railroad bridge engineer shall be a person who is determined by the track owner to be competent to perform the following functions as they apply to the particular engineering work to be performed:

(1) Determine the forces and stresses in railroad bridges and bridge components;

(2) Prescribe safe loading conditions for railroad bridges;

(3) Prescribe inspection and maintenance procedures for railroad bridges; and

(4) Design repairs and modifications to railroad bridges.

(b) The educational qualifications of a railroad bridge engineer shall include either:

(1) A degree in engineering granted by a school of engineering with at least one program accredited by ABET, Inc. or its successor organization as a professional engineering curriculum, or a degree from a program accredited as a professional engineering curriculum by a foreign organization recognized by ABET, Inc. or its successor; or

(2) Current registration as a professional engineer.

(c) Nothing in this part affects the States' authority to regulate the professional practice of engineering.

§ 237.53 Railroad bridge inspectors.

A railroad bridge inspector shall be a person who is determined by the track owner to be technically competent to view, measure, report and record the condition of a railroad bridge and its individual components which that person is designated to inspect. An inspector shall be designated to authorize or restrict the operation of railroad traffic over a bridge according to its immediate condition or state of repair.

§ 237.55 Railroad bridge supervisors.

A railroad bridge supervisor shall be a person, regardless of position title, who is determined by the track owner to be technically competent to supervise the construction, modification or repair of a railroad bridge in conformance with common or particular specifications, plans and instructions applicable to the work to be performed, and to authorize or restrict the operation of railroad traffic over a bridge according to its immediate condition or state of repair.

§ 237.57 Designations of individuals.

Each track owner shall designate those individuals qualified as railroad bridge engineers, railroad bridge inspectors and railroad bridge supervisors. Each individual designation shall include the basis for the designation in effect and shall be recorded.

Subpart D—Capacity of Bridges

§ 237.71 Determination of bridge load capacities.

(a) Each track owner shall determine the load capacity of each of its railroad bridges. The load capacity need not be the ultimate or maximum load capacity, but must be a safe load capacity.

(b) The load capacity of each bridge shall be documented in the track owner's bridge management program, together with the method by which the capacity was determined.

(c) The determination of load capacity shall be made by a railroad bridge engineer using appropriate engineering methods and standards that are particularly applicable to railroad bridges.

(d) Bridge load capacity may be determined from existing design and modification records of a bridge, provided that the bridge substantially conforms to its recorded configuration. Otherwise, the load capacity of a bridge shall be determined by measurement and calculation of the properties of its individual components, or other methods as determined by a railroad bridge engineer.

(e) If a track owner has a group of bridges for which the load capacity has not already been determined, the owner shall schedule the evaluation of those bridges according to their relative priority, as established by a railroad bridge engineer. The initial determination of load capacity shall be completed not later than five years following the required date for adoption of the track owner's bridge management program in conformance with § 237.31.

(f) Where a bridge inspection reveals that, in the determination of the railroad bridge engineer, the condition of a bridge or a bridge component might adversely affect the ability of the bridge to carry the traffic being operated, a new capacity shall be determined.

(g) Bridge load capacity may be expressed in terms of numerical values related to a standard system of bridge loads, but shall in any case be stated in terms of weight and length of individual or combined cars and locomotives, for the use of transportation personnel.

(h) Bridge load capacity may be expressed in terms of both normal and maximum load conditions. Operation of equipment that produces forces greater than the normal capacity shall be subject to any restrictions or conditions that may be prescribed by a railroad bridge engineer.

§ 237.73 Protection of bridges from over-weight and over-dimension loads.

(a) Each track owner shall issue instructions to the personnel who are responsible for the configuration and operation of trains over its bridges to prevent the operation of cars, locomotives and other equipment that would exceed the capacity or dimensions of its bridges.

(b) The instructions regarding weight shall be expressed in terms of maximum equipment weights, and either minimum equipment lengths or axle spacing.

(c) The instructions regarding dimensions shall be expressed in terms of feet and inches of cross section and equipment length, in conformance with common railroad industry practice for reporting dimensions of exceptional equipment in interchange in which height above top-of-rail is shown for each cross section measurement, followed by the width of the car of the shipment at that height.

(d) The instructions may apply to individual structures, or to a defined line segment or group(s) of line segments where the published capacities and dimensions are within the limits of all structures on the subject line segments.

Subpart E—Bridge Inspection

§ 237.101 Scheduling of bridge inspections.

(a) Each bridge management program shall include a provision for scheduling an inspection for each bridge in railroad service at least once in each calendar year, with not more than 540 days between any successive inspections.

(b) A bridge shall be inspected more frequently than provided for in the bridge management program when a railroad bridge engineer determines that such inspection frequency is necessary considering conditions noted on prior inspections, the type and configuration of the bridge, and the weight and frequency of traffic carried on the bridge.

(c) Each bridge management program shall define requirements for the special inspection of a bridge to be performed whenever the bridge is involved in an event which might have compromised the integrity of the bridge, including but not limited to a flood, fire, earthquake, derailment or vehicular or vessel impact.

(d) Any railroad bridge that has not been in railroad service and has not been inspected in accordance with this section within the previous 540 days shall be inspected and the inspection report reviewed by a railroad bridge engineer prior to the resumption of railroad service.

§ 237.103 Bridge inspection procedures.

(a) Each bridge management program shall specify the procedure to be used for inspection of individual bridges or classes and types of bridges.

(b) The bridge inspection procedures shall be as specified by a railroad bridge engineer who is designated as responsible for the conduct and review of the inspections. The inspection procedures shall incorporate the methods, means of access, and level of detail to be recorded for the various components of that bridge or class of bridges.

(c) The bridge inspection procedures shall ensure that the level of detail and the inspection procedures are appropriate to: the configuration of the bridge; conditions found during previous inspections; the nature of the railroad traffic moved over the bridge (including equipment weights, train frequency and length, levels of passenger and hazardous materials traffic); and vulnerability of the bridge to damage.

(d) The bridge inspection procedures shall be designed to detect, report and protect deterioration and deficiencies before they present a hazard to safe train operation.

§ 237.105 Special inspections.

(a) Each bridge management program shall prescribe a procedure for protection of train operations and for inspection of any bridge that might have been damaged by a natural or accidental event, including but not limited to a flood, fire, earthquake, derailment or vehicular or vessel impact.

(b) Each bridge management program shall provide for the detection of scour or deterioration of bridge components that are submerged, or that are subject to water flow.

§ 237.107 Conduct of bridge inspections.

Bridge inspections shall be conducted under the direct supervision of a designated railroad bridge inspector, who shall be responsible for the accuracy of the results and the conformity of the inspection to the bridge management program.

§ 237.109 Bridge inspection records.

(a) Each track owner to which this part applies shall keep a record of each inspection required to be performed on those bridges under this part.

(b) Each record of an inspection under the bridge management program prescribed in this part shall be prepared from notes taken on the day(s) the inspection is made, supplemented with sketches and photographs as needed. Such record will be dated with the date(s) the physical inspection takes place and the date the record is created, and it will be signed or otherwise certified by the person making the inspection.

(c) Each bridge management program shall specify that every bridge inspection report shall include, as a minimum, the following information:

(1) A precise identification of the bridge inspected;

(2) The date on which the physical inspection was completed;

(3) The identification and written or electronic signature of the inspector;

(4) The type of inspection performed, in conformance with the definitions of inspection types in the bridge management program;

(5) An indication on the report as to whether any item noted thereon requires expedited or critical review by a railroad bridge engineer, and any restrictions placed at the time of the inspection;

(6) The condition of components inspected, which may be in a condition reporting format prescribed in the bridge management program, together with any narrative descriptions necessary for the correct interpretation of the report; and

(7) When an inspection does not encompass the entire bridge, the portions of the bridge which were inspected shall be identified in the report.

(d) An initial report of each bridge inspection shall be placed in the location designated in the bridge management program within 30 calendar days of the completion of the inspection unless the complete inspection report is filed first. The initial report shall include the information required by paragraphs (c)(1) through (c)(5) of this section.

(e) A complete report of each bridge inspection, including as a minimum the information required in paragraphs (c)(1) through (c)(6) of this section, shall be placed in the location designated in the bridge management program within 120 calendar days of the completion of the inspection.

(f) Each bridge inspection program shall specify the retention period and location for bridge inspection records. The retention period shall be no less than two years following the completion of the inspection. Records of underwater inspections shall be retained until the completion and review of the next underwater inspection of the bridge.

(g) If a bridge inspector, supervisor, or engineer discovers a deficient condition on a bridge that affects the immediate safety of train operations, that person shall report the condition as promptly as possible to the person who controls the operation of trains on the bridge in order to protect the safety of train operations.

§ 237.111 Review of bridge inspection reports.

Bridge inspection reports shall be reviewed by railroad bridge supervisors and railroad bridge engineers to:

(a) Determine whether inspections have been performed in accordance with the prescribed schedule and specified procedures;

(b) Evaluate whether any items on the report represent a present or potential hazard to safety;

(c) Prescribe any modifications to the inspection procedures or frequency for that particular bridge;

(d) Schedule any repairs or modifications to the bridge required to maintain its structural integrity; and

(e) Determine the need for further higher-level review.

Subpart F—Repair and Modification of Bridges

§ 237.131 Design.

Each repair or modification which materially modifies the capacity of a bridge or the stresses in any primary load-carrying component of a bridge shall be designed by a railroad bridge engineer. The design shall specify the manner in which railroad traffic or other live loads may be permitted on the bridge while it is being modified or repaired. Designs and procedures for repair or modification of bridges of a common configuration, such as timber trestles, or instructions for in-kind replacement of bridge components, may be issued as a common standard. Where the common standard addresses procedures and methods that could materially modify the capacity of a bridge or the stresses in any primary load-carrying component of a bridge, the standard shall be designed and issued by a qualified railroad bridge engineer.

§ 237.133 Supervision of repairs and modifications.

Each repair or modification pursuant to this part shall be performed under the immediate supervision of a railroad bridge supervisor as defined in § 237.55 of this part who is designated and authorized by the track owner to supervise the particular work to be performed. The railroad bridge supervisor shall ensure that railroad traffic or other live loads permitted on the bridge under repair or modification are in conformity with the specifications in the design.

Subpart G—Documentation, Records, and Audits of Bridge Management Programs

§ 237.151 Audits; general.

Each program adopted to comply with this part shall include provisions for auditing the effectiveness of the several provisions of that program, including the validity of bridge inspection reports and bridge inventory data, and the correct application of movement restrictions to railroad equipment of exceptional weight or configuration.

§ 237.153 Audits of inspections.

(a) Each bridge management program shall incorporate provisions for an internal audit to determine whether the inspection provisions of the program are being followed, and whether the program itself is effectively providing for the continued safety of the subject bridges.

(b) The inspection audit shall include an evaluation of a representative sampling of bridge inspection reports at the bridges noted on the reports to determine whether the reports accurately describe the condition of the bridge.

§ 237.155 Documents and records.

Each track owner required to implement a bridge management program and keep records under this part shall make those program documents and records available for inspection and reproduction by the Federal Railroad Administration.

(a) *Electronic recordkeeping; general.* For purposes of compliance with the recordkeeping requirements of this part, a track owner may create and maintain any of the records required by this part through electronic transmission, storage, and retrieval provided that all of the following conditions are met:

(1) The system used to generate the electronic record meets all requirements of this subpart;

(2) The electronically generated record contains the information required by this part;

(3) The track owner monitors its electronic records database through sufficient number of monitoring indicators to ensure a high degree of accuracy of these records;

(4) The track owner shall train its employees who use the system on the proper use of the electronic recordkeeping system; and

(5) The track owner maintains an information technology security program adequate to ensure the integrity of the system, including the prevention of unauthorized access to the program logic or individual records.

(b) *System security.* The integrity of the bridge inspection records must be protected by a security system that incorporates a user identity and password, or a comparable method, to establish appropriate levels of program and record data access meeting all of the following standards:

(1) No two individuals have the same electronic identity;

(2) A record cannot be deleted or altered by any individual after the record is certified by the employee who created the record;

(3) Any amendment to a record is either—

(i) Electronically stored apart from the record that it amends; or

(ii) Electronically attached to the record as information without changing the original record;

(4) Each amendment to a record uniquely identifies the person making the amendment; and

(5) The electronic system provides for the maintenance of inspection records as originally submitted without corruption or loss of data.

Appendix A to Part 237—Supplemental Statement of Agency Policy on the Safety of Railroad Bridges

A Statement of Agency Policy on the Safety of Railroad Bridges was originally published by FRA in 2000 as Appendix C of the Federal Track Safety Standards, 49 CFR Part 213. With the promulgation of 49 CFR Part 237, Bridge Safety Standards, many of the non-regulatory provisions in that Policy Statement have been incorporated into the bridge safety standards in this part.

However, FRA has determined that other non-regulatory items are still useful as information and guidance for track owners. Those provisions of the Policy Statement are therefore retained and placed in this Appendix in lieu of their former location in the Track Safety Standards.

General

1. The structural integrity of bridges that carry railroad tracks is important to the safety of railroad employees and to the public. The responsibility for the safety of railroad bridges is specified in § 237.3, "Responsibility for compliance."

2. The capacity of a bridge to safely support its traffic can be determined only by intelligent application of engineering principles and the law of physics. Track owners should use those principles to assess the integrity of railroad bridges.

3. The long term ability of a structure to perform its function is an economic issue beyond the intent of this policy. In assessing a bridge's structural condition, FRA focuses on the present safety of the structure, rather than its appearance or long term usefulness.

4. FRA inspectors conduct regular evaluations of railroad bridge inspection and management practices. The objective of these evaluations is to document the practices of the evaluated railroad, to disclose any program weaknesses that could affect the safety of the public or railroad employees, and to assure compliance with the terms of this regulation. If the evaluation discloses problems, FRA seeks a cooperative resolution. If safety is jeopardized by a track owner's failure to resolve a bridge problem, FRA will use appropriate measures, including assessing civil penalties and issuance of emergency orders, to protect the safety of railroad employees and the public.

5. This policy statement addresses the integrity of bridges that carry railroad tracks. It does not address the integrity of other types of structures on railroad property (i.e., tunnels, highway bridges over railroads, or other structures on or over the right-of-way).

6. The guidelines published in this statement are advisory. They do not have the force of regulations or orders, which FRA may enforce using civil penalties or other means. The guidelines supplement the requirements of part 237 and are retained for information and guidance.

Guidelines

1. *Responsibility for safety of railroad bridges.*

(a) The responsibility for the safety of railroad bridges is specified in § 237.3.

(b) The track owner should maintain current information regarding loads that may

be operated over the bridge, either from its own engineering evaluations or as provided by a competent engineer representing the track owner. Information on permissible loads may be communicated by the track owner either in terms of specific car and locomotive configurations and weights, or as values representing a standard railroad bridge rating reference system. The most common standard bridge rating reference system incorporated in the Manual for Railway Engineering of the American Railway Engineering and Maintenance-of-Way Association is the dimensional and proportional load configuration devised by Theodore Cooper. Other reference systems may be used where convenient, provided their effects can be defined in terms of shear, bending and pier reactions as necessary for a comprehensive evaluation and statement of the capacity of a bridge.

(c) The owner of the track on a bridge should advise other railroads operating on that track of the maximum loads permitted on the bridge stated in terms of car and locomotive configurations and weights. No railroad should operate a load which exceeds those limits without specific authority from, and in accordance with restrictions placed by, the track owner.

2. *Capacity of railroad bridges.*

(a) The safe capacity of bridges should be determined pursuant to § 237.71.

(b) Proper analysis of a bridge requires knowledge of the actual dimensions, materials and properties of the structural members of the bridge, their condition, and the stresses imposed in those members by the service loads.

(c) The factors which were used for the design of a bridge can generally be used to determine and rate the load capacity of a bridge provided:

(i) The condition of the bridge has not changed significantly; and

(ii) The stresses resulting from the service loads can be correlated to the stresses for which the bridge was designed or rated.

3. *Railroad bridge loads.*

(a) Control of loads is governed by § 237.73.

(b) Authority for exceptions. Equipment exceeding the nominal weight restriction on a bridge should be operated only under conditions determined by a competent railroad bridge engineer who has properly analyzed the stresses resulting from the proposed loads and has determined that the proposed operation can be conducted safely without damaging the bridge.

(c) Operating conditions. Operating conditions for exceptional loads may include speed restrictions, restriction of traffic from adjacent multiple tracks, and weight limitations on adjacent cars in the same train.

4. *Railroad bridge records.*

(a) The organization responsible for the safety of a bridge should keep design, construction, maintenance and repair records readily accessible to permit the determination of safe loads. Having design or rating drawings and calculations that conform to the actual structure greatly simplifies the process of making accurate determinations of safe bridge loads. This provision is governed by § 237.33.

(b) Organizations acquiring railroad property should obtain original or usable copies of all bridge records and drawings, and protect or maintain knowledge of the location of the original records.

5. *Specifications for design and rating of railroad bridges.*

(a) The recommended specifications for the design and rating of bridges are those found in the Manual for Railway Engineering published by the American Railway Engineering and Maintenance-of-Way Association. These specifications incorporate recognized principles of structural design and analysis to provide for the safe and economic utilization of railroad bridges during their expected useful lives. These specifications are continually reviewed and revised by committees of competent engineers. Other specifications for design and rating, however, have been successfully used by some railroads and may continue to be suitable.

(b) A bridge can be rated for capacity according to current specifications regardless of the specification to which it was originally designed.

6. *Periodic inspections of railroad bridges.*

(a) Periodic bridge inspections by competent inspectors are necessary to determine whether a structure conforms to its design or rating condition and, if not, the degree of nonconformity. See § 237.101. Section 237.101(a) calls for every railroad bridge to be inspected at least once in each calendar year. Deterioration or damage may occur during the course of a year regardless of the level of traffic that passes over a bridge. Inspections at more frequent intervals may be required by the nature or condition of a structure or intensive traffic levels.

7. *Underwater inspections of railroad bridges.*

(a) Inspections of bridges should include measuring and recording the condition of substructure support at locations subject to erosion from moving water.

(b) Stream beds often are not visible to the inspector. Indirect measurements by sounding, probing, or any other appropriate means are necessary in these cases. A series of records of these readings will provide the best information in the event unexpected changes suddenly occur. Where such indirect measurements do not provide the necessary assurance of foundation integrity, diving inspections should be performed as prescribed by a competent engineer.

8. *Seismic considerations.*

(a) Owners of bridges should be aware of the risks posed by earthquakes in the areas in which their bridges are located. Precautions should be taken to protect the safety of trains and the public following an earthquake.

(b) Contingency plans for seismic events should be prepared in advance, taking into account the potential for seismic activity in an area.

(c) The predicted attenuation of ground motion varies considerably within the United States. Local ground motion attenuation values and the magnitude of an earthquake both influence the extent of the area affected by an earthquake. Regions with low frequency of seismic events produce less data from which to predict attenuation factors. That uncertainty should be considered when designating the area in which precautions should be taken following the first notice of an earthquake. In fact, earthquakes in such regions might propagate their effects over much wider areas than earthquakes of the same magnitude occurring in regions with frequent seismic activity.

9. *Special inspections of railroad bridges.*

Requirements for special inspections of railroad bridges are found in § 237.105.

10. *Railroad bridge inspection records.*

(a) The requirements for recording and reporting bridge inspections are found in § 237.109.

(b) Information from bridge inspection reports should be incorporated into a bridge management program to ensure that exceptions on the reports are corrected or accounted for. A series of inspection reports prepared over time should be maintained so as to provide a valuable record of trends and rates of degradation of bridge components. The reports should be structured to promote comprehensive inspections and effective communication between an inspector and an engineer who performs an analysis of a bridge.

(c) An inspection report should be comprehensible to a competent person without interpretation by the reporting inspector.

11. *Railroad bridge inspectors and engineers.*

(a) Bridge inspections should be performed by technicians whose training and experience enable them to detect and record indications of distress on a bridge. Inspectors should provide accurate measurements and other information about the condition of the bridge in enough detail so that an engineer can make a proper evaluation of the safety of the bridge. Qualifications of personnel are addressed in subpart C to part 237.

(b) Accurate information about the condition of a bridge should be evaluated by an engineer who is competent to determine the capacity of the bridge. The inspector and the evaluator often are not the same individual; therefore, the quality of the bridge evaluation depends on the quality of the communication between them. Review of inspection reports is addressed in § 237.111.

12. *Scheduling inspections.*

(a) A bridge management program should include a means to ensure that each bridge under the program is inspected at the frequency prescribed for that bridge by a competent engineer. Scheduling of bridge inspections is addressed in § 237.101.

(b) Bridge inspections should be scheduled from an accurate bridge inventory list that includes the due date of the next inspection.

13. *Special considerations for railroad bridges.*

Railroad bridges differ from other types of bridges in the types of loads they carry, in their modes of failure and indications of distress, and in their construction details and components. Proper inspection and analysis of railroad bridges require familiarity with the loads, details and indications of distress that are unique to this class of structure. Particular care should be taken that modifications to railroad bridges, including

retrofits for protection against the effects of earthquakes, are suitable for the structure to which they are to be applied. Modifications should not adversely affect the serviceability of neither the bridge nor its accessibility for periodic or special inspection.

14. *Railroad implementation of bridge safety programs.*

FRA recommends that each track owner or other entity which is responsible for the integrity of bridges which support its track should comply with the intent of this regulation by adopting and implementing an effective and comprehensive program to ensure the safety of its bridges. The bridge safety program should incorporate the following essential elements, applied according to the configuration of the railroad and its bridges. The basis of the program should be in one comprehensive and coherent document which is available to all railroad personnel and other persons who are responsible for the application of any portion of the program. The program should include:

(a) Clearly defined roles and responsibilities of all persons who are designated or authorized to make determinations regarding the integrity of the track owner's bridges. The designations may be made by position or by individual;

(b) Provisions for a complete inventory of bridges that carry the owner's track, to include the following information on each bridge:

(1) A unique identifier, such as milepost location and a subdivision code;

(2) The location of the bridge by nearest town or station, and geographic coordinates;

(3) The name of the geographic features crossed by the bridge;

(4) The number of tracks on the bridge;

(5) The number of spans in the bridge;

(6) The lengths of the spans;

(7) Types of construction of:

(i) Substructure;

(ii) Superstructure; and

(iii) Deck;

(8) Overall length of the bridge;

(9) Dates of:

(i) Construction;

(ii) Major renovation; and

(iii) Strengthening; and

(10) Identification of entities responsible for maintenance of the bridge or its different components.

(c) Known capacity of its bridges as determined by rating by competent railroad bridge engineer or by design documents;

(d) Procedures for the control of movement of high, wide or heavy loads exceeding the nominal capacity of bridges;

(e) Instructions for the maintenance of permanent records of design, construction, modification, and repair;

(f) Railroad-specific procedures and standards for design and rating of bridges;

(g) Detailed bridge inspection policy, including:

(1) Inspector qualifications; including:

(i) Bridge experience or appropriate educational training;

(ii) Training on bridge inspection procedures; and

(iii) Training on Railroad Workplace Safety; and

(2) Type and frequency of inspection; including:

(i) Periodic (at least annually);

(ii) Underwater;

(iii) Special;

(iv) Seismic; and

(v) Cursory inspections of overhead bridges that are not the responsibility of the railroad;

(3) Inspection schedule for each bridge;

(4) Documentation of inspections; including:

(i) Date;

(ii) Name of inspector;

(iii) Reporting Format; and

(iv) Coherence of information;

(5) Inspection Report Review Process;

(6) Record retention; and

(7) Tracking of critical deficiencies to resolution; and

(h) Provide for the protection of train operations following an inspection, noting a critical deficiency, repair, modification or adverse event and should include:

(1) A listing of qualifications of personnel permitted to authorize train operations following an adverse event; and

(2) Detailed internal program audit procedures to ensure compliance with the provisions of the program.

Appendix B to Part 237—Schedule of Civil Penalties

APPENDIX B TO PART 237—SCHEDULE OF CIVIL PENALTIES [1]

Section [2]	Violation	Willful violation
Subpart B—Railroad Bridge Safety Assurance		
237.31 Adoption of bridge management program	$9,500	$17,000
237.33 Content of bridge management program:		
(a) Inventory of railroad bridges	2,500	5,000
(b) Record of safe load capacity	5,500	10,000
(c) Provision to obtain and maintain:		
(i) Design documents	5,500	10,000
(ii) Documentation of repairs and modifications	2,500	5,000
(iii) Inspection reports	2,500	5,000
(d) Bridge inspection program content	2,500	5,000
Subpart C—Qualification and Designation of Responsible Persons		
237.51 Railroad bridge engineers:		
(a) Competency	5,500	10,000
(b) Educational qualification	2,500	5,000
237.53 Railroad bridge inspectors	5,500	10,000
237.55 Railroad bridge supervisors	5,500	10,000
237.57 Designation of individuals	2,500	5,000
Subpart D—Capacity of Bridges		
237.71 Determination of bridge load capacities:		
(a) Safe load capacity	5,500	10,000
(b) Load capacity documented	5,500	10,000
(c) Load capacity determined by a railroad bridge engineer	5,500	10,000
(d) Method of load capacity determination	2,500	5,000
(e) Prioritization of load capacity determination	2,500	5,000
(f) New load capacity determined due to change in condition	2,500	5,000
(g) Load capacity stated in terms of weight and length of equipment	2,500	5,000
(h) Restriction on operations by railroad bridge engineer	5,500	10,000
237.73 Protection of bridges from over-weight and over-dimension equipment:		
(a) Instructions issued	5,500	10,000
(b) Weight instructions	2,500	5,000

APPENDIX B TO PART 237—SCHEDULE OF CIVIL PENALTIES [1]—Continued

Section [2]	Violation	Willful violation
(c) Dimensional instructions	2,500	5,000
(d) Incorrect instructions issued	2,500	5,000
Subpart E—Bridge Inspection		
237.101 Scheduling of bridge inspections:		
(a) Scheduling:		
(i) Failure to inspect	9,500	17,000
(ii) Inspection within calendar year	2,500	5,000
(iii) Inspection frequency exceeding 540 days	2,500	5,000
(b) Increased inspection frequency	5,500	10,000
(c) Special inspections	2,500	5,000
(d) Resumption of railroad operations prior to inspection & review	9,500	17,000
237.103 Bridge inspection procedures	2,500	5,000
237.105 Special inspections:		
(a) Procedures to protect train operations and requiring special inspections	2,500	5,000
(b) Provision for the detection of scour or underwater deterioration	2,500	5,000
237.107 Conduct of bridge inspections	5,500	10,000
237.109 Bridge inspection records:		
(a) Record of inspection	2,500	5,000
(b) Inspection record:		
(i) Certification and date	2,500	5,000
(ii) Falsification		17,000
(c) Inspection record information	2,500	5,000
(d) Initial report within 30 days	2,500	5,000
(e) Final inspection report within 120 calendar days	2,500	5,000
(f) Retention	2,500	5,000
(g) Prompt reporting of dangerous conditions	5,500	10,000
237.111 Review of bridge inspection reports.		
(a) Review by railroad bridge engineers and supervisors	2,500	5,000
(b) Appropriate action concerning present or potential safety hazards	5,500	10,000
(c) Modification of inspection frequency or procedures	2,500	5,000
(d) Scheduling remedial action	2,500	5,000
(e) Higher-level review	2,500	5,000
Subpart F—Repair and Modification of Bridges		
237.131 Design	5,500	10,000
237.133 Supervision of repairs and modifications	5,500	10,000
Subpart G—Documentation, Records and Audits of Bridge Management Programs		
237.151 Audits; general	2,500	5,000
237.153 Audits of inspections	2,500	5,000
237.155 Documents and records:		
(a) Electronic recordkeeping, general	2,500	5,000
(b) System security	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $100,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

[2] The penalty schedule uses section numbers from 49 CFR part 237. If more than one item is listed as a type of violation of a given section, each item is also designated by a "penalty code," which is used to facilitate assessment of civil penalties, and which may or may not correspond to any subsection designation(s). For convenience, penalty citations will cite the CFR section and the penalty code, if any. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR citation in place of the combined CFR and penalty code citation, should they differ.

Issued in Washington, DC, on July 7, 2010.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. 2010–16929 Filed 7–14–10; 8:45 am]

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Federal Register

Thursday,
July 15, 2010

Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Flexible Permits; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0032; FRL–9174–1]

Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Flexible Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to disapprove revisions to the SIP submitted by the State of Texas that relate to the State's Flexible Permits Program (the Texas Flexible Permits Program or the Program). EPA is disapproving the Texas Flexible Permits Program because it does not meet the Minor NSR SIP requirements nor does it meet the NSR SIP requirements for a substitute Major NSR SIP revision. We are taking this action under section 110, part C, and part D, of Title I of the Federal Clean Air Act (the Act or CAA).

DATES: This rule is effective on August 16, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2005–TX–0032. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittals, which are part of the EPA record, are also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley M. Spruiell, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7212; fax number 214–665–7263; e-mail address *spruiell.stanley@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the following terms have the meanings described below:

- "we," "us," and "our" refer to EPA.
- "Act" and "CAA" mean the Federal Clean Air Act.
- "40 CFR" means Title 40 of the Code of Federal Regulations—Protection of the Environment.
- "SIP" means State Implementation Plan established under section 110 of the Act.
- "NSR" means new source review, a phrase intended to encompass the statutory and regulatory programs that regulate the construction and modification of stationary sources as provided under CAA Title I, section 110(a)(2)(C) and parts C and D, and 40 CFR 51.160 through 51.166.
- "Minor NSR" means NSR established under section 110 of the Act and 40 CFR 51.160.
- "NNSR" means nonattainment NSR established under Title I, section 110 and part D of the Act, and 40 CFR 51.165.
- "PSD" means prevention of significant deterioration of air quality established under Title I, section 110 and part C of the Act, and 40 CFR 51.166.
- "Major NSR" means any new or modified source that is subject to NNSR and/or PSD.
- "Program" means the SIP revision submittals from the TCEQ concerning the Texas Flexible Permits State Program.
- "TSD" means the Technical Support Document for this action.
- "NAAQS" means any national ambient air quality standard established under 40 CFR part 50.
- "MRR" means monitoring, reporting, and recordkeeping requirements.

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I. What action is EPA taking?

EPA is taking final action to disapprove the Texas Flexible Permits State Program, as submitted by Texas on November 29, 1994, as revised by severable portions of the March 13, 1996, SIP revision submittal, and severable portions of the July 22, 1998 SIP revision submittal that repealed and replaced portions of, as well as revised, the 1994 submittal and repealed and replaced all of the 1996 submittal; and as revised by severable portions of the October 25, 1999; September 11, 2000; April 12, 2001; September 4, 2002; October 4, 2002; and September 25,

2003; SIP revision submittals. These submittals include revisions to Title 30 of the Texas Administrative Code (30 TAC) at 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. This includes the following regulations under Chapter 116: 30 TAC 116.110(a)(3), 30 TAC Subchapter G–Flexible Permits, the definitions in 30 TAC 116.13—Flexible Permit Definitions, and the definition in 30 TAC 116.10(11)(F) of "modification of existing facility." These State regulations and definitions do not meet the requirements of the Act and EPA's NSR regulations. EPA has concluded that none of these identified elements for the submitted Flexible Permits Program is severable from each other.

EPA proposed an action for the above SIP revision submittals on September 23, 2009 (74 FR 48480). We accepted comments from the public on this proposal from September 23, 2009, until November 23, 2009. A summary of the comments received and our evaluation thereof is discussed in section III below. In the proposal and in the Technical Support Document (TSD), we described our basis for the actions identified above. The reader should refer to the proposal, the TSD, section IV of this preamble, and the Response to Comments in section III of this preamble for additional information relating to our final action.

EPA is disapproving the submitted Texas Flexible Permits State Program as not meeting the requirements for a Minor NSR SIP revision. Our grounds for disapproval as a Minor NSR SIP revision include the following:

- The submitted Program has no express regulatory prohibition clearly limiting its use to Minor NSR and has no regulatory provision clearly prohibiting the use of this submitted Program from circumventing the Major NSR SIP requirements, thereby potentially exempting new major stationary sources and major modifications from the EPA Major NSR SIP requirements;
- It is not an enforceable NSR permitting program. The submitted Program lacks requirements necessary for enforcement and assurance of compliance. There are no specific up-front methodologies in the Program to be able to determine compliance. It fails to meet the enforceability requirements as a program or by a holder of a Flexible Permit, and it cannot assure compliance with the Program or of the affected source;
- It lacks the necessary more specialized monitoring, recordkeeping, and reporting (MRR) requirements required for this type of Minor NSR program, as selected by Texas, to ensure accountability and provide a means to determine compliance. The submitted Program is generic concerning the types of monitoring that is required rather than identifying the employment of specific monitoring approaches, providing the technical specifications for each of the specific allowable monitoring systems, and requiring replicable procedures for the approval of any alternative monitoring system. It also lacks the replicable procedures that are necessary to ensure that (1) adequate monitoring is required that would accurately determine emissions under the Flexible Permit cap, (2) the Program is based upon sound science and meets generally acceptable scientific procedures for data quality and manipulation; and (3) the information generated by such system meets minimum legal requirements for admissibility in a judicial proceeding to enforce the Flexible Permit;
- It lacks replicable, specific, established implementation procedures for establishing the emissions cap in a Minor NSR Flexible Permit;
- It fails to ensure that the terms and conditions of Major NSR SIP permits are retained. Major stationary sources and major modifications can use this submitted Program to fundamentally change the way they comply with specific terms and conditions established in their Major NSR SIP permits. Holders of Major NSR SIP permits are not prohibited from using the submitted Program's allowables-based emissions cap. The Act prohibits the use of an allowables-based cap for Major NSR SIP permittees;
- It fails to meet the statutory and regulatory requirements for a Minor NSR SIP revision and is not consistent with EPA policy and guidance on Minor NSR SIP revisions; and
- Based upon, among other things, the lack of any objective, replicable methodology for establishing the emission cap, the too broad director discretion provision regarding whether or not to include MRR conditions in a Flexible Permit, the lack of sufficient MRR requirements for this type of permit program, and the lack of enforceability, EPA lacks sufficient information to determine that the requested revision to add the new permit option to the Texas Minor NSR SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other requirement of the Act.

We are disapproving the submitted Texas Flexible Permits State Program as not meeting the requirements for a substitute Major NSR SIP revision. EPA understands that the TCEQ intended for the submitted Program to be a Minor NSR program but we are required to review it as a substitute Major NSR SIP revision because the State should have included express language stating that, as it did in the two other Minor NSR SIP alternative permit options (Standard Permits and Permits by Rule), that the submitted Program is clearly limited to Minor NSR and prohibits circumvention of Major NSR. Our grounds for disapproval as a substitute Major NSR SIP revision include the following:

- It is not clearly limited to Minor NSR thereby potentially exempting new major stationary sources to construct and major modifications to occur without a Major NSR permit;
- It has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements, thereby allowing sources to use a Flexible Permit to avoid the requirement to obtain preconstruction permit authorizations for projects that would otherwise require a Major NSR preconstruction permit;
- It does not include a demonstration from the TCEQ, as required by 40 CFR 51.165(a)(2)(ii) and 51.166(a)(7)(iv), showing how the use of "modification" is at least as stringent as the definition of "modification" in the EPA Major NSR SIP program and meets the Act;
- It does not include a demonstration from the TCEQ, as required by 40 CFR 51.165(a)(2)(ii) and 51.166(a)(7)(iv), showing the submitted Program is at least as stringent as the EPA Major NSR SIP program;
- It does not include the requirement to make Major NSR applicability determinations based on actual emissions and on emissions increases and decreases (netting) that occur within a major stationary source;
- To the extent that major stationary sources and major modifications are exempted from Major NSR, it fails to meet the statutory and regulatory requirements for a Major NSR SIP revision and is not consistent with EPA policy and guidance on Major NSR SIP revisions;
- Because it fails to include, among other things, the required demonstration from the State showing how the customized Major NSR SIP revision is in fact as stringent as EPA's Major NSR revised program, any objective, replicable methodology for calculating the emissions cap, provides too broad director discretion regarding whether or not to include monitoring, recordkeeping, and reporting (MRR)

conditions in a Flexible Permit, lacks sufficient MRR requirements for this type of permit program, and is not enforceable, EPA lacks sufficient information to make a finding that the submitted Program will ensure protection of the national ambient air quality standards (NAAQS), and noninterference with the Texas SIP control strategies and RFP.

The provisions in these submittals relating to the Texas Flexible Permits State Program that include the Chapter 116 regulatory provisions and the nonseverab1e definitions in the Flexible Permits Definitions and the General Definitions were not submitted to meet a mandatory requirement of the Act. Therefore, this final action to disapprove the submitted Texas Flexible Permits State Program does not trigger a sanctions or Federal Implementation Plan clock. *See* CAA section l79(a).

II. What is the background?

A. Summary of Our Proposed Action

On September 23, 2009, EPA proposed to disapprove revisions to the SIP submitted by the State of Texas that relate to the Flexible Permits Program. These affected provisions include regulatory provisions at 30 TAC 116.110(a)(3) and 30 TAC Subchapter G—Flexible Permits, definitions in 30 TAC 116.13, Flexible Permits Definitions, and a nonseverable portion of the definition at subparagraph 116.10(11)(F) of "modification of existing facility" under Texas's General Definitions in Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. EPA finds that these submitted provisions and definitions are not severable from each other.

B. Summary of the Submittals Addressed in This Final Action

Tables 1 and 2 below summarize the changes that are in the SIP revision submittals. A summary of EPA's evaluation of each section and the basis for this final action is discussed in sections III through V of this preamble. The TSD (which is in the docket) includes a detailed evaluation of the submittals.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION

Title of SIP submittal	Date submitted to EPA	Date of State adoption	Regulations affected
Flexible Permits	11/29/1994	11/16/1994	• Revision to 30 TAC 116.110. • Adoption of New 30 TAC 116.13 and New Subchapter G, 30 TAC 116.710, 116.711, 116.714, 116.715, 116.716, 116.717, 116.718, 116.720, 116.721, 116.722, 115.730, 116.740, 116.750, and 116.760.
Qualified Facilities and Modifications to Existing Facilities.	3/13/1996	2/14/1996	• Revision of 30 TAC 116.10 to add new definition of "modification of existing facility" at (F).
NSR Rule Revisions; section 112(g) Rule Review for Chapter 116.	7/22/1998	6/17/1998	• Repeal and new 30 TAC 116.10(9)(F), 116.13 and 116.110(a)(3) adopted. • Revisions to Subchapter G, 30 TAC 116.710, 116.711, 116.714, 116.715, 116.721, 116.730, and 116.750.
Public Participation (HB 801)	10/25/1999	9/2/1999	• Revision to Subchapter G, 30 TAC 116.740.
Air Permits (SB–766)—Phase II	9/11/2000	8/9/2000	• Revisions to Subchapter G, 30 TAC 116.710, 116.715, 116.721, 116.722, and 116.750.
Emissions Banking and Trading	4/12/2001	3/7/2001	• Revisions to Subchapter G, 30 TAC 116.711 and 116.715.
House Bill 3040: Shipyard Facilities and NSR Maintenance Emissions.	9/4/2002	8/21/2002	• Revision to 30 TAC 116.10, redesignating 30 TAC 116.10(9)(F) to 116.10(11)(F). • Revisions to Subchapter G, 30 TAC 116.711 and 116.715.
Air Fees	10/4/2002	9/25/2002	• Revisions to Subchapter G, 30 TAC 116.750.
Offset Certification, New Source Review Permitting Processes and Extensions for Construction.	9/25/2003	8/20/2003	• Revision to Subchapter G, 30 TAC 116.715.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION

Section	Title	Date submitted	Date adopted by State	Comments
Chapter 116—Control of Air Pollution by Permits for New Construction or Modification Subchapter A—Definitions				
Section 116.10(11)(F)	General Definitions	3/13/1996	2/14/1996	• Revised to add new definition of "modification of existing facility" at (F).
		7/22/1998	6/17/1998	• Repealed and Adopted new 30 TAC 116.10(9)(F).
		9/4/2002	8/21/2002	• Redesignated 30 TAC 116.10(9)(F) to 30 TAC 116.10(11)(F).
Section 116.13	Flexible Permit Definitions	11/29/1994	11/16/1994	• Initial Adoption.
		7/22/1998	6/17/1998	• Repealed and Adopted new 30 TAC 116.13.
• Subchapter B—New Source Review Permits • Division 1—Permit Application				
Section 116.110	Applicability	11/29/1994	11/16/1994	• Revised (a) to add reference to Flexible Permits.
		7/22/1998	6/17/1998	• Repealed and adopted a new 30 TAC 116.110.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION—Continued

Section	Title	Date submitted	Date adopted by State	Comments
				• Included reference to Flexible Permits in new 30 TAC 116.110(a)(3).
		• **Subchapter G—Flexible Permits**		
Section 116.710	Applicability	11/29/1994	11/16/1994	• Initial adoption.
		7/22/1998	6/17/1998	• Revised subsection (a). • Removed subsection (b) and • Redesignated existing subsections (c)–(e) to subsections (b)–(d). • Revised subsections (b)–(d) as redesignated.
		9/11/2000	8/9/2000	• Revised subsection (b).
Section 116.711	Flexible Permit Application	11/29/1994	11/16/1994	• Initial adoption.
		7/22/1998	6/17/1998	• Revised introductory paragraph and paragraphs (1)–(5); • Added new paragraphs (6) and (11): • Redesignated existing paragraphs (6)–(9) to paragraphs (7)–(10) and existing paragraphs (10)–(11) to paragraphs (12)–(13); and • Revised paragraphs (8)–(10) as redesignated.
		4/12/2001	3/7/2001	• Added new paragraph (12); and • Redesignated existing paragraphs (12)–(13) to paragraphs (13)–(14).
		9/4/2002	8/21/2002	• Designated existing as subsection (a); • Added new subsection (b); and • Revised paragraphs (a)(8)–(11) as redesignated.
Section 116.714	Application Review Schedule.	11/29/1994	11/16/1994	• Initial adoption.
		7/22/1998	6/17/1998	• Revised introductory paragraph.
Section 116.715	General and Special Conditions.	11/29/1994	11/16/1994	• Initial adoption.
		7/22/1998	6/17/1998	• Revised subsection (a), and paragraphs (c)(3)–(6), and (9)–(10).
		9/11/2000	8/9/2000	• Revised subsection (a).
		4/12/2001	3/7/2001	• Revised paragraph (c)(3).
		9/4/2002	8/21/2002	• Revised paragraph (c)(9).
		9/25/2003	8/20/2003	• Revised paragraphs (c)(1) and (c)(9).
Section 116.716	Emission Caps and Individual Limitations.	11/29/1994	11/16/1994	• Initial adoption.
Section 116.717	Implementation Schedule for Addition Controls.	11/29/1994	11/16/1994	• Initial adoption.
Section 116.718	Significant Emission Increase.	11/29/1994	11/16/1994	• Initial adoption.
Section 116.720	Limitation on Physical and Operational Changes.	11/29/1994	11/16/1994	• Initial adoption.
Section 116.721	Amendments and Alterations	11/29/1994	11/16/1994	• Initial adoption.
		7/22/1998	6/17/1998	• Revised paragraphs (b)(2) and (d)(1)–(2).
		9/11/2000	8/9/2000	• Revised subsection (d) and paragraph (d)(1).
Section 116.722	Distance Limitations	11/29/1994	11/16/1994	• Initial adoption.
		9/11/2000	8/9/2000	• Revised introductory paragraph.
Section 116.730	Compliance History	11/29/1994	11/16/1994	• Initial adoption.
		7/22/1998	6/17/1998	• Revised introductory paragraph.
Section 116.740	Public Notice and Comment	11/29/1994	11/16/1994	• Initial adoption.
		7/22/1998	6/17/1998	• Designated existing text as subsection (a); and • Added new subsection (b).
		10/25/1999	9/2/1999	• Revised subsections (a)–(b).
Section 116.750	Flexible Permit Fee	11/29/1994	11/16/1994	• Initial adoption.
		7/22/1998	6/17/1998	• Revised subsections (b)–(d).
		9/11/2000	8/9/2000	• Revised subsection (d).
		10/4/2002	9/25/2002	• Revised subsections (b)–(c).
Section 116.760	Flexible Permit Renewal	11/29/1994	11/16/1994	• Initial adoption.

C. Other Relevant Actions on the Texas Permitting SIP Revision Submittals

The Settlement Agreement in *BCCA Appeal Group* v. *EPA,* Case No. 3:08–cv–01491–N (N.D. Tex), as amended, currently provides that EPA will take final action on the State's Public Participation SIP revision submittal by October 29, 2010. EPA intends to take final action on the submitted NSR SIP by August 31, 2010, as provided in the Consent Decree entered on January 21, 2010 in *BCCA Appeal Group* v. *EPA,* Case No. 3:08–cv–01491–N (N.D. Tex). EPA published its final action on the Texas Qualified Facilities Program and its associated General Definitions on April 14, 2010 (*See* 75 FR 19467) as provided in the Consent Decree.

Additionally, EPA acknowledges that TCEQ is developing a proposed rulemaking package to address EPA's concerns with the current Flexible Permits rules. We will, of course, consider any rule changes if and when they are submitted to EPA for review. However, the rules before us today are those of the current Flexible Permits Program, and we have concluded that the current Program is not approvable for the reasons set out in this notice.

III. Response to Comments

In response to our September 23, 2009, proposal, we received comments from the following: Baker Botts, L.L.P., on behalf of BCCA Appeal Group (BCCA); Baker Botts, L.L.P., on behalf of Texas Industrial Project (TIP); Bracewell & Guiliani, L.L.P., on behalf of the Electric Reliability Coordinating Council (ERCC); Gulf Coast Lignite Coalition (GCLC); Office of the Mayor—City of Houston, Texas (City of Houston); Harris County Public Health and Environmental Services (HCPHES); Sierra Club—Houston Regional Group (Sierra Club); Sierra Club Membership Services (including 2,062 individual comment letters) (SCMS); Texas Chemical Council (TCC); Texas Commission on Environmental Quality (TCEQ); Members of the Texas House of Representatives; Texas Association of Business (TAB); Texas Oil and Gas Association (TxOGA); and University of Texas at Austin School of Law—Environmental Clinic on behalf of Environmental Integrity Project (the Clinic), Environmental Defense Fund, Galveston-Houston Association for Smog Prevention, Public Citizen, Citizens for Environmental Justice, Sierra Club Lone Star Chapter, Community-In-Power and Development Association, KIDS for Clean Air, Clean Air Institute of Texas, Sustainable Energy and Economic Development Coalition, Robertson County: Our Land, Our Lives, Texas Protecting Our Land, Water and Environment, Citizens for a Clean Environment, Multi-County Coalition and Citizens Opposing Power Plants for Clean Air.

A. General Comments

Comment 1: The following commenters support EPA's decisions to disapprove the Flexible Permits State Program: HCPHES; several members of the Texas House of Representatives; the Sierra Club; the City of Houston, and the Clinic.

Response: Generally, these comments support EPA's analysis of Texas's Flexible Permits Program as discussed in detail at 74 FR 48480, at 48485–48494, and further support EPA's action to disapprove the Flexible Permits Program submission.

Comment 2: The SCMS sent numerous similar letters via e-mail that relate to this action. These comments include 1,789 identical letters (sent via e-mail), which support EPA's proposed ruling that major portions of the TCEQ air permitting program do not adhere to the CAA and should be thrown out. While agreeing that the proposed disapprovals are a good first step, the commenters state that EPA should take bold actions such as halting any new air pollution permits being issued by TCEQ utilizing TCEQ's current illegal policy; creating a moratorium on the operations of any new coal fired power plants; reviewing all permits issued since TCEQ adopted its illegal policies and requiring that these entities resubmit their applications in accordance with the Federal CAA; and putting stronger rules in place in order to reduce global-warming emissions and to make sure new laws and rules do not allow existing coal plants to continue polluting with global warming emissions.

The commenters further state that Texas: (1) Has more proposed coal and petroleum coke fired power plants than any other State in the Nation; (2) Is number one in carbon emissions; and (3) Is on the list for the largest increase in emissions over the past five years. Strong rules are needed to make sure the coal industry is held responsible and that no permits are issued under TCEQ's illegal permitting process. Strong regulations are vital to cleaning up the energy industry and putting Texas on a path to clean energy technology that boosts economic growth, creates jobs in Texas, and protects the air quality, health, and communities.

In addition, SCMS sent 273 similar letters (sent via e-mail) that contained additional comments that Texas should rely on wind power, solar energy, and natural gas as clean alternatives to coal. Other comments expressed general concerns related to: Impacts on global warming, lack of commitment by TCEQ to protect air quality, the need for clean energy efficient growth, impacts upon human health, endangerment of wildlife, impacts on creation of future jobs in Texas, plus numerous other similar concerns.

Response: To the extent that the SCMS letters comment on the proposed disapproval of the Flexible Permits Program, they support EPA's action to disapprove the Flexible Permits submission. The remaining comments are outside the scope of our proposed action relating to the Flexible Permits Program.

Comment 3: The Clinic comments that EPA should issue an immediate SIP call for Texas' failure to enforce the current SIP and should require those facilities operating under a Flexible Permit to apply for a SIP-approved permit.

Response: This final rulemaking only addresses the approvability of the Texas Flexible Permits Program as a SIP revision submittal. Therefore, comments related to other EPA action are outside the scope of our proposed action relating to the Flexible Permits Program.

Comment 4: The ERCC comments that to avoid negative economic consequences EPA should exercise enforcement discretion statewide for sources that obtained government authorization in good faith and as required by TCEQ, the primary permitting authority. EPA should not require any injunctive relief and should consider penalty only cases.

Response: EPA enforcement of the CAA in Texas is outside the scope of our proposed action relating to the Flexible Permits Program.

Comment 5: TIP, BCCA, TAB, and TxOGA comment that the Federal NSR SIP regulations recognize the importance of providing operational flexibility. In 1990, Congress added Title V to the CAA and it specifies that State Title V programs must include provisions to allow changes within a permitted facility without requiring a permit revision if the changes are not modifications under any provision of Title I of the Act and do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions). *See* section 502(b)(10) of the Act. In order to provide operational flexibility, EPA adopted 40 CFR 70.4(b)(12) which requires that States establish Title V programs that allow three specific avenues to establish

operational flexibility, including establishment of federally-enforceable emission caps in their Title V programs. *See* 40 CFR 70.4(b)(12)(iii). EPA emphasized the importance of enabling plant sites to maintain operational flexibility in the preamble of to 40 CFR part 70. *See* 57 FR 32250, at 32267 (July 21, 1992).

Response: EPA acknowledges that the Title V Federal program requirements allow a State to provide for operational flexibility using the establishment of federally enforceable emissions caps. EPA, however, must review the submitted Program as a SIP revision submittal under Title I of the Act, not Title V. We are not disapproving the submitted Program because it provides for the establishment of emissions caps. As discussed in the proposal and this final action, EPA is disapproving the submitted Program for inclusion in the Texas NSR SIP because it is not enforceable, does not include any replicable methodology for calculating the emissions caps, provides too broad director discretion regarding the monitoring, recordkeeping, and reporting (MRR) requirements, and lacks sufficient MRR requirements. The submitted Program fails to meet section 110 and parts C and D of the Act and the requirements of 40 CFR part 51. As stated elsewhere in the proposal and throughout this final action, we have identified areas in which the submitted Program does not meet these statutory requirements. *See* 74 FR 48480, at 48490, 48491–48492, and 48492–48493; and sections III.D.3 and IV.C, for further information.

Comment 6: BCCA, TIP, TAB, and TxOGA comment on several Federal Flexibility Permitting rules in which EPA promotes permit flexibility. These include the following:

- Flexible Permit Pilot Study. EPA focused on the importance of operational flexibility in a decade-long Flexible Permit pilot study that included flexible emission cap permits in six states and found that flexible permits worked well and could be used to further both environmental protection and administrative flexibility. Both States and EPA recognized the need to respond rapidly to market signals and demand in today's increasingly global markets while delivering products faster, at lower cost, and of equal or better quality than their competitors. EPA recognized that the flexible permits could reduce the administrative "friction" of time, costs, delay, uncertainty, and risk associated with certain types of operational changes.
- Plantwide Applicability Limits (PALs). EPA recognized the advantages of emissions caps in permits in promulgating its NSR Reform in 1996 and 2002. These advantages include the ability to make changes an emissions cap that do not require a permit for each change so long as the plant's emissions do not exceed the cap rather than face piecemeal applicability decisions for each and every contemplated change. EPA further noted environmental benefits that could result from PALs because sources participating in a cap-based program strive to create enough headroom for future expansion by voluntarily controlling emissions.
- EPA's Proposed Indian Country Rule. In the 2006 proposed rule for Indian Country, EPA recognized the importance of flexibility in air permitting programs. EPA intended this rule to be a representative template of State NSR programs that serve to provide operational flexibility while leveling the regulatory playing field.
- EPA's Flexible Air Permit Rule. In October 2009, EPA promulgated the Federal Flexible Air Permit rule, which incorporated changes to the Title V rules that were intended to clarify and reaffirm opportunities for accessing operational flexibility under existing regulations. EPA recognized that State permitting authorities have discretion to pre-approve minor changes and re-affirms pre-existing authority for State to craft flexible air permits.

Response: EPA acknowledges that each of these cap-based permitting programs has resulted in, or has the potential to result in, increased operational flexibility and may enable the owner or operator to make certain changes without the need to apply for and receive a permit for each individual change whenever the change does not result in emissions that exceed the cap. However, of the four identified programs, one was a pilot study and one has not been finalized. The State did not submit the Flexible Permits Program for consideration by EPA as a PALs NSR SIP revision. Moreover, the submitted Flexible Permits Program does not meet the minimum requirements contained in the PALs NSR SIP regulations, which include procedures for establishing replicable emission caps, protecting the NAAQS and control strategies, and MRR requirements sufficient to ensure compliance with the terms and conditions of the permit that establishes the emissions cap. As we discussed in the proposal and now through this final action, the submitted Flexible Program does not meet the requirements for the establishment of replicable emissions caps and sufficient MRR requirements. The submitted Program has no specific, only general, requirements pertaining to MRR. Paragraph (c)(6) of submitted 30 TAC 116.715 generally requires maintenance of data sufficient to demonstrate continuous compliance with emission caps and individual emission limits contained in the Flexible Permit. That is all. To contrast, the submitted Flexible Permit Program lacks the specific requirements of another cap-base program, the Federal PAL SIP rule. The Federal PAL SIP rule requires that the program require each PAL permit to contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. The PAL SIP rule further provides that the monitoring system must be based upon sound science and meet generally acceptable scientific procedures for data quality and manipulation; and the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit. The SIP requirements for an approvable PAL monitoring system are the employment of one or more of the following approaches: Mass balance calculations for activities using coatings or solvents, continuous emission monitoring system, predictive emission monitoring system, continuous parameter monitoring system, and emission factors, if approved by the reviewing authority. The PAL SIP rule provides the technical specifications for each of the allowable monitoring systems and provides replicable procedures for the approval of any alternative monitoring system. *See* 40 CFR 51.165(f)(12) and 51.166(w)(12). The submitted Flexible Permit Program, in contrast, is generic concerning the types of monitoring that is required rather than identifying the employment of specific monitoring approaches, providing the technical specifications for each of the specific allowable monitoring systems, and requiring replicable procedures for the approval of any alternative monitoring system. It also lacks the replicable procedures that are necessary to ensure that (1) adequate monitoring is required that would accurately determine emissions under the Flexible Permit cap, (2) the Program is based upon sound science and meets generally acceptable scientific procedures for data quality and manipulation; and (3) the information generated by such system meets minimum legal requirements for admissibility in a judicial proceeding to enforce the Flexible Permit.

The Federal Flexible Air Permit Rule, although it is not a NSR SIP program but

a Title V program that provides for an alternative NSR SIP approach, is a cap program but it too requires replicable methodologies and sufficient MRR requirements. The submitted Program does not contain a replicable methodology for establishing the emissions cap and sufficient MRR requirements. *See* 74 FR 48480, at 48490, 48491–48492, and 48492–48493; and sections III.D.3 and IV.C, for further information. Finally, *see* section III.D.3 (response to comment 4) concerning MRR for the proposed Indian Country Minor NSR rule.

Comment 7: GCLC, TIP, BCCA, and TCC comment that EPA ignores the fact that the Texas Flexible Permit Program has had a significant impact on improving air quality in Texas. TCEQ commented that significant emission reductions have been achieved by the submitted Program through the large number of participating grandfathered facilities, which resulted in improved air quality based upon the monitoring data.

BCCA, TAB, TxOGA, and ERCC comment that the legal standard for evaluating a SIP revision for approval is whether the submitted revision mitigates any efforts to attain compliance with a NAAQS. EPA's failure to assess the single most important factor in the submitted Program, the promotion of continued air quality improvement, is inconsistent with case law and the Act and is a deviation from the SIP consistency process and national policy. EPA should perform a detailed analysis of approved SIP programs through the United States and initiate the SIP consistency process within EPA to ensure fairness to Texas industries.

Response: We are disapproving the submitted Program because it is not enforceable, it lacks an objective, replicable methodology for establishment of the emissions caps, it provides broad director discretion concerning whether or not to include a MRR condition in a Flexible Permit, lacks sufficient MRR requirements, is ambiguous regarding circumvention of Major NSR, and there is not sufficient information to enable EPA to make a finding that the submitted Program will protect the NAAQS and control strategies. EPA is required to review a SIP revision submission for its compliance with the Act and EPA regulations. CAA 110(k)(3); *See* also *BCCA Appeal Group* v. *EPA,* 355 F 3d. 817, 822 (5th Cir. 2003); *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (D.C Cir. 1995). Also *see* section III.A (response to comment 6) for further information.

Even if the commenters' premises are to be accepted, they fail to substantiate their claim that the Texas Flexible Permit Program has had a significant impact on improving air quality in Texas by producing data showing that any such gains are directly attributable to the submitted Program, and are not attributable to the SIP-approved control strategies (both State and Federal programs) or other Federal and State programs. They provide no explanation or basis for how their numbers were derived. Moreover, since the submitted Program is not enforceable, claims of emission reductions are not assured on a continuous basis.

EPA is not required to initiate the SIP consistency process within EPA unless the pending SIP revision appears to meet all the requirements of the Act and EPA's regulations but raises a novel issue. EPA is disapproving the submitted Program because it fails to meet the Act and EPA's regulations. Because the submitted Program fails to meet the requirements for a SIP revision, the SIP consistency process is not relevant.

Furthermore, since the commenters thought EPA was acting inconsistently, they should have identified SIPs that are inconsistent with our actions and provided technical, factual information, not bare assertions.

Comment 8: BCCA and ERCC comment that the concepts embedded in the Program have been part of the Title V, NSR, and PAL programs for many years and were upheld as consistent with the Clean Air Act by the U.S. Supreme Court in *Chevron* v. *NRDC,* 467 S.C. 837 (June 25,1984). Texas' Program is actually more stringent than EPA's interpretation of the NSR program upheld by the Supreme Court.

Response: The U.S. Supreme Court found, in the cited case, that the pertinent legislative history was silent on the precise issue of the bubble concept as it related to what constituted a major stationary source and found that EPA should have wide discretion in implementing the policies of the 1977 amendments. Id at 862. This opinion is not relevant to EPA's grounds for disapproving the submitted Program. Not only is it not relevant but none of the concepts cited by the commenters was before the Court in *Chevron.* EPA's disapproval is not based on a per se finding that a preconstruction program based on emissions caps is unacceptable or more or less stringent than the SIP requirements. We are disapproving the submitted Program because it is not enforceable, it lacks a replicable methodology for establishment of the emissions caps, it provides broad director discretion concerning whether or not to include a MRR condition in a Flexible Permit, lacks sufficient MRR requirements, and there is not sufficient information to enable EPA to make a finding that the submitted Program will protect the NAAQS and control strategies. *See* section III.A (response to comment 6) for further information.

B. Whether the Flexible Permits Program Is Clearly a Minor, not a Major, NSR SIP Revision

Comment 1: TCEQ comments that though it has always considered the Flexible Permit Program to be a Minor NSR program, this fact is not specifically stated in the rule. TCEQ, nevertheless, asserts that its implementation of the Program includes a review process that always determines the applicability of Federal Major NSR, as well as any other Federal and State requirements. The TCEQ states that it understands EPA's concerns regarding, among other things, applicability, clarity, enforceability, replicable procedures, recordkeeping, and compliance assurance.

Response: We acknowledge TCEQ's description that it intends to implement the submitted Program in such a manner that the submitted Flexible Permit Program does not supersede the duty to comply with the Texas Major NSR SIP. In contrast to the submitted Program, however, in its Minor NSR SIP for Permits by Rule and Standard Permits, TCEQ included additional regulatory language that explicitly prohibits the use of the Permits by Rule alternative permit program and the Standard Permits alternative permit program from being used for major stationary sources and major modifications and explicitly prohibits circumvention of the Major NSR requirements.[1] Specifically, the Standard Permits and Permits by Rule NSR SIP rules explicitly require a Major NSR applicability determination at 30 TAC 116.610(b) and 30 TAC 106.4(a)(3). In each, the State specifically expressed its intention to require a Major NSR applicability determination. The Flexible Permits Program is also an alternative permit program. If the State wishes for it to be considered as solely a Minor NSR SIP revision submittal, the TCEQ should have included express language stating that it explicitly

[1] Although the Texas Minor NSR SIP rules for Permits by Rule and Standard Permits remain acceptable for a Minor NSR SIP revision, EPA is conducting a review of each individual Permit by Rule and/or Standard Permit. EPA is conducting this review to ensure that the TCEQ is implementing the SIP appropriately and that each such individual Minor NSR SIP permit protects the NAAQS and control strategies and is enforceable.

prohibits the use of the Flexible Permit Program from being used for major stationary sources and major modifications and explicitly prohibits circumvention of the Major NSR requirements, as it did in the two other Minor NSR alternative permit options. This submitted Program lacks such language. While the inclusion of such specific language is not ordinarily a minimum NSR SIP program element, we conclude that the inconsistent treatment between the similar types of NSR programs creates the potential for an unacceptable ambiguity about a permit holder's obligations to continue to comply with the Major NSR requirements.

EPA reviews a SIP revision submission for its compliance with the Act and EPA regulations. CAA 110(k)(3). *See* also *BCCA Appeal Group* v. *EPA,* 355 F 3d. 817, 822 (5th Cir. 2003); *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (D.C. Cir. 1995). This includes an analysis of the submitted regulations for their legal interpretation. The Program's rules are ambiguous and therefore unapprovable. *See* 74 FR 48480, at 48485–48487 for further information.

Comment 2: TCC notes that 30 TAC 116.711 identifies the use of Flexible Permits as only a Minor NSR option and concludes that TCEQ's rules therefore do not intend for the Flexible Permits Program to be an equivalent to a Major NSR program.

Response: We disagree that 30 TAC 116.711 identifies the use of Flexible Permits as only a Minor NSR permitting option. Contrary to commenter's assertion, this rule merely replicates certain general permitting requirements that are also common to Subchapter B, that also apply to all Texas Major and Minor NSR SIP permits. There are no requirements or terms in 30 TAC 116.711 that expressly identify use of Flexible Permits as only a Minor NSR option. As noted above in section III.B (response to comment 1), the TCEQ should have included express additional regulatory language prohibiting the use of the submitted Program for Major NSR and explicitly prohibiting circumvention of the Major NSR requirements, as it did in the two other Minor NSR SIP alternative permit options.

C. Whether the Flexible Permits Program Meets the Requirements for a Substitute Major NSR SIP Revision

1. General Comment on Whether the Program Is a Substitute Major NSR SIP Revision

Comment: TCEQ comments that it did not view the Flexible Permit Program as a substitute Major NSR SIP revision when it adopted it nor does it wish for it to be considered as a SIP revision submittal for a substitute Major NSR SIP revision. It has always viewed the Program as a Minor NSR program. In its implementation of the Program, TCEQ comments that it requires a Federal applicability demonstration but acknowledges that the submitted Program's rules are not clear on this point. TCEQ states that it will confirm through upcoming rulemaking and SIP revision that the Program is not a substitute Major NSR SIP revision.

Response: EPA appreciates TCEQ's statement that it does not view its Flexible Permit Program as a substitute Major NSR SIP revision submittal. However, EPA must review the content of the Program as submitted for inclusion into the Texas SIP. The submitted Program is ambiguous when compared to the regulatory structure of existing similar Texas Minor NSR SIP programs, as it contains no express provision that clearly limits the Program to Minor NSR and no explicit provision that prohibits circumvention of the Major NSR SIP requirements. *See* 74 FR 48480, at 48488 and section III.B (response to comment 1) of this notice for further information.

2. Requirements for Major NSR Applicability Determinations

Comment 1: Although TCEQ comments that the Flexible Permit Program requires that the applicability of Major NSR requirements be evaluated prior to considering whether the new construction or modification can be authorized under a Flexible Permit, TCEQ also comments that it understands EPA's concerns with issues regarding Major NSR applicability vis a vis the submitted Program, based upon the application of today's legal requirements. TCEQ undertakes to consider rulemaking to ensure Major NSR applicability requirements are included in Flexible Permit reviews, and that the requirements of the appropriate Major NSR permitting program are met when triggered.

Response: EPA appreciates TCEQ's understanding that the Program lacks clarity on the issue of the applicability of Major NSR requirements and that the State plans to revise its rules to ensure it is clear that the Major NSR applicability determination requirements are required before one can use the Program, and that the requirements of the appropriate Major NSR permitting program are met when triggered. Nonetheless, EPA must review the content of the Program as submitted for inclusion into the Texas SIP. The submitted Program's regulations do not contain any emission limitations, applicability statement, or regulatory provision restricting the construction or change to Minor NSR as was included in the SIP rules for Standard Permits and Permits by Rule. *See* section III.B (response to comment 1) for additional information.

Comment 2: TAB, TxOGA, TIP, and BCCA comment that there are safeguards in the Texas Flexible Permit rules at 30 TAC 116.711(1), (8), (9), 116.718, and 116.720 that constrain regulated community from making major changes without complying with Major NSR requirements.

Response: The regulations cited by the commenters do not explicitly require sources to comply with the Major NSR rules. 30 TAC 116.711(1) provides for protection of public health and welfare and does not address applicability of Major NSR. 30 TAC 116.711(8) and (9) generally require compliance with all applicable requirements for nonattainment and PSD review within that Chapter of the rules. Despite commenters contentions there are no express terms or requirements within the cited rules that compel a Major NSR applicability determination. The cited regulations do not contain any emission limitations, applicability statement, or regulatory provision restricting the construction or change to Minor NSR or clearly prohibiting circumvention of Major NSR, as was included in the SIP rules for Standard Permits and Permits by Rule. The absence of such provisions in the submitted Flexible Permit rules creates an unacceptable ambiguity. 30 TAC 116.718 and 116.720 do not address Major NSR. *See* section III.B (response to comment 1) for additional information.

Comment 3: ERCC comments that the concepts embedded in the Flexible Permit Program have been a part of the NSR program for many years and are well-settled law. The fact that the emission rates used in the calculation of the cap(s) are reflected in a "bubble" permit is of no consequence and is consistent with applicable statutory and regulatory requirements under the Clean Air Act.

The submitted Program explicitly requires any new source or major

modification that is applying for a Flexible Permit to go through Major NSR review and if necessary, have the Flexible Permit altered.

Response: EPA disagrees with these comments. First, the submitted Program has not been a part of the Texas NSR SIP "for many years." Therefore, it is not "well-settled law." Furthermore, any source operating under a Flexible Permit risks potential Federal enforcement action. Second, it is being disapproved today because of not meeting the Federal NSR SIP requirements, not because it embeds the concepts of a cap program. The commenter's comments are also at odds with TCEQ's comments. TCEQ comments that its Program is intended to be a Minor NSR SIP program only and not intended to address Major NSR SIP requirements. In contrast, the commenter describes the submitted Program as covering major modifications and having a Flexible Permit (not a Major NSR SIP permit) altered to reflect the Major NSR review. TCEQ disputes this concept in its comments. *See* our response to TCEQ's comments section III.C.3 (response to comment 1).

3. Circumvention of Major NSR

Comment 1: TCEQ comments that it understands EPA concerns regarding the "the lack of specificity" in its rules but maintains that the Program does not circumvent Federal Rules. TCEQ maintains that its implementation of the submitted rules includes Federal applicability review that includes determination of actual rates, project emission increases, and net emission increases. It also includes BACT analysis to establish the cap, NAAQS and increment analysis if PSD is triggered; and LAER and offsets if Nonattainment Review is triggered. TCEQ states that its implementation also includes a Federal Major NSR Review which is conducted parallel with the Minor NSR Review and TCEQ does not allow applicant to use Flexible Permits to circumvent Major NSR. TCEQ plans to confirm EPA's concerns in future rulemaking.

Response: EPA appreciates TCEQ's understanding of its concerns regarding the "lack of specificity." While it is commendable that TCEQ may implement the Program in a manner consistent with the Federal Major NSR requirements, we cannot approve the Program as submitted. *See* CAA 110(k)(3). *See* also *BCCA Appeal Group* v. *EPA,* 355 F 3d. 817, 822 (5th Cir. 2003); *Natural Resources Defense Council, Inc.* v. *Browner,* 57 F.3d 1122, 1123 (D.C. Cir. 1995). Moreover, relying upon an agency to continue to implement a program consistently with the Federal requirements even though not constrained to do so by its rules, makes EPA, the agency, industry, and the public vulnerable to the agency's unfettered discretion to change how it implements its program.

In this instance, there is no express provision in the submitted Subchapter G similar to the Minor NSR SIP provisions for Minor NSR SIP Permits by Rule and Standard Permits that prohibit circumvention of the Major NSR requirements. Both the SIP-codified rules for Permits by Rule and the SIP-codified rules for Standard Permits contain clear regulatory provisions prohibiting the use of these Minor NSR permits from circumventing Major NSR. There are no regulatory provisions prohibiting circumvention of Major NSR in the submitted Chapter 116, Subchapter G, for Flexible Permits. *See* 74 FR 48480, at 48488 and section III.B (response to comment 1) for further information. The BACT analysis that TCEQ references for establishing the cap upon a plain reading of the rules and the associated Texas Registers means the Texas Minor NSR SIP BACT requirement, not the PSD Major NSR SIP BACT requirement. The failure to distinguish in the Program's rules that it is Minor NSR SIP BACT that is used to create the cap contributes to the confusion of the reach of the Program.

Comment 2: TCC and ERCC comment that the Flexible Permit Program does not circumvent Major NSR review. The Program is explicit in that any new major stationary source or major modification must go through Major NSR and the Flexible Permit must be altered. *See* 30 TAC 116.805. Moreover, the Flexible Permits employ two emissions cap, an initial cap and a final cap, which combine to ensure that the Major NSR permitting requirements are not circumvented.

Response: EPA disagrees with commenters. Unlike the Texas Minor NSR SIP rules for Permits by Rule and Standard Permits, the submitted Program's regulations do not contain any express regulatory provision that prohibits circumvention of the Major NSR requirements. This lack of such express provisions distinguishes the Flexible Permit Program and contributes to its nonapprovability. *See* 74 FR 48480, at 48488, and section III.B (response to comment 1) of this notice. Furthermore, the referenced 30 TAC 116.805 does not add an explicit requirement to the submitted Program. Rather, it applies to a separate class of Existing Facility Flexible Permits that is severable from the Flexible Permits Program.

4. Use of Allowable Emissions in Major NSR

Comment: TCC, TAB, and TxOGA comment that when TCEQ is evaluating emissions increases on a project level, the Program requires the use of actual baseline emissions to determine whether a project will result in an increase that triggers Major NSR applicability. TCC further states that the application of BACT to facilities subject to the emission cap results in an allowable that is lower than the pre-change actual emissions.

Response: As noted above in the preceding response, EPA must evaluate the submitted Program based upon the content of the regulations and associated record that have been submitted and are currently before EPA for appropriate approval or disapproval action. The commenters are not clear whether they are referring to PSD BACT or the Texas Minor NSR SIP BACT. This lack of specificity by industry contributes to EPA's concerns about whether the submitted Program is clearly limited to Minor NSR. We recognize that the application of either type of BACT to facilities subject to the emission cap could result in allowable emissions that are lower than the pre-change actual emissions at the initial issuance of a Flexible Permit. However, the commenter provided no information to show a comparison of actual emission to potential to emit for changes that occur after the Flexible Permit is issued to evaluate that the net emission increase is based upon changes from baseline actual to either projected actual emissions or potential to emit. In such case, the baseline actual emissions resulting from such proposed change must be established as provided under applicable Federal requirements. *See* 40 CFR 51.165(a)(2)(ii) and (a)(1)(vi)(A)(2) and 51.166(a)(7)(iv)(c)–(d) and (b)(3)(i)(b). Accordingly, there are no provisions in the Program that require the use of actual baseline emissions to determine whether a project will result in an increase that triggers Major NSR applicability. *See* 74 FR 48480, at 48489–48490, for further information.

5. Retention of Major NSR Permit Terms and Conditions

Comment: TAB, ERCC, and TxOGA comment that the submitted Program requires that conditions of an existing PSD or Nonattainment permit be carried forward into a Flexible Permit. The submitted Program does not "void" the pre-existing Major NSR SIP permits.

Response: The submitted Program does not explicitly provide that the holder of a Flexible Permit still be required to continue to comply with all of the terms and conditions in the pre-existing Major NSR SIP permits. Federal NSR SIP regulations do not provide for a blanket elimination of emission limits at individual units. The submitted Program does not assure the retention of the pre-existing Major NSR SIP permits' terms and conditions.

EPA's long-held position is that permits issued under federally approved PSD, NNSR, and Minor NSR SIP programs must remain in effect because they are the legal mechanism through which the underlying NSR requirements (from the Act, Federal regulations, and federally approved SIP regulations) become applicable, and remain applicable, to individual sources. NSR programs enable the relevant permitting authority to impose source-specific NSR terms and conditions in legally enforceable permits, and provide states, EPA, and citizens with the authority to enforce these permits. SIP-approved permits impose continual operational requirements and restrictions upon a source's air pollution activities and, accordingly, may not expire so long as the source operates.[2]

The lack of enforceability and adequacy of the MRR requirements in the submitted Program contributes to EPA's concern that not all of the conditions of a PSD or NNSR SIP permit existing before the issuance of a Flexible Permit were carried forward into the Flexible Permit fully and completely. *See* section III.A (response to comment 6) for further information. The submitted Program does not meet the requirements of section 110(a)(2)(A)–(C) of the Act, which requires that SIP revision submittals be enforceable. Section 116.711(2) of the submitted Program provides that emissions will be measured "as determined by the executive director." This broad discretion lacks accountability, replicability and fails to provide for a full evaluation of the enforceability of permits issued under the Program. We are concerned with the broad director discretion whether to include MRR requirements in a Flexible Permit and the lack of adequacy of the MRR requirements in the submitted Program.[3] EPA has interpreted the Act's requirements for enforceability as specifying that SIP revision submittals must "specify clear, unambiguous, and measurable requirements." *See* 57 FR at 13567. There must be legal means in a SIP revision for ensuring compliance when conditions of an existing PSD or Nonattainment permit are carried forward in a Flexible Permit. The submitted Program does not contain sufficient enforceable means. This submitted Program is an intricate program, thus to be approved as a Major (as well as a Minor) NSR SIP revision, it requires detailed MRR requirements in order to ensure, among other things, that a project triggering the Major NSR SIP requirements is covered under Major NSR or there are adequate means for ensuring compliance of each affected entity.

Without clear, objective, requirements in the submitted Program for retaining and distinguishing the Flexible Permits terms and conditions from the Texas Major NSR SIP permits terms and conditions, the submitted Program lacks clear, unambiguous, and measurable requirements necessary for approval as a SIP revision. The submitted Program does not ensure the retention of the pre-existing Major NSR SIP permits' terms and conditions.

6. Protection of the NAAQS Attainment Under Major NSR

Comment: The Clinic comments that the Program represents a relaxation of the current SIP and is inadequate to assure protection of the NAAQS, increments, and control strategies.

Response: Without the required demonstration from the State showing how the customized Major NSR SIP revision is in fact as stringent as EPA's Major NSR revised program and without, among other things, an objective, replicable methodology for establishing the emission cap, the too broad director discretion provision for whether or not to include MRR conditions in a Flexible Permit, the lack of sufficient MRR requirements for this type of permit program, and the lack of enforceability of the submitted Program, EPA lacks sufficient information to make a finding that the submitted Program, as a substitute for a Major NSR SIP program, will ensure protection of the NAAQS, and noninterference with the Texas SIP control strategies and RFP, as required by section 110(l) of the Act. *See* section III.A (response to comment 6) for further information.

D. Whether the Flexible Permits Program Meets the Requirements for a Minor NSR SIP Revision

1. Applicability for a Minor NSR Program

Comment 1: The Clinic comments that the Flexible Permit rules do not include adequate provisions for ensuring that changes that should trigger Major NSR are subject to technology and air quality analysis requirements.

Response: EPA agrees with this comment. *See* section III.B (responses to comments 1 and 2), section III.C.1 (response to comment), and section III.C.2 (responses to comments 1, 2, and 3), and section III.C.3 (responses to comments 1 and 2) for further information.

Comment 2: TCC comments that the Flexible Permit authorization method used at a source does not exempt any facilities located at a source from Major NSR permitting requirements. If a source has a Flexible Permit that does not contain all the facilities located at that source and a project within the Flexible Permit triggers netting, all facilities (under the cap and outside the cap) at the source are evaluated to determine whether a net significant emissions increase at the source has occurred. If a resulting net emissions increase is significant, Major NSR is triggered.

Response: We disagree with this comment. *See* section III.D.1 (response to comment 1, above) for further information.

Comment 3: TIP, BCCA, and TCC comment that TCEQ rules provide two separate "modification" definitions. The first is at 30 TAC 116.12(18) for Major NSR applicability. The second is at 30 TAC 116.10(11) for Minor NSR sources and does not limit its scope to federally regulated pollutants. EPA applies the term "modification" differently in the Minor NSR context and the Major NSR context. Therefore, it also is within Texas's discretion to define the term differently for purposes of Minor NSR. Citing the EAB in *In re Tennessee Valley Authority,* 9 EAD 357,461 (EAB Sept. 15, 2000) commenters maintain that Texas has the discretion to define the term differently for purposes of Minor NSR.

Response: EPA acknowledges that that TCEQ defines the term "modification" differently for Major NSR and for Minor NSR. However, the submitted Program does not specifically state which definition of modification it uses the one for Major NSR or the one for Minor NSR. This contributes to making the submitted Program not clear

[2] *See* EPA Letter from John Seitz, Director, Office of Air Quality Planning and Standards, to Robert Hodanbosi and Charles Lagges, STAPPA/ALAPCO, dated May 20, 1999.

[3] EPA's letter of March 12, 2008, on pages 12 to 13 of the Enclosure provides some examples of, and concepts on how to establish replicable recordkeeping, reporting, tracking, and monitoring requirements up-front in a NSR program without requiring every director discretion decision to be adopted and submitted to EPA for approval as a source-specific SIP revision.

on its face that the Major NSR applicability requirements must be evaluated and met when triggered and that the State is required under its submitted Program to apply the Major NSR applicability concepts during the technical review of a Flexible Permit. Therefore based upon the ambiguities in the Program's rules, we disagree that the Flexible Permit Program is exclusively a Minor NSR program. EPA is required to review a SIP revision submission for its compliance with the Act and EPA regulations. This includes an analysis of the submitted regulations for their legal interpretation. The Program's rules are ambiguous and therefore do not adequately prohibit use under Major NSR. *See* section III.B (response to comment 1) for further information.

2. Establishment of the Emission Cap Under Minor NSR

Comment: TIP and BCCA comment that the submitted Program's rules do contain an established and replicable method for determining an emissions cap. TAB and TxOGA comment that EPA provides no example of any unsuccessful attempt to replicate an emission cap using the current TCEQ rules. TAB and TxOGA comment that the submitted Program requires that each Flexible Permit establish a cap by simple summation of BACT emission rates. Each Flexible Permit involves the summing of BACT emission rates. While BACT determinations may vary between specific types of sources, the use of Federal and State BACT guidance results in a replicable procedure for establishing caps. In addition, the authorization under a Flexible Permit has no effect on sources or pollutants not covered in the Flexible Permit for a particular site. Both sources and emissions that are not incorporated into a Flexible Permit are subject to whatever rules or authorizations are in effect or should be applied to those emissions. An applicant for a Flexible Permit is required to meet BACT standards as applicable to all facilities individually contributing to an emission cap. In addition to an emission cap, a Flexible Permit may also impose individual emission limits where necessary to ensure satisfaction of off site screening levels of hazardous air pollutants or NAAQS for criteria pollutants, or to prevent violation of any Federal permitting requirement.

Response: The proper scope of review for this SIP revision submittal does not include a review of the State's individually issued Flexible Permits to determine whether there are replicable caps in each permit. Instead, EPA's review is focused on the structure of the submitted Program, ensuring that it includes legally sufficient objective and replicable criteria for establishment of the cap in each Flexible Permit and information submitted by the State to demonstrate that the program meets the requirements of the Act. Review based on the submittal, rather than improper implementation, is necessary to ensure that as structured the submitted Program does not interfere with NAAQS attainment, the Texas SIP control strategies, and RFP, and is enforceable pursuant to section 110(a) (2)(A)–(C) of the Act. The September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency" provides EPA's guidance for interpreting this provision in the Act. A copy of this document is in the docket at document ID EPA–R06–OAR–2005–TX–0032–0022.[4] *See also* the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," (GP) 57 FR 13498 at page 13556 (April 10, 1992).

The submitted Program establishes a cap in a Flexible Permit that is a summation of BACT requirements (or a more stringent requirement if applicable). The submitted rules are not clear as to how the State does the summation. Even the State fails in its comment letter to clarify whether the cap includes the summation of not only the minor stationary sources and minor modifications but also the major stationary sources' and major modifications' emissions limitations. This failure to clarify the methodology for the establishment of the cap contributes to the ambiguity of the submitted Program. Specific, objective, and replicable criteria are to be set forth for determining the emissions cap.

The commenter states that if a source or emissions are not covered under a Flexible Permit, then they are subject to whatever rules or authorizations are in effect or should be applied to those emissions. EPA is however concerned that it is not clear which facilities are covered by a Flexible Permit. The submitted Program does not clearly delineate which emissions are covered by a Flexible Permit. EPA proposed disapproval because the submittal lacks specific, established, replicable procedures providing available means to determine independently how the source or the State will calculate an emission cap; determine the coverage of a Flexible Permit; establish individual emissions limitations for each site, a facility on the site, a group of units on the site; or for one pollutant but not another. Without a clearly defined replicable process for determining what the process is, and how the emission cap is adjusted for the addition of new facilities, the public and EPA cannot independently calculate an emission cap and reach the same conclusions as the State. Therefore, the submitted Program is unapprovable. This conclusion was reached based on our review of the submitted Program pursuant to the CAA.

3. Enforceability of a Minor NSR Program

Comment 1: TCEQ comments that although the submitted rules do not specify special conditions that ensure recordkeeping, reporting, and testing to assure compliance with the Flexible Permit, the State issues Flexible Permits containing special conditions requiring periodic stack testing, continuous emissions monitoring, and other parametric monitoring requirements, along with recordkeeping requirements to ensure compliance with the Flexible Permit cap and BACT. Because of the wide variety of industrial source types, TCEQ has carefully drafted its rules to ensure it has the ability to adequately implement specific and detailed MRR requirements. TCEQ will address EPA concerns in a forthcoming rulemaking and SIP revision.

Response: Although TCEQ plans in a future rulemaking action to add specific conditions as part of the Program to address MRR requirements, the submitted Program lacks these requirements. *See* section III.A (response to comment 6) for further information. EPA must evaluate the Program based upon the content of the regulations and associated record that have been submitted and are currently before EPA for appropriate approval or disapproval action. Any SIP revision must have adequate recordkeeping, reporting, testing, and monitoring requirements to assure there can be compliance with the submitted plan and ensure that the plan is enforceable, as well as ensure that each affected entity can be easily identified and that there are means to determine its compliance. *See New York I,* 413 F.3d at 33–36. There is further discussion in the General Preamble about EPA's interpretation of the Act's requirements for enforceability and that submitted rules must "specify clear, unambiguous,

[4] You can access this document directly at: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a2bccd.*

and measurable requirements." *See* the GP 57 FR 13498 at page 13567.

Comment 2: The City of Houston states that it has long opposed the use of Flexible Permits. Quoting its comments on TCEQ's proposed renewal of the Flexible Permit issued to a refinery in Houston, it states that "[t]he permit terms violate Federal law and are not federally enforceable. This refinery (and others) could have sought other SIP-approved permitting." The City of Houston also noted that the structure of the Flexible Permit Program fails to assure compliance with the Major NSR requirements and that these Flexible Permits are essentially unenforceable. The City of Houston strongly supports the EPA's decision to seek the changes necessary in the Flexible Permit Program to make it federally enforceable, consistent with the CAA and ensure that emissions are controlled and reduced from the State's largest sources of pollutants.

Response: EPA agrees with these comments. Texas has opted for a program that allows the permit holder to select which new facilities and/or new modifications to include under the umbrella of a Flexible Permit. The submitted Program fails to provide clear criteria for determining what type of MRR requirements are needed and furthermore leaves the choice to the director, including whether to include any MRR requirements in a Flexible Permit. *See* section III.A (response to comment 6) for further information. Without the appropriate specialized MRR requirements, it is generally impractical to determine for instance, which emission points are covered, which modifications of existing non-covered emission points are covered, *etc.* Texas also chose to allow both a cap and an individual emission limitation to apply to selected units, or just the cap, or just the individual emission limitation. Without the appropriate MRR requirements, it is generally impractical to determine if a covered unit is subject to the cap or an individual emission limitation, if a unit is subject to both the cap and a limitation, or whether a cap or a limitation applies at what time. Further, there can be existing units on the site not covered under the Flexible Permit cap that may be modified, and use the provisions of the Flexible Permit Program for the modification. Without replicable implementation procedures for establishing the emission cap and sufficient MRR requirements, EPA cannot find that the submitted Program is enforceable, as required by section 110(a)(2)(A) and (C) of the Act. *See* 74 FR 48480, at 48492.

The submitted Program lacks provisions explicitly addressing the type of MRR requirements that are necessary to ensure that all of the movement of emissions between the emission points, units, facilities, plants, *etc.,* still meet the cap for the pollutant, still meet the individual emissions limitations, and still meet any other applicable State or Federal requirement. In addition, there are no limits on the types of sources that can be included in the cap. It is also difficult to quantify emissions from some units, such as tanks, fugitive emissions from leaking valves, or wastewater emissions points that can be included in a Flexible Permit under this Program.

Without specialized MRR requirements, it is difficult for EPA or the public to determine which units are covered by a Flexible Permit, which modifications to non-covered units are covered by a Flexible Permit, whether a covered unit is subject to the emission cap or an individual emission limitation, whether a unit is subject to both the cap and a limitation, or whether a cap or a limitation applies and at what time.

Comment 3: TIP, BCCA, TAB, and TxOGA comment that the submitted Program contains comprehensive and stringent provisions for monitoring, recordkeeping, and reporting. These are more than adequate to ensure compliance on the part of permit holders, enforceability by TCEQ, and protection of public health. *See* 30 TAC 116.715(c). They require the regulated community to monitor and submit information sufficient to safeguard environmental quality.

Response: EPA disagrees with commenters. The commenters failed to point to any such specific provisions. The submitted Program lacks adequate program requirements for the tracking of existing SIP permits' major and minor NSR terms, limits and conditions, and whether such requirements are incorporated into a Flexible Permit or they remain outside the coverage of the Flexible Permit. Minor and Major NSR permits, as well as Minor NSR SIP Permits by Rule and Standard Permits, can be incorporated into a Flexible Permit without any program requirement in place that ensures the SIP permits' terms and conditions are included in the Flexible Permit. EPA finds that there are not sufficient provisions requiring the holder of a Flexible Permit to maintain recordkeeping sufficient to ensure that all terms and conditions of existing permits (including representations in the applications for such permits) that are incorporated into the Flexible Permit continue to be met. Paragraph (c)(6) of submitted 30 TAC 116.715 generally requires maintenance of data sufficient to demonstrate continuous compliance with emission caps and individual emission limits contained in the Flexible Permit but lacks the necessary specificity and replicability needed to ensure the enforceability of the submitted Program and the protection of the NAAQS and control strategies. *See* section III.A (response to comment 6) for further information.

Comment 4: TIP, BCCA, TAB, and TxOGA note that TCEQ also may impose additional recordkeeping requirements appropriate for a specific source covered by a Flexible Permit. The submitted Program's rules contemplate that additional recordkeeping requirements may be tailored to the type of source covered by a Flexible Permit. TIP comments that the submitted Flexible Permits rules are as stringent as EPA's proposed Indian Country Minor NSR rules. This commenter claims that with respect to emission events and maintenance, startup, and shutdown emissions (SSM), the submitted rules go far beyond Federal benchmarks because they require compliance with 30 TAC 101.201 and 101.211. Section 101.201 includes record-keeping requirements to report all reportable and non-reportable emissions events within two weeks, which in the view of this commenter is more stringent than the "prompt" reporting requirement of the proposed Indian Country counterpart. Again citing Section 101.201, commenter claims the record retention requirements of the submitted Program for records of reportable and non-reportable emissions events are similar to their proposed Indian Country counterparts.

Response: EPA disagrees with this comment. Commenters' reliance upon the Texas rules for malfunction emissions and maintenance, startup, and shutdown emissions is misplaced. Section 101.201 concerns Emissions Event Reporting and Recordkeeping Requirements; and Section 101.211 concerns Scheduled Maintenance, Startup, Shutdown Reporting and Recordkeeping Requirements. These two referenced sections concern emission events that are a subset of the universe of air emissions. Emission events are unauthorized emissions by nature. *See* 30 TAC 101.1(28). Malfunction related emissions are those unauthorized emissions that result from

a sudden and unavoidable breakdown of process or control equipment.[5]

EPA agrees that the submitted Program's rules contemplate that additional recordkeeping requirements may be required (at the discretion of the director). Yet as EPA noted in the proposal, the submitted Program is an intricate program and therefore, for approvability as a Major or Minor NSR SIP revision, there is a greater need for detailed MRR requirements to ensure, among other things, there are adequate means for ensuring compliance by each holder of a Flexible Permit. Without detailed MRR requirements, the program is unenforceable. The MRR requirements are needed additionally to ensure that the issuance of the Flexible Permits does not cause or contribute to a NAAQS violation, violate the Texas control strategy, or violate any other CAA requirement. *See* 74 FR 48480, at 48490. The submitted Program lacks provisions explicitly addressing the type of MRR requirements that are necessary to ensure that all of the movement of emissions between the emission points, units, facilities, plants, *etc.,* still meet the cap for the pollutant, still meet the individual emissions limitations, and still meet any other applicable State or Federal requirement. In addition, there are no limits on the types of sources that can be included in the cap. It is also difficult to quantify emissions from some units, such as tanks, fugitive emissions from leaking valves, or wastewater emissions points that can be included in a Flexible Permit under this Program. The underpinnings of the submitted Program are so complex as to necessitate more detailed MRR requirements to ensure that the emission cap and/or individual emissions limitations in the issued Flexible Permits are enforceable.

Without the appropriate specialized MRR requirements, it is generally impractical to determine for instance, which emission points are covered, which modifications of existing non-covered emission points are covered, *etc. See* section III.D.3 (response to comment 2) for further information.

Commenter's comparison of the submitted Program to EPA's proposed Indian Country Minor NSR rules is misplaced in the context of this action. As an initial point, we clearly stated in the proposed rule that we did not intend for this regulation of national scope to serve as a model or comparison for development of State Minor NSR programs. *See* 71 FR 48695, at 48700 (August 21, 2006). EPA regulations require that it review a Minor NSR SIP revision to determine if a plan includes "legally enforceable procedures" that enable the permitting agency to determine whether a minor source will cause or contribute to violations of applicable portions of the control strategy, 40 CFR 51.160(a)(1), or "interference with a national ambient air quality standard," 40 CFR 51.160(a)(2), and to prevent the source from doing so, 40 CFR 51.160(b).

We believe the reporting requirements we proposed for the Indian Country Minor NSR rules will ensure protection of the NAAQS and control strategy. Moreover, the standard of review in this instance is not a comparison between the MRR provisions in the submitted Program and any MRR provisions in the proposed Indian Country Minor NSR rules but a determination whether the submitted Program has sufficient legally enforceable procedures that enable the permitting agency to determine whether a minor source will cause or contribute to violations of applicable portions of the control strategy. As stated above, the submitted Program lacks provisions explicitly addressing the type of MRR requirements that are necessary to ensure that all of the movement of emissions between the emission points, units, facilities, plants, *etc.,* still meet the cap for the pollutant, still meet the individual emissions limitations, and still meet any other applicable State or Federal requirement.

Comment 5: TIP, BCCA, TAB, and TxOGA also point out that there is a wide array of additional Texas rules specifying monitoring, recordkeeping, and reporting requirements. For instance, the Texas Flexible Permit rules also require compliance with section 101.201, related to reporting and recordkeeping of malfunction emissions, and section 101.211, related to reporting of maintenance, startup, and shutdown emissions. Commenters claim that there are many detailed monitoring, recordkeeping and reporting requirements that Flexible Permit holders are subject to and there are indeed very explicit requirements that adequately document the operations of sources covered by Flexible Permits.

Response: EPA disagrees with this comment. The submitted Program does not have provisions explicitly specifying the monitoring requirements for this Program.

Without the appropriate specialized MRR requirements, it is generally impractical to determine information such as which emission points are covered, and which modifications of existing non-covered emission points are covered. *See* section III.D.3 (response to comment 2) for further information. Without replicable implementation procedures for establishing the emission cap and sufficient and MRR requirements, EPA lacks sufficient information to make a finding that the submitted Program, as a Minor NSR SIP program, will ensure protection of the NAAQS, and noninterference with the Texas SIP control strategies and RFP.

Further, commenters' reliance upon the Texas rules for malfunction emissions and maintenance, startup, and shutdown emissions is misplaced. Section 101.201 concerns Emissions Event Reporting and Recordkeeping Requirements; and Section 101.211 concerns Scheduled Maintenance, Startup, Shutdown Reporting and Recordkeeping Requirements. These two referenced sections concern emission events that are a subset of the universe of air emissions. Emission events are unauthorized emissions by nature. *See* 30 TAC 101.1(28). Malfunction related emissions are those unauthorized emissions that result from a sudden and unavoidable breakdown of process or control equipment.[6] EPA's concern with the structure of the Program and its lack of specific MRR requirements is not with how malfunction and SSM emissions are treated concerning MRR but with the emissions that are normally emitted and how one can determine if the emitted emissions are meeting the Flexible Permit's emission limitations. *See* section III.A (response to comment 6) for further information.

As EPA noted in the proposal, the submitted Program is an intricate program and therefore, for approvability as a Major or Minor NSR SIP revision, there is a greater need for detailed MRR requirements whether to ensure, among other things, that a project triggering the Major NSR SIP requirements is covered under Major NSR or there are adequate means for ensuring compliance by each holder of a Flexible Permit. These are needed additionally to ensure that the issuance of the Flexible Permits does not cause or contribute to a NAAQS violation, violate the Texas control strategy, or violate any other CAA

[5] *See* Footnote 1 of the Attachment to the Memo entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 1999 Policy) from Steve Herman and Robert Perciasepe. You can access this document at: *http://epa.gov/ttn/oarpg/t5/memoranda/exemmpol092099.pdf.*

[6] *See* Footnote 1 of the Attachment to the Memo entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 1999 Policy) from Steve Herman and Robert Perciasepe. You can access this document at: *http://epa.gov/ttn/oarpg/t5/memoranda/exemmpol092099.pdf.*

requirement. *See* 74 FR 48480, at 48490, and section III.D.3 (response to comment 4) for further information.

Comment 6: TAB and TxOGA comment that the submitted Flexible Permit rules provide for the enumeration of special conditions including requirements for monitoring, testing, recordkeeping, and reporting (MRR). Commenter also asserts that EPA does not include any analysis that might lead one to understand what additional specificity or detail is necessary, or how or why the many detailed requirements in TCEQ's rules (specifically 30 TAC 101.10, 115.116, 117.801 and 111.111) are inadequate.

Response: EPA disagrees with this comment that the Agency has not provided a reasonable basis for it findings. Appropriate MRR provisions are necessary to establish how compliance will be determined and be sufficient to ensure that the NAAQS and control strategies are protected. There is further discussion in the General Preamble about EPA's interpretation of the Act's requirements for enforceability and that submitted rules must "specify clear, unambiguous, and measurable requirements." *See* 57 FR at 13567. The Program's rules do not contain specific enumerated requirements for MRR. It is not legally sufficient even if the State is issuing individual Flexible Permits with special conditions requiring MRR. In order for the Program to be approvable as a SIP revision, the Program itself must contain specific objective, replicable MRR requirements that ensure compliance with all terms and conditions of each Flexible Permit issued by the TCEQ. There are no provisions providing clear criteria for determining what type of MRR requirements are needed. The Program is too complex to leave the choice of MRR requirements up to the individual issuance of a Flexible Permit, and up to the discretion of the Executive Director of the TCEQ. EPA finds such director discretion provisions are not acceptable for inclusion in SIPs, unless each director decision is required under the plan to be submitted to EPA for approval as a single-source SIP revision. This Program does not contain specific, objective, and replicable criteria for determining whether the Executive Director's choice of MRR requirements will be effective in terms of enforceability, compliance assurance, and ambient impacts. *See* 74 FR 48480, at 48490, and section III.A (response to comment 6) for further information.

Comment 7: TAB and TxOGA comment that EPA does not provide any example of a permit or permits the review of which led to that conclusion that absence of certain recordkeeping and reporting made it difficult to derive information from Flexible Permits. TCC notes that there is significant difference in the types of sources that apply for a Flexible Permit; therefore, it is difficult for TCEQ to implement rulemaking for every type of recordkeeping, monitoring and tracking requirements that may apply. Attempting to incorporate these variable components into one comprehensive rule could severely limit TCEQ's ability to implement adequately these requirements. BCCA comments that the Flexible Permit rules contemplate that additional recordkeeping requirements many be tailored to the type of source covered by a Flexible Permit making them as least as stringent as their Federal counterparts. BCCA highlights a comparison to the proposed Indian Country Minor NSR rules to make this point.

Response: The proper scope of review for this SIP revision submittal does not include a review of the State's individually issued Flexible Permits to determine whether there are adequate recordkeeping and reporting requirements in each permit. These Flexible Permits never should have been issued since the submitted Program is not part of the Texas NSR SIP. EPA's review is instead focused on the structure of the submitted Program, ensuring that it includes legally sufficient recordkeeping and reporting requirements. This is necessary to ensure that not only does the submitted Program not interfere with NAAQS attainment, the Texas SIP control strategies, and RFP, but the proposed revision is enforceable pursuant to section 110(a))(2)(A)–(C) of the Act. The September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency" provides EPA's guidance for interpreting this provision in the Act. *See* also the General Preamble at page 13566. Submitted rules that are clear as to who must comply, and explicit in their applicability to regulated sources are appropriate means for achieving the statutory enforcement requirement. Specific, objective, and replicable criteria are to be set forth for determining whether this new type of NSR permit will be truly equivalent to the other minor NSR SIP permits in terms of being consistent with the levels specified in the control strategies, including air quality impacts, *etc.* Appropriate testing, recordkeeping, reporting, and monitoring provisions are necessary to establish how compliance will be determined and be sufficient to ensure that the NAAQS and PSD increments are protected. *See* 74 FR 48480, at 48492. Furthermore, any permitting rule will apply to a variety of sources (unless it is a permit adopted specifically for a source category and limited to that affected source category).

The submitted Program allows a Flexible Permit holder to selectively include new facilities and/or new modifications under the umbrella of a Flexible Permit. Without the appropriate specialized MRR requirements, it is generally impractical to determine information such as which emission points are covered, and which modifications of existing non-covered emission points are covered. *See* section III.D.3 (response to comment 2) for further information. Submitted 116.711(7) is an illustration of our concerns. It states that initial compliance testing with ongoing compliance by engineering calculations "may be required." This means that under the Program, compliance testing may, or may not, be required and provides no guidance for when monitoring will be required. *See* section III.A (response to comment 6) for further information.

The submitted Flexible Permit Program does not compare favorably with the MRR requirements that are proposed in the proposed Indian Country Minor NSR rules. The proposed Indian Country Minor NSR Rules would require the permit to include monitoring sufficient to assure compliance with any control technology requirements contained in the permit. Monitoring approaches may include continuous emission monitoring systems, predictive emission monitoring systems, continuous parameter monitoring systems, periodic manual logging of monitor readings, equipment inspections, mass balances, periodic performance tests, and/or emission factors, as appropriate for the minor source. None of these monitoring approaches is addressed in the submitted Program. The proposed Indian County Minor NSR Rules also would require the permit to include recordkeeping sufficient to assure compliance with enforceable emission limitations in the permit and require retention of the records for five years from the date of the record. The submitted Program lacks this specificity for the recordkeeping requirements. The proposed Indian County Minor NSR Rules also would require annual

monitoring reports showing whether the permittee has complied with the permit emission limitations and prompt reports of deviations from permit requirements, including those attributable to upset conditions, probable cause of such deviations, and any corrective or preventative measures taken. *See* 71 FR 48695, at 48715–48716 and 48738 (August 21, 2006). Thus even assuming such a comparison represented the proper scope of review, the MRR provisions of the submitted Program do not compare favorably to those in the proposed Indian Country Minor NSR Program. The MRR provisions of the Texas Flexible Permit Program do not contain this level of MRR or otherwise sufficient MRR provisions given the features of the Program.

Comment 8: The Clinic comments that there are no provisions for ensuring that emission reductions are real, permanent, and enforceable.

Response: Specific, objective, and replicable criteria are required to be set forth for determining whether this new type of NSR permit program will be truly equivalent to the other Minor NSR SIP permit programs in terms of being consistent with the levels specified in the control strategies, including air quality impacts, *etc.* Appropriate MRR provisions are necessary to establish how compliance will be determined and be sufficient to ensure that the NAAQS and Texas control strategies are protected. Without replicable procedures for establishing the emissions caps, the lack of enforceability, the director discretion regarding whether or not to require MRR and the lack of sufficient MRR requirements, EPA cannot be assured that the submitted Program does indeed produce permanent emission reductions. *See* section III.A (response to comment 6) for further information.

Comment 9: The Clinic comments that the Flexible Permit rules fail to assure that permits include enforceable limits, as required by the Clean Air Act. There is no required monitoring or reporting to assure compliance with the terms and conditions. Likewise, the Flexible Permit rules fail to require adequate monitoring and reporting for those emission limits and requirements that are included in the Flexible Permit. The rules require measurement of emissions "as determined by the executive director." *See* submitted 30 TAC 116.711(2). They also require that unspecified "information and data sufficient to demonstrate continuous compliance with the emission caps and individual emission limitations contained in the flexible permit" be kept at the plant site and made available for TCEQ inspection. *See* submitted 30 TAC 116.715(c)(6). These requirements are clearly insufficient to demonstrate compliance with emission caps applicable to dozens of dissimilar emission units. For a program as complex as the Texas Program, stringent monitoring must not be left up to the discretion of the Executive Director. Instead, stringent monitoring and reporting requirements must be required by regulation for all units covered under a Flexible Permit. Because the Texas Flexible Permit is more complex than either the PAL or the Green Groups proposal, it should include monitoring at least as stringent as required by those rules.

Response: EPA generally agrees with these comments. The submitted Program does not meet the requirements of section 110(a)(2)(A)–(C) of the Act, which require that SIP revision submittals be enforceable.[7] There are no specific up-front methodologies in the submitted Program to be able to determine compliance. There are no sufficient MRR provisions in the submitted Program. Accordingly, the Program lacks requirements necessary for enforcement and assurance of compliance. There are no specific up-front methodologies in the Program to be able to determine compliance. It fails to meet the enforceability requirements as a program or for an affected source, and it cannot assure compliance with the Program or by the holder of a Flexible Permit. *See* 74 FR 48480, at 48490, section III.A (response to comment 6) for further information.

Instead, MRR requirements appropriate for such a complex Program must be required by regulation for all units covered under a Flexible Permit. Whether or not to require MRR requirements in a Flexible Permit should not be left to director discretion. This complex and intricate Program, for enforceability purposes, requires sufficient MRR requirements for each Flexible Permit. In the proposal, we stated that we are concerned with the adequacy of the MRR requirements in the submitted Program.[8] This submitted Program is an intricate program and therefore, for approvability as a NSR SIP revision, there is a greater need for detailed MRR requirements whether to ensure that a project triggering the Major NSR SIP requirements is covered under Major NSR or to ensure that there are adequate means for ensuring compliance of each affected entity under both Major and Minor NSR. *See* section III.D.3 (response to comment 2) for further information.

Finally, the commenter stated that because the Texas Flexible Permit Program is more complex than either the Federal PAL SIP rule or the Federal Green Groups proposal, it should include monitoring at least as stringent as required by those rules. EPA is not requiring that the Program include the specific MRR as required or proposed for another program. As stated above, to be approvable as a SIP revision, the Program must contain specific, replicable MRR requirements that ensure compliance with all terms and conditions of each Flexible Permit issued by the TCEQ. *See* section III.C.6 (response to comment 2) for additional information.

Comment 10: The Clinic comments that the Program does not assure that permit terms of pre-existing NSR permits remain as part of the Flexible Permit and therefore enforceable. The Clinic provided information on a refinery that had a PSD permit and subsequently received a Flexible Permit from TCEQ. The PSD permit included emission limits for two fluid catalytic cracking units (FCCUs). When the Flexible Permit was issued, these emission limits in the PSD permit were not included as separate from the limits in the Flexible Permit; instead, the Flexible Permit included the FCCUs among the units subject to the emission caps. When the refinery subsequently reported emission events, it reported only the Flexible Permit and its associated caps as the applicable limits, rather than the limits from the pre-existing Major NSR SIP permits.

Response: The submitted Program lacks adequate program requirements for whether or not the terms and conditions of pre-existing Major and Minor SIP permits are incorporated into a Flexible Permit or they remain outside the coverage of the Flexible Permit. While the comments on implementation of the submitted Program as related to a particular source are not relevant to this action, they do highlight EPA's concerns about why the submitted Program is not approvable. The submitted Flexible Permit Program also lacks sufficient recordkeeping provisions to ensure that all terms and conditions of pre-existing Major and

[7] Section 116.711(2) of the submitted Program provides that emissions will be measured "as determined by the executive director." This broad discretion lacks accountability, replicability and fails to provide for a full evaluation of the enforceability of permits issued under the Program.

[8] EPA's letter of March 12, 2008, on pages 12 to 13 of the Enclosure provides some examples of, and concepts on how to establish replicable recordkeeping, reporting, tracking, and monitoring requirements up-front in a NSR program without requiring every director discretion decision to be adopted and submitted to EPA for approval as a source-specific SIP revision.

Minor NSR SIP permits (including representations in the applications for such permits) that are incorporated into the Flexible Permit continue to be met. These underlying Major and Minor NSR SIP permits remain legally enforceable but the lack of specificity in the submitted Program impacts practical enforceability. *See* 74 FR 48493, and section III.A (response to comment 6) and section III.D.3 (response to comment 11, below) for further information.

Comment 11: A member of the Sierra Club cites to references from the proposal that relate to the lack of appropriate MRR requirements in the Program. An individual commenter states that as an air quality investigator for the City of Houston Bureau of Air Quality Control, investigating documentation of compliance for a Flexible Permit was presented an entire roomful of binders, containing emissions information for different sources under one cap. The company representative said that this was the documentation of the company's compliance with the Flexible Permit. Confronted with these practical difficulties, the commenter was unable to determine the company's compliance with its Flexible Permit Cap.

Response: The EPA agrees with these comments. While the comments on implementation of the submitted Program are not relevant to this action, they do highlight EPA's concerns about why the submitted Program is not approvable. The submitted Program lacks provisions explicitly addressing the type of monitoring requirements that are necessary to ensure that all of the movement of emissions between the emission points, units, facilities, plants, *etc.,* still meet the cap for the pollutant, still meet the individual emissions limitations, and still meet any other applicable State or Federal requirement. In addition, there are no limits on the types of sources that can be included in the cap. It is also difficult to quantify emissions from some units, such as tanks, fugitive emissions from leaking valves, or wastewater emissions points that can be included in a Flexible Permit under this Program. This comment also highlights the lack of adequate program requirements for the tracking of existing SIP permits' major and minor NSR terms, limits and conditions, and whether such requirements are incorporated into a Flexible Permit or they remain outside the coverage of the Flexible Permit. This further highlights the lack of MRR sufficient to establish how compliance will be determined and to ensure that NAAQS and Texas control strategies are protected. *See* 74 FR 40480, at 40493, section III.D.3 (responses to comment 1, 2, 4, 5, 7, and 10, above), and section III.A (response to comment 6) for further information.

4. Revocation of Major NSR Permits Under a Minor NSR Program

Comment: The Clinic comments that Flexible Permits are used to eliminate or amend existing Nonattainment NSR and PSD permit terms without following SIP required procedures for permit amendments.

Response: We are disapproving the submitted Program because it is ambiguous and could be interpreted to allow holders of a Flexible Permit to make *de facto* amendments of existing SIP permits, including changes in the terms and conditions (such as throughput, fuel type, hours of operation) of minor and major NSR permits, without a preconstruction review by Texas. While we have recognized that under certain circumstances changes to PSD permits may be appropriate, such changes are generally not allowed without a review of the new circumstances by the permitting authority. As EPA has explained, any time a change to a permit limit founded in BACT is being considered, a corresponding reevaluation (or reopening) of the original BACT determination may be necessary. *See,* "Request for Determination on Best Available Control Technology (BACT) Issues—Ogden Martin Tulsa Municipal Waste Incinerator Facility," from Gary McCutchen, Chief of OAQPS NSR Section (Nov. 19, 1987). *See* 74 FR 40480, at 48493 and a copy of the document is in the docket at document ID EPA–R06–OAR–2005–TX–0032–0025.[9]

5. Protection of the NAAQS Under a Minor NSR Program

Comment: The Clinic comments that the submitted Flexible Permits Program is inadequate to assure protection of the NAAQS, increments, and control strategy.

Response: Approval of the submitted Program as a Minor NSR SIP revision requires that it include legally enforceable procedures that enable the State to determine whether construction or modification by a holder of a Flexible Permit would violate a control strategy or interfere with attainment or maintenance of the NAAQS. *See* 40 CFR 51.160(a)–(b). Without a replicable methodology for establishing the emissions caps, the lack of enforceability, the director discretion concerning whether or not to require MRR conditions in a Flexible Permit, and the lack of sufficient MRR requirements in the submitted Program, EPA lacks sufficient information to make a finding that the submitted Program, as a Minor NSR SIP program, will ensure protection of the NAAQS, and noninterference with the Texas SIP control strategies and RFP. *See* 74 FR 48480, at 48490–48492, and section III.A (response to comment 6) for further information.

E. Definition of Account

Comment 1: TCEQ does not agree with EPA's understanding of the term "account" as applied by TCEQ. TCEQ maintains that it has included in each of its permitting rules appropriate definitions to meet State and Federal requirements. TCEQ interprets an "account" to include multiple "sources." Within this rule, it interprets "sources" as being equivalent to multiple "facilities" (a facility is a discrete piece of equipment or source of air contaminants) under Texas Minor Source definitions. A Flexible Permit cannot cover more than one major stationary source, as the term is used by EPA and TCEQ for Federal NSR purposes.

Response: We appreciate TCEQ's explanation of the terms "account," "facility" and "source" as it intends them to apply in the submitted Program. We are pleased to learn that the State does not intend to allow a Flexible Permit to cover multiple major stationary sources and that companies complying with a Flexible Permit understand the continued obligation to comply with the SIP-approved Major NSR program at all major stationary sources and major modifications. Nonetheless, we believe that the definitions are not sufficiently limiting to preclude issuance of a Flexible Permit to multiple major stationary sources. This is because the terms "source" and "account" rely on the term "site" which does not contain the SIC code limitation contained in the Federal definitions. Without this limitation, the broad terms can encompass more than one major stationary source. For example, a petroleum refiner (SIC code 2911) may be collocated with a Plastic Materials and Resins manufacturer (SIC code 2821) and be under common control and ownership, and neither source is a support facility to the other. But, under the Major NSR program, these two facilities would be considered separate major stationary sources by virtue of a

[9] You can access this document directly at: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a2bd1d.*

difference in each facility's SIC irrespective of the fact that they are located at the same "site." Notably this is not the case for the Title V and Section 112 programs. A single Title V permit can be issued to the "site." TCEQ asserts that an account includes multiple sources and that the term "source" is limited to a discrete piece of equipment or source of air contaminants. There is nothing in the submitted Program's rules and definitions that limit the term "account" to one "major stationary source" much less to a discrete piece of equipment. This submitted Program establishes an emissions cap over a group of one or more emissions points located at an "account" site. 30 TAC 101.1(1). The Texas SIP defines an "account" to include an entire company site, which could include more than one plant and certainly more than one major stationary source. *See* the approved SIP rule 30 TAC 101.1(1), second sentence. On its plain face, the term "account" cannot be interpreted to be limited to a single major stationary source.

Comment 2: BCCA, TCC, TIP and TAB, and TxOGA comment that the definition of "account" is tied to the definition of "site" at 30 TAC 101.1(1) and (87). These commenters view this as limiting an account to a specific plant site. Commenters also point to the Title V rules as providing additional limitation. Citing 30 TAC 116.710(a)(1) and (4), the commenters point out that only one Flexible Permit may be issued at an account site and a Flexible Permit may not cover sources at more than one account site. In summary, commenters conclude that if these rules are read together they provide sufficient safeguards against a major stationary source netting a significant emissions increase against a decrease occurring outside a site using a Flexible Permit. TAB comments if a Flexible Permit could be obtained for more than one site, the only reasonable construction of the rule would be "* * * a facility, group of facilities, account or accounts * * *" but the rule is not so constructed because it does not extend a Flexible Permit to more than one site.

Response: EPA disagrees with the comment. Concerning the comment that an account is limited to a site and that the submitted Flexible Permit Program limits only one Flexible Permit at an account does not address our concern that an account may include more than one major stationary source. *See* the section III.D.1 (response to comment 1) and 74 FR 48480, at 48489 for further information. The commenter's reliance on the Title V rules does not identify a specific provision in the Texas Title V program that supports the commenter's position.

Furthermore, the reliance on the Title V program as providing additional limitation for limiting an account to a major stationary source does not address this matter. The Title V program is an operating permit program that incorporates the applicable requirements of the CAA (including the requirements of the approved SIP) into the operating permit. *See* 40 CFR 70.2—definition of "applicable requirement" and 70.6(a)(1). The Title V Program generally does not create applicable requirements independently of the applicable requirements in the approved SIP and other requirements of the CAA. *Public Citizen* v. *EPA,* 343 F.3d 449, 453 (5th Cir. 2003) ("Title V permits do not impose additional requirements on sources but, to facilitate compliance, consolidate all applicable requirements in a single document. *See* 42 U.S.C. 7661a(a); *see also Virginia* v. *Browner,* 80 F.3d 869, 873 (4th Cir.1996) (Title V permit "is a source-specific bible for [CAA] compliance"), *cert. denied,* 519 U.S. 1090, 117 S.Ct. 764, 136 L.Ed.2d 711 (1997)."); *Sierra Club* v. *Georgia Power Co.,* 443 F.3d 1346, 1348 (11th Cir. 2006) (Title V "generally does not impose new substantive air quality control requirements.")

In summary, for the reasons stated above, the definition of "account" is not limited to a single major stationary source and may include multiple major stationary sources, or in other circumstances, may include a subset of a major stationary source.

F. Public Participation

Comment 1: TCC comments that any future changes in the public participation aspects of the Flexible Permit program should apply prospectively and have no effect on the existing permits.

Response: EPA cannot comment on what actions it will take regarding any future changes in the public participation aspects of the Flexible Permit Program and therefore defers responding because those changes are outside the scope of the present rulemaking. We wish to note, however, existing Flexible Permits were not issued under the Texas NSR SIP, and any future Flexible Permits also will not be issued under the Texas NSR SIP.

Comment 2: The Clinic comments that the CAA and its implementing regulations include minimal requirements for public participation in permitting. This includes, for Major and Minor NSR permits and modifications, the requirements under 40 CFR 51.161 and for PSD permits, additional requirements as provided under 40 CFR 51.166(q). Texas public participation rules for Flexible Permits in 30 TAC Chapter 39 require 30-days public notice and comment on initial issuance of Flexible Permits and amendments to a Flexible Permit if the action involves construction of a new facility or meets certain criteria, including modifications resulting in allowable emissions increases of 250 tons per year of carbon monoxide and nitrogen oxides or 25 tons per year of other pollutants. *See* 30 TAC 39.403(b). This restriction is inconsistent with Federal requirements for both Major and Minor NSR. The commenters further object to the use of alterations and permits by rule to change Flexible Permit terms and conditions; such changes should be made through permit amendment with at least 30-days public notice and comment.

Response: In the proposal, EPA proposed to disapprove 30 TAC 116.740 because this submitted rule relates to the public participation requirements of the submitted Flexible Permit Program, and is not severable from the Program. Because we are disapproving the Flexible Permit Program, we are likewise disapproving the inseverable provisions in 30 TAC 116.740, Public Notice, for the Program. *See* 74 FR 40480, at 48491 and 48493.

The comments relating to the provisions in 30 TAC Chapter 39, the use of permit alterations and Permits by Rule in lieu of permit amendment with at least 30-days public notice and comment are outside the scope of this action.

Comment 3: GCLC provided comments on Texas's submitted public participation program that it is robust and fully compliant with Federal requirements and in fact exceeds Federal requirements. GCLC comments that even parties not residing in the State may comment on an air permit application and TCEQ is obligated to respond whereas under Federal requirements only affected persons are allowed to comment and trigger a response obligation. GCLC asserts that the "public meeting" component of the State program is equivalent to the "public hearing" component of the Federal program. GCLC comments that the trial-type contested hearing process in the Texas program goes well beyond the Federal requirements which permit only interested parties to participate during the notice and comment period.

Response: We recognize that our proposal included a brief discussion of how the submitted Flexible Permit Program requires compliance with provisions in Chapter 39 of the Texas

Administrative Code. On November 26, 2008, EPA proposed limited approval/limited disapproval of the Texas submittals relating to public participation for air permits of new and modified facilities (73 FR 72001). In our November 26, 2008, proposal of the Texas Public Participation rules, we proposed no action on 30 TAC 116.740 and stated that we would address that section in a separate action. *See* 73 FR 72001, at 72015. In our proposal of the Texas Flexible Permits Program, we proposed to disapprove 30 TAC 116.740 because this submitted rule relates to the public participation requirements of the submitted Flexible Permit Program, and is not severable from the Program. Because we are disapproving the Flexible Permit Program, we are likewise disapproving the inseverable provisions in 30 TAC 116.740, Public Notice, for the Program. *See* 74 FR 40480, at 48491 and 48493.

IV. What are the Grounds for This Disapproval Action of the Texas Flexible Permits State Program?

EPA is disapproving revisions to the SIP submitted by the State of Texas that relate to the Flexible Permits State Program, identified in the above Tables 1 and 2. Sources are reminded that they remain subject to the requirements of the federally approved Texas SIP and may be subject to enforcement actions for violations of the SIP. *See* EPA's Revised Guidance on Enforcement during Pending SIP Revisions, (March 1, 1991). You can access this document at: *http://www.epa.gov/compliance/resources/policies/civil/caa/stationary/enf-siprev-rpt.pdf.* However, this final disapproval action does not affect Federal enforceability of Major and Minor NSR SIP permits.

The provisions affected by this disapproval action include regulatory provisions at 30 TAC 116.110(a)(3), 116.710, 116.711, 116.714, 116.715, 116.716, 116.717, 116.718, 116.720, 116.721, 116.722, 116.730, 116.740, 116.750, and 116.760; and definitions at 30 TAC 116.10(11)(F), and 30 TAC 116.13 under 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. EPA finds that these submitted provisions and definitions in the submittals affecting the Texas Flexible Permits State Program are not severable from each other. Specifically, EPA is making the following findings and taking the following actions as described below:

A. The Texas Flexible Permits Program is Unclear Whether It is for a Major or Minor NSR SIP Revision

Several commenters claim that the submitted Program is clear that every project for which a Flexible Permit is issued must also comply with Major NSR requirements, and therefore was not intended to be a Major NSR SIP revision. Other commenters disagree and say the rules are not clear on their face that the Program requires compliance with the Major NSR requirements. The latter commenters agree with EPA's analysis of the submitted Program in the proposal and comment that we correctly stated that we were required to review the submittal as a substitute for a Major NSR program because the submittal is not clearly limited to minor sources and minor modifications. TCEQ states that the Flexible Permit Program was not intended to be a substitute for the Major NSR permitting requirements but that it understands EPA's concerns with ambiguity regarding the applicability of the submitted Program, that this is not specifically stated in the submitted Program's regulations. Furthermore, the TCEQ commits to revise its rules to make it clear that the Program is limited to Minor NSR.

The submitted Program is analogous to two other Minor NSR programs (Standard Permits and Permits by Rule) in Texas's SIP because they too provide a different permit option for facilities. In particular, these programs exempt facilities from obtaining a source-specific (*i.e.,* case-by case) permit. Unlike the submitted Program, however, the SIP rules for Standard Permits and Permits by Rule include an applicability statement and a regulatory provision that expressly limits applicability to minor sources and minor modifications. The Standard Permits rules explicitly require a Major NSR applicability determination at 30 TAC 116.610(b), and prohibit circumvention of Major NSR at 30 TAC 116.610(c). Likewise, the Permits by Rule provisions explicitly require a Major NSR applicability determination at 30 TAC 106.4(a)(3), and prohibit circumvention of Major NSR at 30 TAC 106.4(b). In each, the State specifically expressed its intention to require a Major NSR applicability determination and prohibit circumvention of Major NSR. The absence of a similar Major NSR applicability determination requirement and a similar regulatory prohibition for circumvention of the Major NSR SIP permitting requirements in the submitted Flexible Permits Program creates unacceptable ambiguity. The commenters opposing our proposed action fail to provide an explanation of why the TCEQ did not write the submitted Flexible Permit rules with the same provisions as the Texas Minor NSR Permits by Rule and Standard Permit SIP rules. A clear intention to limit the submitted Program to minor sources and minor modifications would have resulted in a similar structure to the Texas Minor NSR Permits by Rule and Standard Permit SIP rules. The State, however, did not include such provision in the submitted Flexible Permits Program. *See* 74 FR 48480, at 48487, and section III.B (response to comment 1) for further information.

B. The Texas Flexible Permits Program is Not Approvable as a Substitute Major NSR SIP Revision

Because of the State's disavowal of any intent to have this SIP revision submittal treated as a substitute for a Major NSR SIP program, it did not submit a demonstration as required by 40 CFR 51.165(a)(2)(ii) and 51.166(a)(7)(iv) to show that its Program was as stringent as the EPA Major NSR SIP program requirements. It also did not explain how the submitted Program is consistent with the Act's requirements for a Major NSR SIP revision. As discussed at 74 FR 38480, at 48487, and in section III.B (response to comments 1 and 2), section III.C.1 (responses to comments 1 and 2), and section III.C.3 (responses to comments 1 and 2) of this notice, the State did not structure the submitted Program in a similar fashion as the Texas Minor Standard Permits and Permits by Rule NSR SIP programs. This lack of a similar regulatory structure creates the ambiguities whether the submitted Program is truly limited to Minor NSR and whether it prohibits the circumvention of the Federal Major NSR SIP requirements. Without the required demonstration and with the ambiguities, EPA is disapproving the Program as not meeting the Major NSR SIP requirements that require the Major NSR applicability requirements be met and that prevent circumvention of Major NSR. *See* 74 FR 48480, at 48488, section III.B (response to comment 1) and section III.C.1 of this notice for further information.

Some commenters assert that the submitted Program meets the netting criteria for a Major NSR SIP revision. Others argue differently. Under the submitted Program, not all emission points, units, facilities, major stationary sources, minor modifications to an existing major stationary source, and so forth, at a site are required to be included in the site's Flexible Permit.

The submitted Program allows an emission cap to be established under a Flexible Permit account to include multiple major stationary sources and allow a major stationary source to net a significant emissions increase against a decrease occurring outside the major stationary source, from facilities on the account's site, and, in other circumstances, allowing an evaluation of emissions of a subset of units at a major stationary source. As a result, the regulated community may apply these regulations inconsistently and in a way that fails to evaluate emissions changes at the entire major stationary source correctly as required by the Major NSR SIP regulations. *See* section III.E (responses to comments 1 and 2) for further information.

Therefore, the submitted Program does not meet the CAA's definition of "modification" and the Major NSR SIP requirements and is inconsistent with *Alabama Power* v. *Costle,* 636 F.2d 323, 401–403 (D.C. Cir. 1980) and *Asarco* v. *EPA,* 578 F.2d 320 (D.C. Cir.1978). The submitted Program does not meet the Major NSR SIP requirements for netting. Second, the Program authorizes existing allowable emissions, rather than actual emissions, to be used as a baseline to determine applicability. Therefore, this use of allowables is inconsistent with the requirements of the Act for Major NSR and is contrary to *New York* v. *EPA,* 413 F.3d 3, 38–40 (D.C. Cir. 2005) ("New York I"). *See* 74 FR 48480, at 48489–48490, and section III.C.2 (response to comment 2) for further information.

Several commenters claim that the submitted Program requires the retention of the conditions of an existing PSD or Nonattainment NSR permit and that the TCEQ is required under the submitted Program to carry forward such terms and conditions in a Flexible Permit. On the other hand, there was a comment that the submitted Program contains no such requirement and that TCEQ regularly voids existing Nonattainment and PSD NSR permits when it issues a Flexible Permit. The submitted Flexible Permit Program is not clear and explicit that Flexible Permits cannot be used to eliminate or amend existing Nonattainment and PSD NSR SIP permit terms and conditions. There are not sufficient provisions in the submitted Program requiring the holder of a Flexible Permit to maintain recordkeeping sufficient to ensure that all terms and conditions of pre-existing permits (including representations in the applications for such permits) that are incorporated into the Flexible Permit continue to be met. The submitted Program lacks adequate program requirements for the tracking of existing SIP permits' Major NSR terms, limits and conditions, and whether such requirements are incorporated into a Flexible Permit or they remain outside the coverage of the Flexible Permit. The submitted Program is ambiguous and can be interpreted to allow holders of a Flexible Permit to make *de facto* amendments of existing SIP permits, including changes in the terms and conditions (such as throughput, fuel type, hours of operation) of Major NSR permits, without a preconstruction review by Texas. *See* section III.C.5 for further information.

Therefore, the submitted Program does not require the retention of the conditions of Major NSR SIP permits upon the issuance of a Flexible Permit, as is required for a Major NSR SIP revision.

Pursuant to 40 CFR 51.165(a)(2)(ii) and 51.166(a)(7)(iv), where a State submits a revision to its Major NSR SIP that differs from the Federal Major NSR base program SIP requirements, the State has an affirmative obligation to explain how the submitted program satisfies the CAA and to demonstrate why the submitted program is in fact at least as stringent as the Major NSR SIP requirements of the Federal base program. It is not EPA's obligation to surmise how the submitted program might work and if it may under certain circumstances be more or less stringent than the Federal Major NSR SIP base program. The State did not submit such a demonstration because it did not view the submitted Program as a substitute for a Major NSR SIP revision.

Without the required customized Major NSR demonstration, the lack of a replicable methodology for the establishment of the emissions cap, the provision allowing director discretion in deciding whether or not to include a MRR condition in a Flexible Permit, the lack of sufficient MRR requirements, and the lack of enforceability, EPA lacks sufficient information to make a finding that the submitted Flexible Permits Program will prevent interference with NAAQS attainment and RFP or violations of any State control strategy that is required by the Texas NSR SIP, or any other applicable CAA requirement. *See* 74 FR 48480, at 48492, section III.D.3, and section III.A (response to comment 6) for further information.

Therefore, the Program does not meet the requirements of the Act and EPA regulations for a substitute Major NSR SIP.

In summary, EPA is disapproving the submitted Flexible Permits Program as not meeting the Major NSR SIP requirements.

C. The Texas Flexible Permits Program Is Not Approvable as a Minor NSR SIP Revision

Several commenters claim the Texas Flexible Permit Program explicitly requires permit holders to comply with the Federal Major NSR rules. In contrast, another commenter says that the submitted Program does not include adequate provisions for ensuring that changes that should trigger Major NSR are subject to technology and air quality analysis requirements. Commenters assert that the submitted Program prohibits circumvention of Major NSR. Another commenter notes to the contrary. We evaluated the submitted Program under CAA section 110(a)(2)(C), which requires each State to include a Minor NSR program in its SIP. EPA regulations implementing the Act require that a plan include "legally enforceable procedures that enable" the permitting agency to determine whether a minor source will cause or contribute to violations of applicable portions of the control strategy (*see* 40 CFR 51.160(a)(1)), or "interference with a national ambient air quality standard," (*see* 40 CFR 51.160(a)(2)), and to prevent the source from doing so (*see* 40 CFR 51.160(b)). There is, however, no express provision in the submitted Flexible Permit Program rules that prohibits its use for Major NSR. There is no express regulatory provision in the submitted Program requiring that it cannot be used to circumvent the requirements of Major NSR. There are no regulatory provisions clearly prohibiting circumvention of Major NSR. *See* 74 FR 48480, at 48486, and section III.D.1 for further information.

Therefore, EPA is disapproving the submitted Program as a Minor NSR SIP revision because it is not clearly limited to Minor NSR and it does not prevent circumvention of the Major NSR SIP requirements.

Several commenters state that the submitted Program does contain comprehensive and stringent provisions for MRR or assert that there is a wide array of additional Texas rules specifying MRR requirements. A commenter notes that there is significant difference in the types of sources that apply for a Flexible Permit; therefore, requiring one comprehensive rule could severely limit TCEQ's ability to implement adequately these requirements. In contrast, another commenter notes that the submitted Program does not contain adequate MRR requirements to assure compliance with the emission limits in Flexible Permits.

On the other hand, TCEQ admits the submitted Program does not specify special conditions that ensure recordkeeping, reporting, testing, and reporting to assure compliance with the Flexible Permit.

The submitted Program is an intricate and complex program and therefore, for approvability as a Major NSR SIP revision, there is a greater need for detailed MRR requirements whether to ensure that a project triggering the Major NSR SIP requirements is covered under Major NSR or to ensure that there are adequate means for ensuring compliance of each affected source under both Major and Minor NSR. These are needed to make the submitted Program enforceable and to ensure that the issuance of the Flexible Permits does not cause or contribute to a NAAQS violation, the Texas control strategy, or violate any other CAA requirement. The submitted Flexible Permit Program is generic concerning the types of monitoring that is required rather than identifying the employment of specific monitoring approaches, providing the technical specifications for each of the specific allowable monitoring systems, and requiring replicable procedures for the approval of any alternative monitoring system. It also lacks the replicable procedures that are necessary to ensure that (1) adequate monitoring is required that would accurately determine emissions under the Flexible Permit cap, (2) the Program is based upon sound science and meets generally acceptable scientific procedures for data quality and manipulation; and (3) the information generated by such system meets minimum legal requirements for admissibility in a judicial proceeding to enforce the Flexible Permit.

The submitted Program therefore lacks provisions explicitly addressing the type of MRR requirements that are necessary to ensure that all of the movement of emissions between the emission points, units, facilities, plants, *etc.,* still meet the cap for the pollutant, still meet the individual emissions limitations, and still meet any other applicable State or Federal requirement. The commenters' assertion that there are additional MRR SIP requirements applicable to the submitted Program is incorrect; there are no such additional applicable MRR SIP requirements. Moreover, the submitted Program leaves it to the director's discretion to require a MRR condition in a Flexible Permit. *See* 74 FR 48480, at 48490, and section III.C.5 (response to comment), III.D.3 (response to comments 4, 5, and 9), and section III.A (response to comment 6) for further information.

Without specialized MRR requirements in the submitted Program, it is difficult for EPA or the public to determine which units are covered by a Flexible Permit, which modifications to non-covered units are covered by a Flexible Permit, whether a covered unit is subject to the emission cap or an individual emission limitation, whether a unit is subject to both the cap and a limitation, or whether a cap or a limitation applies and at what time. *See* 74 FR 48480, at 48492, and section III.D.3 for further information. Accordingly, the submitted Program lacks requirements necessary for enforcement and assurance of compliance. There are no specific up-front methodologies in the Program to be able to determine compliance. It fails to meet the enforceability requirements as a program or by a holder of a Flexible Permit, and it cannot assure compliance with the Program or of the affected source.

Several commenters state that the submitted Program does contain comprehensive and stringent provisions for MRR or assert that there is a wide array of additional Texas rules specifying MRR requirements. A commenter notes that there is significant difference in the types of sources that apply for a Flexible Permit; therefore, requiring one comprehensive rule could severely limit TCEQ's ability to implement adequately these requirements. In contrast, another commenter notes that the submitted Program does not contain adequate MRR requirements to assure compliance with the emission limits in Flexible Permits.

First, the commenters point to no other specific SIP rules that apply to Flexible Permits and are detailed MRR requirements. Although the submitted Program requires the same MRR requirements at 30 TAC 116.711(2) and 116.715(c)(4)–(6), as do the SIP rules codified in Subchapter B of Chapter 116, the underpinnings of the submitted Program are so complex that even for a Minor NSR SIP program, there should be more detailed MRR requirements to ensure that the emission cap and/or individual emissions limitations in the issued Flexible Permits are enforceable. *See* 74 FR 48480, at 48492, and section III.D.3 for further information. Secondly, the submitted Flexible Permit Program is complex and intricate and therefore, for approvability as a NSR SIP revision, there is a greater need for detailed MRR requirements whether to ensure that a project triggering the Major NSR SIP requirements is covered under Major NSR or to ensure that there are adequate means for ensuring compliance of each affected entity under both Major and Minor NSR. *See* 74 FR 48480, at 48490, section III.A (response to comment 6), and section III.D.3 (response to comment 2) for further information.

Moreover without specialized MRR requirements in the submitted Program, it is difficult for EPA or the public to determine which units are covered by a Flexible Permit, which modifications to non-covered units are covered by a Flexible Permit, whether a covered unit is subject to the emission cap or an individual emission limitation, whether a unit is subject to both the cap and a limitation, or whether a cap or a limitation applies and when it applies. *See* 74 FR 48480, at 48492, and section III.D.3 of this notice for further information. Accordingly, the Program lacks requirements necessary for enforcement and assurance of compliance. There are no specific up-front methodologies in the Program to be able to determine compliance. It fails to meet the enforceability requirements as a program or for a holder of a Flexible Permit, and it cannot assure compliance with the Program or by the holder of a Flexible Permit.

Therefore, the submitted Program is not enforceable, as required by section 110(a)(2)(A)–(C) of the Act for a Minor NSR SIP revision, and it fails to prohibit the issuance of a Flexible Permit that could interfere with attainment of a NAAQS or violate a control strategy. Because of its lack of enforceability, EPA lacks sufficient information to make a finding that the Flexible Permits Program is adequate to ensure that no construction and changes authorized under the Program will prevent interference with attainment and maintenance of the NAAQS or violations of any State control strategy that is required by the Texas NSR SIP. *See* 74 FR 48480, at 48492, and section III.D.3 for further information.

Several commenters claim that the submitted Program requires the retention of the conditions of an existing PSD or Nonattainment NSR permit and that the TCEQ is required under the submitted Program to carry forward such terms and conditions in a Flexible Permit. On the other hand, there was a comment that the submitted Program contains no such requirement and that TCEQ regularly voids existing Nonattainment and PSD NSR permits when it issues a Flexible Permit. The submitted Flexible Permit Program is not clear and explicit that Flexible Permits cannot be used to eliminate or amend existing Nonattainment and PSD NSR SIP permit terms and conditions. The regulatory structure of the submitted Program does not ensure that existing Major NSR SIP permits' terms

and conditions are retained. It lacks legally enforceable procedures to ensure that both the permit application and the State's permitting processes (*i.e.,* the State's review, supporting technical information, the public notice and comment process, the record, and most importantly the structuring of each Flexible Permit) clearly identify each covered point of emissions; which existing Minor NSR permits and their types (*e.g.,* Minor NSR SIP permit, Minor NSR SIP standard permit, Minor NSR SIP permit by rule); and which of their permitted terms, limits, conditions and representations in the permit application, are moved into the Flexible Permit. The regulatory structure of the submitted Program also is not clear which existing permits and their types and terms, limits, conditions and representations in the permit application, are not being moved into the Flexible Permit. Finally, there are not sufficient provisions in the submitted Program requiring the holder of a Flexible Permit to maintain recordkeeping sufficient to ensure that all terms and conditions of existing permits (including representations in the applications for such permits) that are incorporated into the Flexible Permit continue to be met. The submitted Program lacks adequate program requirements for the tracking of existing SIP permits' Major and Minor NSR terms, limits and conditions, and whether or not such requirements are incorporated into a Flexible Permit. Minor and Major NSR permits, as well as Minor NSR SIP Permits by Rule and Standard Permits, can be incorporated into a Flexible Permit without any program requirement in place that ensures the SIP permits' terms and conditions are included in the Flexible Permit. The submitted Program also allows holders of a Flexible Permit to make *de facto* amendments of existing SIP permits, including changes in the terms and conditions (such as throughput, fuel type, hours of operation) of Minor and Major NSR permits, without a preconstruction review by Texas. *See* section III.C.5 and section III.D.3 (response to comment 10) for further information.

Therefore, the submitted Program does not require the retention of the conditions of Major NSR SIP permits upon the issuance of a Flexible Permit, as is required for a Minor NSR SIP revision and allows for revision of existing permits without adequate public notice and comment as required by 40 CFR 51.160–161.

Several commenters claim that the submitted Program does contain an established and replicable method for determining an established emissions cap; others claim differently. The submitted Program does not describe in sufficient detail the calculation methodologies and underlying technical analyses used to determine a cap. It lacks specific, established, replicable procedures in the submitted regulations providing available means to determine independently, and for different scenarios, how the State will calculate a Flexible Permit's cap and/or individual emissions limitations for a company's site, plants on the site, major stationary sources on the site, a facility within a major stationary source on the site, facilities on the site, a group of units on the site, for one pollutant but not another, *etc.* The process also is not clear for how the emission cap is adjusted for the addition of new facilities. *See* 74 FR 48480, at 48491 and section III.D.2 for additional information.

Therefore, the submitted Program lacks replicable procedures for the establishment of the emissions cap, as is required for a Minor NSR SIP revision.

The submitted Program provides an alternative permit option but there is not sufficient information to determine whether this alternative is as stringent as the existing Texas Minor NSR SIP. Consequently, the submitted Program could create a risk of interference with NAAQS attainment, RFP, or any other requirement of the Act. Additionally, the legal test for whether an alternative Minor NSR permit approach can be approved is whether it is consistent with the need for a plan to include legally enforceable procedures to ensure that the State will not permit a source that will violate the control strategy or interfere with NAAQS attainment, as required by 40 CFR 51.160(a)–(b). 74 FR 48480, at 48491. Therefore, we are disapproving the submitted Flexible Permits Program as a Minor NSR SIP revision because it does not meet sections 110(a)(2)(C) and 110(1) of the Act and 40 CFR 51.160. Without a replicable methodology for establishing the emission caps, the provision allowing director discretion whether or not to include a MRR condition in a Flexible Permit, the lack of sufficient MRR requirements and the lack of enforceability of the submitted Program, EPA lacks sufficient information to make a finding that the submitted Program, as a Minor NSR SIP program, will ensure protection of the NAAQS, and noninterference with the Texas SIP control strategies and RFP. *See* 74 FR 48480, at 48492, and section III.A (response to comment 6) for further information.

Based upon the above, overall, the submitted Program fails to include sufficient legally enforceable safeguards to ensure that the NAAQS and control strategies are protected. Therefore, EPA is disapproving the Program for not meeting the requirements for a Minor NSR SIP revision.

D. The Texas Flexible Permits Program Does Not Meet the NSR Public Participation Requirements

A commenter stated that any future changes in public participation aspects of the Flexible Permit Program should apply prospectively and should have no effect on existing permits. Another commenter stated that the submitted Program lacks the minimum public participation in 40 CFR 51.161 for a NSR SIP submittal and for a PSD SIP submittal, the public participation requirements in 40 CFR 51.166(q). Another commenter asserts that the submitted public participation program is robust and fully compliant with Federal requirements and in fact exceeds Federal requirements because of its broader scope and trial-type contested hearings process.

The submitted rule is not severable from the Program because it relates to the public participation requirements of the submitted Program. We are disapproving the Texas Flexible Permits State Program, and we are disapproving the submitted 30 TAC 116.740, because this submitted rule for public participation is not severable from the submitted Program. *See* 74 FR 48480, at 48490 and 48493 and section III.F for further information.

E. Definition of "Account"

TCEQ does not agree with EPA's understanding of the term "account" as applied by TCEQ. It further states that it has integrated and translated the many Federal definitions of the "source" in an attempt to maintain consistent terminology between State and Federal programs. TCEQ comments that its definition of an "account" references the term "source" as defined in Texas law. According to TCEQ, within this rule, it interprets "sources" as being equivalent to multiple "facilities" (a discrete piece of equipment or source of air contaminants) under Texas Minor Source definitions. TCEQ further commented that a Flexible Permit cannot cover more than one major stationary source, as the term is used by EPA and TCEQ for Federal NSR purposes. *See* comment 1 under section III.E. To be approvable, a Flexible Permit cannot cover more than one major stationary source, as the term is used by EPA and TCEQ for Federal NSR

purposes. Other commenters note that the definition of "account" is tied to the definition of "site" at 30 TAC 101.1(1) and (87). This, in their view limits an account to a specific plant site. These commenters also point to the Title V rules as providing additional limitation. Citing 30 TAC 116.710(a)(1) and (4), these commenters point out that only one Flexible Permit may be issued at an account site and a Flexible Permit may not cover sources at more than one account site. In summary, these commenters conclude that if these rules are read together they provide sufficient safeguards against a major stationary source netting a significant emissions increase against a decrease occurring outside a site using a Flexible Permit. Another commenter comments if a Flexible Permit could be obtained for more than one site, the only reasonable construction of the rule would be "* * * a facility, group of facilities, account or account * * *" but the rule is not so constructed because it does not extend a Flexible Permit to more than one site. After considering these comments EPA observes that that an account could include an entire company site, which could include multiple major stationary sources, the submitted SIP revisions may allow a major stationary source to net a significant emissions increase against a decrease occurring outside the stationary source from facilities on the account site that are covered under a Flexible Permit. An account may also allow an emission increase to be determined based on an evaluation of a subset of facilities within a major stationary source. *See* section III.E (response to comment 1) above and 74 FR 48480, at 48489 for further information. The commenter's reliance on the Title V rules does not identify a specific provision in the Texas Title V program that supports the commenter's position.

In summary, for the reasons stated above, the definition of "account" is not clearly limited to a single major stationary source and may include multiple major stationary sources, or in other circumstances, may include a subset of a major stationary source. The submitted Program is not approvable because it does not include legally enforceable procedures for ensuring that both the permit application and the State's permitting processes (*i.e.,* the State's review, supporting technical information, the public notice and comment process, the record, and most importantly the structuring of each Flexible Permit in such a manner as to be clear) will clearly inform the public, other governmental agencies, or a court, which facilities are included under the permit and cap, and which are included under the permit but subject to individual limitations. *See* 74 FR 48480, at 48485 and section III.E for further information.

V. Final Action

EPA is disapproving the Texas Flexible Permits State Program submitted in a series of SIP revisions, identified in the Tables in section II of this preamble. These affected provisions are addressed in Texas' November 29, 1994 SIP revision submittal, as revised by severable portions in the March 13, 1996, SIP revision submittal, and severable portions of the July 22, 1998 SIP revision submittal that repealed and replaced portions of, as well as revised, the 1994 submittal and repealed and replaced all of the 1996 submittal; and as revised by severable portions in the October 25, 1999, September 11, 2000, April 12, 2001, September 4, 2002, October 4, 2002, and September 25, 2003, SIP revision submittals.

EPA is disapproving the submitted Texas Flexible Permits State Program as a Minor NSR SIP revision because it does not meet the Act and EPA's regulations and is not consistent with applicable statutory and regulatory requirements as interpreted in EPA guidance and policy. We also are disapproving the submitted Texas Flexible Permits State Program as a substitute Major NSR SIP revision, because it does not meet the Act and EPA's regulations and is not consistent with applicable statutory and regulatory requirements as interpreted in EPA guidance and policy.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This final action has been determined not to be a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993).

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.,* because this SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b). Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 and part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the States are already imposing.

Furthermore, as explained in this action, the submissions do not meet the requirements of the Act and EPA cannot approve the submissions. The final disapproval will not affect any existing State requirements applicable to small entities in the State of Texas. Federal disapproval of a State submittal does not affect its State enforceability. After considering the economic impacts of today's rulemaking on small entities, and because the Federal SIP disapproval does not create any new requirements or impact a substantial number of small entities, 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 7410(a)(2).

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 "for State, local, or tribal governments or the private sector." EPA has determined that the disapproval action 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 determines that pre-existing requirements under State or local law should not be approved as part of the Federally approved SIP. It 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

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), 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."

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (59 FR 22951, November 9, 2000), because the SIP EPA is disapproving would not apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. 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. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets 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 action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act. 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 (59 FR 7629, (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.

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

K. Congressional Review Act

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

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 13, 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, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2010.

Al Armendariz,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7410 *et seq.*

Subpart SS—Texas

■ 2. Section 52.2273 is amended by adding a new paragraph (c) to read as follows:

§ 52.2273 Approval status.

* * * * *

(c) EPA is disapproving the Texas SIP revision submittals under 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification as follows:

(1) The following provisions under 30 TAC Chapter 116, Subchapter A—Definitions:

(i) Portion of the definition of "modification of existing facility" in 30 TAC 116.10(11)(F), submitted March 13, 1996; repealed and readopted June 17, 1998 and submitted July 22, 1998; adopted August 9, 2000 and submitted September 11, 2000; and revised August 21, 2002 and submitted September 4, 2002;

(ii) 30 TAC 116.13—Flexible Permit Definitions, adopted November 16, 1994 and submitted November 29, 1994; repealed and readopted June 17, 1998 and submitted July 22, 1998;

(2) The following provision in 30 TAC Chapter 116, Subchapter B—New Source Review Permits, Division 1—Permit Application: 30 TAC 116.110(a)(3)—Applicability, adopted November 16, 1994 and submitted November 29, 1994; repealed and readopted June 17, 1998 and submitted July 22, 1998;

(3) The following sections in 40 TAC Chapter 116, Subchapter G—Flexible Permits:

(i) 30 TAC 116.710—Applicability—adopted November 16, 1994 and submitted November 29, 1994; revised June 17, 1998 and submitted July 22, 1998; and adopted August 9, 2000 and September 11, 2000;

(ii) 30 TAC 116.711—Flexible Permit Application—adopted November 16, 1994 and submitted November 29, 1994; revised June 17, 1998 and submitted July 22, 1998; revised March 7, 2001 and submitted April 12, 2001; and revised August 21, 2002 and submitted September 4, 2002;

(iii) 30 TAC 116.714—Application Review Schedule—adopted November 16, 1994 and submitted November 29, 1994, and revised June 17, 1998 and submitted July 22, 1998;

(iv) 30 TAC 116.715—General and Special Conditions—adopted November 16, 1994 and submitted November 29, 1994; revised June 17, 1998 and submitted July 22, 1998; adopted August 9, 2000 and submitted September 11, 2000; revised March 7, 2001 and submitted April 12, 2001; revised August 21, 2002 and submitted September 4, 2002; and revised August 20, 2003 and submitted September 25, 2003;

(v) 30 TAC 116.716—Emission Caps and Individual Limitations—adopted November 16, 1994 and submitted November 29, 1994;

(vi) 30 TAC 116.717—Implementation Schedule for Additional Controls—adopted November 16, 1994 and submitted November 29, 1994;

(vii) 30 TAC 116.718—Significant Emission Increase—adopted November 16, 1994 and submitted November 29, 1994;

(viii) 30 TAC 116.720—Limitation on Physical and Operational Changes—adopted November 16, 1994 and submitted November 29, 1994;

(ix) 30 TAC 116.721—Amendments and Alterations—adopted November 16, 1994 and submitted November 29, 1994; revised June 17, 1998 and submitted July 22, 1998; and revision adopted August 9, 2000 and submitted September 11, 2000;

(x) 30 TAC 116.722—Distance Limitations—adopted November 16, 1994 and submitted November 29, 1994; and revision adopted August 9, 2000 and submitted September 11, 2000;

(xi) 30 TAC 116.730—Compliance History—adopted November 16, 1994 and submitted November 29, 1994; and revised June 17, 1998 and submitted July 22, 1998;

(xii) 30 TAC 116.740—Public Notice and Comment—adopted November 16, 1994 and submitted November 29, 1994; revised June 17, 1998 and submitted July 22, 1998; and revision adopted September 2, 1999 and submitted October 25, 1999;

(xiii) 30 TAC 116.750—Flexible Permit Fee—adopted November 16, 1994 and submitted November 29, 1994; revised June 17, 1998 and submitted July 22, 1998; adopted August 9, 2000 and submitted September 11, 2000; and revision adopted September 25, 2002 and submitted October 4, 2002;

(xiv) 30 TAC 116.760—Flexible Permit Renewal—adopted November 16, 1994 and submitted November 29, 1994.

[FR Doc. 2010–16776 Filed 7–14–10; 8:45 am]

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Federal Register

Thursday,
July 15, 2010

Part IV

Federal Communications Commission

47 CFR Part 1

Implementation of Section 224 of the Act; A National Broadband Plan for Our Future; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 07–245, GN Docket No. 09–51; FCC 10–84]

Implementation of Section 224 of the Act; A National Broadband Plan for Our Future

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: In this Further Notice of Proposed Rulemaking (FNPRM), the Commission proposes rules to expedite access by telecommunications carriers and cable operators to utility poles. Proposed measures include adoption of a specific timeline for poles survey and make-ready work, use of outside contractors, and improving the availability of data. The FNPRM also proposes to improve the pole attachments enforcement process, and proposes ways to make attachment rates as low and uniform as possible consistent with section 224 of the Communications Act. These steps should lower both the cost of gaining access to utility poles and pole attachment rates. These actions are intended to remove impediments to the deployment of facilities and to increase delivery of broadband services.

DATES: Comments are due on or before August 16, 2010 and reply comments are due on or before September 13, 2010. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before September 13, 2010.

ADDRESSES: You may submit comments, identified by WC Docket No. 07–245; GN Docket No. 09–51, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/*. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *Nicholas_A._Fraser@omb.eop.gov or via fax at 202–395–5167.*

FOR FURTHER INFORMATION CONTACT: Jonathan Reel, Wireline Competition Bureau, Competition Policy Division, 202–418–1580. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before August 16, 2010 and reply comments on or before September 13, 2010. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.*
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (202) 488–5300, fax: (202) 488–5563, or via e-mail *http://www.bcpiweb.com*.

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due September 13, 2010.

Comments should address: (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 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. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060–XXXX.

Title: Pole attachment Access Requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 2,961 respondents; 20,427 responses.

Estimated Time per Response: 6–300 hours.

Frequency of Response: On occasion and annual reporting and recordkeeping requirements and third party disclosure requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 965,202 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: No need for confidentiality.

Needs and Uses: Delivery of telecommunications, information, and video services depends on the ability of wireline and wireless providers of these services to attach their facilities (*e.g.,* cable and fiber) to existing utility infrastructure. The Commission proposes a comprehensive regulatory scheme to ensure that the terms and conditions of attachment are just and reasonable under section 224 of the Communications Act. These proposals largely formalize existing practices, such as contract negotiations, applications to attach, surveys and engineering analyses, coordinated repositioning of existing attachments. But the proposals also impose some new paperwork requirements, including web postings of information, and letters of notification among the affected parties. Both existing practices and new proposals are incorporated in the paperwork burden estimates. Most of these responsibilities fall on the pole-owning utility, but some paperwork is required of prospective attaching entities. Normal course-of-business practices, including preparation, review, and payment of invoices, are not included.

Below is a synopsis of the Commission's Further Notice of Proposed Rulemaking in WC Docket No. 07–245, GN Docket No. 09–51, adopted May 20, 2010, and released May 20, 2010.

Synopsis of Further Notice of Proposed Rulemaking

1. In this FNPRM, the Commission seeks comment on how to improve access to essential infrastructure, and expedite the build-out of affordable broadband services as well as telecommunications and cable services. The Commission proposes a specific timeline for all wired pole attachment requests (including fiber or other wired attachments by wireless carriers), and seeks comment on the timeline and exceptions or refinements, as well as the development of a timeline for the attachment of wireless facilities. The Commission also proposes rules allowing the use of contract workers in certain circumstances, and proposes reforming its access dispute-resolution process consistent with the aims of the National Broadband Plan. The Commission seeks to establish rental rates for pole attachments that are as low and close to uniform as possible, consistent with section 224 of the Act, and the Commission seeks comment on proposals to accomplish this goal.

A. Expediting Access to Utility Poles

2. *A Comprehensive Timeline for Section 224 Access.* The Commission proposes a comprehensive timeline for the make-ready process, as recommended in the National Broadband Plan. The Commission begins the process of establishing a Federal timeline that covers each step of the pole attachment process, from application to issuance of the final permit. The Commission believes that the Federal timeline should be comprehensive and applicable to all forms of communications attachments. The Commission proposes that it should adopt a timeline covering the process of certifying wireless equipment for attachment. The record before the Commission includes many examples of delay in make-ready work in states without make-ready timelines, in contrast to evidence of more expedited deployment in those states that have adopted timelines. Section 224 imposes a responsibility on utilities to provide just and reasonable access to any pole, duct, conduit, or right-of-way owned or controlled by it, in addition to preserving their ability to deliver their traditional services. The Commission is skeptical of the 'zero-sum' view that some commenters seem to take with respect to the resources devoted to pole attachments and regular maintenance. To the extent utilities or other commenters assert that they are unable to satisfy these requirements, commenters are asked to provide further detail. Are utilities unable to hire enough workers to perform timely surveys and make-ready, and to ramp up their operations to meet demand? Inasmuch as they are unable to perform pole attachments as needed without impeding their provision of electric service, why is this so? Are these issues really a claim of insufficient cost recovery, rather than inability to provide make-ready work in a timely fashion?

3. *A Proposed Five-Stage Timeline for Wired Pole Attachment.* The Commission proposes adopting a specific five-stage timeline to govern the pole attachment process for wired attachments consisting of the following five stages: (1) Survey; (2) estimate; (3) attacher acceptance; (4) performance; and, if needed, (5) multiparty coordination. Depending how long the applicant reviews the estimate, and whether the existing attachers complete their work in a timely manner, make-ready should be complete within a 105 to 149 day window after the utility receives a complete application for access. The Commission does not propose at this time to apply this timeline to make-ready for wireless equipment or pole replacement.

4. *Stage 1—Survey: 45 Days.* As current rules dictate, a request for access continues to trigger a 45 day period for the utility to respond. The Commission proposes that, as the first stage of the timeline, the Commission should retain existing Commission rule § 1.1403(b). A "request for access" is a complete application that provides the utility with the information necessary to begin to survey the poles. The current rule gives utilities 45 days to provide a written explanation of evidence and information for denying the request for reasons of lack of capacity, safety, reliability or engineering standards. The rule is functionally identical to a requirement for a survey and engineering analysis when applied to wired facilities, and is generally understood by utilities as such. The rule remains applicable to wireless facilities, but could apply in a somewhat different manner. A 45-day survey limit accords with the time allowed for surveys in New York, Connecticut, and the Coalition Proposal, as well as the current rule.

5. The Commission proposes that all requests for attachment be included in the timeframe for the survey stage, even where the request ultimately indicates a lack of capacity. Any right the owner has to refuse to install a new pole, and other questions about timing, however, do not affect the applicant's right to know whether the owner considers pole replacement necessary. The Commission seeks comment on whether to clarify what constitutes a sufficient request to trigger the timeline. Utilities state that application errors cause them to miss deadlines, and New York has adopted specific rules governing the application process. The Commission asks whether it should adopt similar regulations, or leave the details of the application process in the hands of individual parties. The Commission also

seeks comment on whether timing should be adjusted when an application that appears complete includes errors that delay the survey. Should significant errors justify stopping the clock? Should it matter whether the errors reflect lack of due care by the applicant, or lack of information that the utility could have provided?

6. *Stage 2—Estimate: 14 Days.* The Commission proposes that, as the second stage in the pole access timeline, a utility must tender an estimate of its charges to perform any make-ready work within 14 days after completing the survey. Both the New York timeline and the Coalition Proposal include a similar deadline, and the Commission proposes that such a timeframe is reasonable. Although utilities commonly provide an estimate with the survey and engineering analysis, an estimate of charges is not clearly required under the current 45-day response rule. The Commission proposes a deadline for estimates that is separate from the survey in order to permit a utility to separate the engineering analysis from its estimation of charges, and to permit the attacher time to examine and consider the engineering assessment before it reviews an invoice.

7. *Stage 3—Acceptance: 14 Days.* The Commission proposes that, as the third stage in the timeline, the applicant should have 14 days to accept the tendered estimate, consistent with New York's practice. The Commission considers it unreasonable to require a utility to commit indefinitely to its make-ready proposal and estimate of charges, and believes that imposing this time limit on prospective attachers will provide additional certainty. Limiting review also meets the intention that the timeline should be comprehensive, and address each phase of the process. The applicant may accept the estimate sooner, and need not wait 14 days before accepting or rejecting it.

8. *Stage 4—Performance: 45 Days.* The Commission proposes that, as the fourth stage in the timeline, payment by the applicant should trigger a 45-day period for the completion of make-ready work, consistent with the approach in New York and Connecticut. Given the experience in New York and Connecticut, the Commission finds 45 days to be a reasonable time period for the actual performance of make-ready work. To implement this approach, the Commission proposes that, when it receives payment, a utility must notify immediately all entities whose existing attachments may be affected by the project. The Commission further proposes that notification must include a reminder that those attachers have 45 days to move, rearrange, or remove any facilities as needed to perform the make-ready work and that, if they fail to do so, the utility or its agents, or the new attacher, using authorized contractors, may move or remove any facilities that impede performance. Moreover, the Commission proposes that the obligation to complete make-ready work in this timeframe extend not only to the utility, but also to existing attachers. Utilities contend that existing attachers cause delays and have little incentive to cooperate, especially if the applicant will be a competitor, and this constrains their ability to provide timely pole access to new attachers. The Commission seeks comment with regard to this assertion, as well as the incentive and ability of other attachers on a pole to discriminate against a new attacher. The Commission invites comment on alternative or additional policies that could ensure the cooperation needed as part of the make-ready process. By contrast, the Commission notes that the Coalition Proposal would not adopt a specific number of days for completion of relevant make-ready work, instead proposing to perform such work "in a manner that does not discriminate in favor of the utility's own needs or customer work." The Commission seeks comment on what metrics and data would be needed to evaluate compliance with such an approach, and how it would be reported or otherwise made available. The Commission also seeks comment on the balance reflected in the Coalition Proposal in this regard between attachers' interests in timely, predictable pole access and pole owners' interests in ensuring safety, reliability, and sound engineering.

9. *Stage 5—Multiparty Coordination: 30 Days.* The Commission proposes that the fifth stage of the timeline—if needed—will provide time for any coordination and make-ready work required in the event that some existing attachers fail to move their facilities as directed by the utility. The Commission notes that incumbent LECs typically occupy more space on a pole than other communications attachers and, due to their location on a pole, often must be the first to move their communications attachments as part of the make-ready process. And while current Commission rules provide that attachments by a cable operator or non-incumbent LEC telecommunications carrier may not be moved by the utility until 60 days have passed, that rule does not govern attachments by incumbent LECs. Thus, after 45 days, the utility or its agent may move incumbent LEC attachments as needed and, after 60 days, may act independently of other existing attachers to finish the project.

10. Consequently, it is reasonable to allow extra time for the utility or its agent to complete the make-ready with a free hand. Given that the utility will have surveyed the poles and coordinated rearrangement, and, after 60 days, may act independently of other existing attachers, the Commission considers 30 days after the 45th day a reasonable extension of time to undertake any coordination or planning required to finish the project. The Commission seeks comment on this proposal. In addition to defining a default timeline, the Commission recognizes the need to define certain exceptions or limitations in appropriate circumstances.

11. *Adjustments to the Timeline for the Number of Pole Attachment Requests.* In addition, the Commission recognizes the potential need to address utilities' concerns about possible operational or logistical challenges or the need to respond to factors outside their control. Thus, the Commission seeks comment on any necessary adjustments or exclusions from the timeline proposed above.

12. *Size of Request.* The Commission seeks comment on whether requests for access to a particularly large number of poles should be excepted from the timeline, or subject to an alternative timeline. Requests for access vary widely, and the Commission seeks comment on how best to incorporate the size or complexity of requests into the rules. Utah and Vermont adjust the duration of the survey and performance deadlines for both the size of the job and size of the utility. Utah divides requests for attachment into four categories: (1) Up to 20 poles; (2) 21 to 300 poles, or up to .5 percent of the owner's poles in Utah; (3) 300 to 3,000 poles, or 5 percent of the owner's poles in Utah, up to 3,000 poles; and (4) requests that exceed 3,000 poles or 5 percent of the owner's poles in Utah, which are negotiated individually. At each step, the lower outcome of the absolute number or percentage test applies. Vermont staggers the timeline solely according to the percentage of the owner's poles where attachment is requested, which it divides at .5 percent, 3 percent, and 5 percent; any request that exceeds 5% of the owner's poles must be negotiated individually. Similarly, New York requires applicants to give advance notice of "significant" attachment requests.

13. Comment is sought on the merits and effectiveness of the states' timeline adjustments or notice requirements as

modifications to the proposed Federal timeline described above. Utah and Vermont's approach has the virtue of calibrating the timeline to fit both the size of the request and the size of the utility, but implementation depends upon access to data that may not currently be readily available for utilities nationally. Should utilities below a certain size have the option of sorting attachment requests into categories determined by a percentage of the utility's in-State poles, and adjusting the timeline accordingly? If so, how should the Commission define a large, medium, and small request, and what timeframe would be appropriate for each level? Should small utilities negotiate all timelines individually? Alternatively, should the timeline apply to small utilities for requests up to a certain size, with any larger requests subject to individual negotiation?

14. Providing access on a rolling basis, or capping the number of attachments in a given time period, might provide an alternative approach to modifying the proposed timeline to accommodate larger jobs. The Coalition Proposal would limit any individual request to 250 poles, with pole access requests limited to 600 attachments in any one month. Utah considers a request to attach to more than 300 poles a large request, and counts all requests from any particular prospective attacher within a calendar month as one application. Regarding surveys, UTC reports that, on average, approximately 19 percent of all requests take longer than 45 days to process and, of that number, the reason for 30 percent of missed deadlines was the size of the project. Comment is sought regarding whether, and if so, how, the reasonable size of a request would fit the timeline that the Commission proposes. The Commission also asks whether that size should be adjusted for small utilities, and, if so, what thresholds are appropriate.

15. Just as some requests might prove too large for the timeline to accommodate, some attachers might seek faster action on smaller requests. Connecticut accelerates the deadline when an applicant requests access to four or fewer attachments. Utah distinguishes access requests for 20 poles or less. Should the Commission adopt an alternative timeline for small requests, and, if so, how many poles should count as a small request and what deadlines should apply? Commenters should consider whether some deadlines may be easier to scale back than others, and address the concern that a utility that can act quickly alone may not be able to induce other attachers to act quickly in concert. Section 224 requires that the utility give existing attachers a "reasonable opportunity" to modify their attachments. What notice would be appropriate in the context of particular small jobs?

16. *Stopping the Clock.* The Commission acknowledges that circumstances beyond a utility's control may require prioritization, or otherwise warrant interrupting the timeline. In New York, "circumstances beyond the owner's control, other than resource problems, will excuse meeting the timetable. Non-payment of charges will also stop the clock for meeting timetables." In Vermont, the clock stops for extraordinary circumstances or reasons beyond the pole owner's control. Comment is sought with regard to stopping and restarting the clock. Are guidelines necessary or helpful? What type of communication or notice between parties is expected? If so, what potential disputes would guidelines resolve, and should guidelines be specific or general? The Commission would expect the utility to return to the timeline as soon as circumstances permit, which will generally be the same point that the utility resumes normal operation, and to keep all interested parties reasonably informed.

17. *Wireless Attachment Timeline Issues.* The Commission also solicits comment on developing timelines for section 224 access other than wired pole attachments. First, the Commission seeks comment on whether the wired pole attachment timeline is appropriate for wireless equipment. Utilities assert that wireless attachment presents different safety, reliability, and engineering concerns because wireless equipment varies widely; is often placed in or near the electric lines; and requires a power source. The current rule requiring a response to pole access requests within 45 days applies in full to utilities that receive requests by wireless carriers, however. Where a utility has no master agreement with a carrier for wireless attachments requested, such as pole top attachments, the utility may satisfy the requirement to respond with a written explanation of its concerns with regard to capacity, safety, reliability, or engineering standards. The Commission seeks comment on whether it should require that the response be sufficiently detailed to serve as a basis for negotiating a master agreement, which would dictate a timely process for future attachments.

18. The Commission seeks comment on considerations that would affect a timeline tailored to suit requests for attachment of wireless equipment after a utility and the carrier have reached a master agreement. Attachment of wireless equipment may complicate engineering analyses, but may also avoid the multiparty notice and coordination issues that characterize rearrangement of wired facilities. Also, wireless carriers using a distributed antenna system (DAS) attach to relatively few poles compared to cable operators and wireline carriers that attach to every pole that their network passes. Should a timeline for requests for wireless equipment reflect these circumstances, and if so how? The Commission particularly asks utilities that have permitted wireless equipment to be installed on their poles to report their experience, and to describe their typical timeframes for meeting wireless attachment requests. The goal is to bring regularity and predictability to attachment of wireless facilities while acknowledging that the attachment of wireless telecommunications equipment in or near the electric space may raise different safety, reliability, and engineering concerns.

19. *Other Section 224 Timeline Issues.* Section 224 provides that, when an owner intends to modify a pole, the owner shall provide both written notification to "any entity that has obtained an attachment" and a "reasonable opportunity to add to or modify its existing attachment." The record suggests that modification may be required during make-ready when, for example, a pole that has been grandfathered to a prior standard must be brought into compliance with current standards when a new attachment is added. Similarly, a utility may have been unaware of a safety violation until make-ready is performed. Does the proposed timeline provide adequate time for utilities to implement this obligation? The definition of "pole attachment" in section 224(a)(4) includes attachments to a pole, duct, conduit, or right-of-way. The record compiled in this proceeding almost exclusively addresses issues of attachments to poles. Beyond timeline issues for access to poles, comment is sought on whether to implement this timeline for access to section 224 ducts, conduits, and rights-of-way owned or controlled by a utility. Has delayed access to infrastructure other than poles impeded the deployment of broadband or other services? If so, should the proposed pole attachment timeline set forth above be applied to requests for access to other infrastructure, or are modifications or other considerations needed?

20. *Use of Outside Contractors.* Attachers frequently seek the ability to

use independent contractors to deploy their facilities when the utility fails to perform survey and make-ready work in a timely manner. The National Broadband Plan recommends rules that allow attachers to use independent, utility-approved and certified contractors to perform engineering assessments and communications make-ready work, as well as independent surveys. In defining how and when attachers may employ contractors in response to that recommendation, the Commission first delineates between: (a) Survey and make-ready work; and (b) the actual attachment of facilities. As a general matter, the Commission believes it is appropriate to allow greater utility control over the former by permitting utilities to require the use of pre-approved contractors for this work, but continuing a less restrictive approach, originally established in 1996, for the latter. The Commission also distinguishes between electric utilities and incumbent LECs regarding the level of control that each may exercise over an attacher's use of independent contractors.

21. *Basic Right to Use Contractors.* The Local Competition Order established a general principle that attachers may rely upon independent contractors; that order did not differentiate between two different types of work: (a) Surveys and make-ready; and (b) post-make-ready attachment of lines. As a result, there have been ongoing disagreements regarding the ability of attachers to use contractors to perform survey and make-ready work under existing law. As discussed below, addressing these issues in greater detail here the Commission proposes to clarify and revise this approach in several respects in the context of surveys and make-ready to reflect utilities' concerns regarding safety, reliability, and sound engineering. The Commission also finds differing approaches warranted for incumbent LEC pole owners as compared to other pole owners.

22. In particular, with respect to surveys and communications make-ready work, the Commission proposes that: Attachers may use contractors to perform surveys and make-ready work if a utility has failed to perform its obligations within the timeline, or as otherwise agreed to by the utility. As discussed above, the Commission proposes a pole access timeline based in significant part on the approach taken in New York. Within that regulatory framework, the New York Commission gives utilities the option of using their own workers to do the requested work, or to hire outside contractors themselves, or to allow attachers to hire approved outside contractors. Under the proposed approach, utilities likewise would be entitled to rely on their own personnel unless they are unable to complete work within the timeline. If the utility decides to deploy its workforce on other projects or otherwise is unable to meet a deadline, the prospective attacher would be free to use contractors that are approved and certified by the utility. Comment is sought on this general approach, including the relative benefits of preserving greater control for utilities as compared to potential time- or cost-savings that attachers might obtain if they have appropriate contractors available and ready to do make-ready work.

23. With respect to actual attachment of facilities to poles, the Commission proposes to retain the existing rules. The make-ready process is designed to address the utilities' safety, reliability and engineering concerns prior to a new attachment. So when that process is complete and facilities are ready to be attached, the utility's concerns are less pressing, and an attacher's interest in rolling out properly permitted facilities is proportionately larger. Therefore, for the post-make-ready attachment of facilities, the Commission retains the existing standard of "same qualifications, in terms of training, as the utilities' own workers," and continues to deny utilities the right to predesignate or co-direct an attacher's chosen contractor. The Commission seeks comment on this proposal, as well as other alternatives.

24. *Approval and certification of contract workers.* With respect to electric utilities and other non-incumbent LEC pole owners, the Commission proposes that: To perform surveys or make-ready work attachers may use contractors that a utility has approved and certified for purposes of performing such work. This is consistent with the approach of the New York Commission—cited approvingly by some attachers—which entitles applicants for attachment to hire contractors from a utility-approved list if the utility cannot or will not meet survey and make-ready deadlines. A number of utilities express concern that the safety and reliability of their poles may be jeopardized by independent contractors. Crucial judgments about safety, capacity, and engineering are made during surveys and make-ready, and the Commission finds the utilities' concerns reasonable. Permitting such utilities to decide which contractors it will approve and certify for surveys and make-ready addresses the need that utilities maintain control over safety and engineering standards, although the Commission seeks comment on alternative approaches, as well.

25. Although the Commission proposes to allow electric utilities and other non-incumbent LEC pole owners to pre-approve the contractors they will permit to perform surveys and make-ready, their discretion should not be unbounded, and the Commission proposes the following requirements. First, the Commission proposes to require such utilities to post or otherwise share with attachers a list of approved- and certified contractors, including any contractors that the utility itself uses. Second, the Commission proposes to require each such utility to post or otherwise share with attachers the standards it uses to evaluate contractors for approval and certification and require the nondiscriminatory application of those standards. Under the proposal, these utilities may design their requirements as they see fit, by, for example, setting training standards, approving training manuals, or otherwise clarifying their requirements.

26. These requirements are minimally burdensome and are sufficient to prevent a utility from artificially limiting the list of approved contractors. The Commission is unpersuaded by contentions from certain utilities that the decisions on outside contractors will lead to resource diversion of non-employee "resources," undercutting their ability to deliver traditional services. Nothing in this proposal affects a utility's control of its employees. The Commission is aware of the need to balance the work of infrastructure personnel, but also mindful that section 224 imposes obligations on utilities that may require accommodations and adjustments. The Commission seeks further comment on the staffing issues, especially regarding the utilities' rights to the time and attention of contractors. The Commission invites comment concerning whether the proposed requirements are necessary, appropriate, and sufficient for their purpose.

27. The Commission seeks comment on this proposal, including whether it strikes the right balance of rights and burdens of attachers and utilities, and any implementation issues the Commission should address. For example, if no list is provided, or if one is not available when the application is filed, should the existing "same qualifications" standard apply by default? The Commission also seeks comment on whether any additional criteria are warranted. For example, should this list contain a minimum number of contractors to ensure ready

availability of contractors if make-ready work is needed? Should the list automatically include any contractors previously used by the utility for its own purposes? Should there be a presumption that contractors that are approved and certified by a utility (or multiple utilities) other than the pole owner be acceptable for make-ready work?

28. With respect to incumbent LECs, the Commission proposes that: to perform surveys or make-ready work attachers may use any contractor that has the "same qualifications, in terms of training, as the utilities own workers." As discussed above, in the Local Competition Order, the Commission reasoned that "[a]llowing a utility to dictate that only specific employees or contractors be used would impede the access that Congress sought to bestow on telecommunications providers and cable operators * * *." These risks are heightened in the context of incumbent LEC utility poles, where the new attacher typically will be a competitor of the incumbent LEC. Thus, the balancing of safety concerns and protection for attachers differs from the context of electric utility-owned poles, and leads us to propose an approach that grants greater flexibility to attachers.

29. *Direction and Supervision of Outside Contractors.* The Commission proposes that, for surveys and make-ready work, utilities and prospective attachers may jointly direct and supervise contractors. As with approval and certification of contract workers, the Commission proposes a differing approach for incumbent LEC pole owners and other pole owners. And in the context of actual attachment of facilities to poles, the Commission does not propose any affirmative right for utilities to jointly direct and supervise contractors.

30. For electric utilities and other non-incumbent LEC pole owners, the Commission proposes that: attachers performing surveys and make-ready work using contractors shall invite representatives of the utility to accompany the contract workers, and should mutually agree regarding the amount of notice to the utility. The Commission further proposes that, whenever possible, both parties' engineers should seek to find mutually satisfactory solutions to conflicting opinions, but when differences are irreconcilable, the pole owners' representative may exercise final authority to make all judgments that relate directly to insufficient capacity or safety, reliability, and sound engineering, subject to any otherwise-applicable dispute resolution process. The Commission sees no conflict between the use of contractors as outlined above and the electric utilities' safety and engineering concerns. Nor does the Commission see a conflict with the attachers' desire to use independent contractors. Use of contractors is an appropriate tool to facilitate timely deployment of facilities only when it does not circumvent or diminish the electric utilities' vital role in maintaining the safety, reliability, and sound engineering of the pole infrastructure.

31. In the case of incumbent LEC-owned poles: attachers performing surveys and make-ready work using contractors shall invite a representative of the incumbent LEC to accompany and observe the contractor, but the incumbent LEC shall not have final decision-making power. In the majority of cases, electric power companies and other non-incumbent LECs are typically disinterested parties with only the best interest of the infrastructure at heart; incumbent LECs may make no such claim. In contrast to the vast majority of electric utilities or similar pole owners, as discussed above, incumbent LECs are usually in direct competition with at least one of the new attacher's services, and the incumbent LEC may have strong incentives to frustrate and delay attachment. To allow an incumbent LEC a veto over contractors would provide them with an undue ability to act on that incentive. The Commission seeks comment on whether incumbent LECs have other legal responsibilities or obligations under joint use agreements that could counsel in favor of a different approach.

32. *Working Among the Electrical Lines.* The Commission further proposes that all utilities may deny access by contractors to work among the electric lines, except where the contractor has special communications-equipment related training or skills that the utility cannot duplicate. In so doing, the Commission clarifies that "proximity of electric lines" extends into the safety space between the communications and electrical wires but, not among the lines themselves. The Commission concluded in the Local Competition Order that "[a] utility may require that individuals who will work in the proximity of electric lines have the same qualifications, in terms of training, as the utility's own workers, but the party seeking access will be able to use any individual workers who meet these criteria." Safety, reliability, and engineering concerns are strongest regarding work among energized power lines, and the National Broadband Plan calls for the use of independent contractors to perform "engineering assessments and communications make-ready work." In any event, the word "proximity" is ambiguous, and could mean either "up to the electric lines" or "among the electric lines." The former is the more reasonable choice and the Commission believes it is appropriate to remove this ambiguity from the rules. Thus, the Commission proposes that, generally, attachers and their contractors may be limited to the communications space and safety space below the electric space on a pole. However, utilities must permit contract personnel with specialized communications-equipment training or skills that the utility cannot duplicate to work among the power lines, such as work with wireless antennae equipment. Because of the heightened safety considerations, any such work shall be performed in concert with the utility's workforce and when the utility deems it safe.

Other Options To Expedite Pole Access

33. *Payment for Make-ready Work.* In addition to adopting a formal pole access timeline, the Commission seeks to correctly align the incentives to perform make-ready work on schedule. Accordingly, the Commission proposes to adopt the Utah rule that applicants pay for make-ready work in stages, and may withhold a portion of the payment until the work is complete. In Utah, applicants trigger initiation of performance by paying one half the estimated cost; pay one quarter of the estimated cost midway through performance; and pay the remainder upon completion. What schedule of payment is normal in comparable circumstances in other commercial contexts? Alternatively, should the Commission adopt a general rule permitting payment for make-ready work in stages, and leave the details of the specific payment schedule to negotiation?

34. *Schedule of Charges.* The Commission proposes that utilities shall make available to attaching entities a schedule of common make-ready charges. The National Broadband Plan recommended that the Commission "[e]stablish a schedule of charges for the most common categories of work (such as engineering assessments and pole construction)" as an additional way to lower the cost and increase the speed of the pole attachment process. Such a schedule could provide transparency to attachers seeking to deploy their networks and could fortify the "just and reasonable" access standard for pole attachments. The Commission seeks comment generally on the benefits and any limitations associated with

requiring utilities to prepare such a schedule. Further, the Commission asks whether and how schedules of common make-ready charges are used and implemented by utilities today. The Commission also seeks comment on any comparable State requirements. For example, the Commission notes that the New York Commission's rules require that make-ready charges be in each pole owner's operating agreement, be posted on its Web site, with supporting documentation available to attachers on request, and can only be changed annually with notice. The Commission also asks if there are other mechanisms currently in use, such as standardized contract terms, that provide the necessary information and transparency to the make-ready process, without additional government mandate. Finally, the Commission seeks comment on whether particular make-ready jobs and charges are the most common, and thus would most easily be applied to a generalized schedule of charges.

35. *Administering Pole Attachments.* The Commission seeks comment on ways to simplify the relationship between prospective attachers and utilities when there is joint ownership. The record suggests that, when a pole is jointly owned, a prospective attacher may sometimes be required to obtain permission to attach from both owners. Consolidating administrative authority in one managing utility would simplify a prospective attacher's request for access, and clarify which utility will interact with the requesting entity and existing attachers during the make-ready process. The Commission therefore proposes that, when more than one utility owns a pole, the owners must determine which of them is the managing utility for any jointly-owned pole. Also, requesting entities need only deal with the managing utility, and not both utilities. The Commission also proposes that both utilities should make publicly available the identity of the managing utility for any given pole, and the Commission seeks comments on these proposals. The Commission invites comment on whether the proposed regulations are sufficient to clarify joint owners' rights and responsibilities with regard to the right of access. In addition, the Commission seeks comment on joint use agreements, and whether they may inhibit the managing owner from administering the entire pole. If the joint user is an incumbent LEC, how should the Commission address concerns that it might not be inclined to devote its resources to providing access for a competitor? Do joint use agreements sometimes give that user a degree of "control" over access to the pole to the point that the user may have a specific duty to provide access under section 224?

36. The Commission also seeks comment regarding the managing utility's responsibility to administer the pole during the make-ready process. In particular, under section 224, an existing attacher may not be required to bear any of the costs of rearranging its attachment to make room for a new attacher. As a practical matter, only the utility has privity with both the requesting entity and the existing attachers, and it appears reasonable for the utility to manage the transfer of funds. The Commission is reluctant, however, to entrust this responsibility to the managing utility without standards or guidance. Therefore, it proposes to require the utility to collect from existing attachers statements of any costs that are attributable to rearrangement; to bill the new attacher for these costs, plus any expenses the utility incurs in its role as clearinghouse, and to disburse compensatory payment to the existing attachers. The Commission seeks comment on this proposal, and any alternatives for managing this process. The Commission also asks whether utilities require any further clarification of their role in managing the pole during the make-ready process. For example, should the managing utility schedule the sequence for attaching entities to move their facilities during make-ready?

37. *Attachment Techniques.* In the Order, the Commission clarified that the Act requires a utility to allow cable operators and telecommunications carriers to use the same pole attachment techniques that the utility itself uses or allows. Some commenters state, however, that even if a utility has employed such practices in the past, it should be able to prohibit boxing and bracketing for both itself and other attachers going forward. If a utility changes its practices over time to exclude attachment techniques such as boxing, to what extent would the nondiscrimination standard in the statute automatically address this, or are rules necessary? The Commission also seeks comment on how standards should apply when a pole is jointly used or owned, and on whether utilities' decisions regarding the use of boxing and bracketing should be made publicly available.

38. *Improving the Availability of Data.* The Commission seeks comment on how to improve the collection and availability of information regarding the location and availability of poles, ducts, conduits, and rights-of-way. As the National Broadband Plan points out, there are hundreds of entities that own and use this infrastructure, and accurate information about it is important for the efficient and timely deployment of advanced and competitive communications networks. Initially, the Commission asks what data would be beneficial to maintain, such as the ownership of, location of, and attachments on a pole. Should the Commission collect these data itself, or might industry, including third-party entities, be better suited for the task? If the latter, what is the appropriate role for the Commission regarding the establishment of common standards and oversight? Could or should this information, if collected and maintained by separate entities, be aggregated into a national database?

39. To gain perspective on the scope of this task, the Commission seeks comment on the number of poles for which data would need to be gathered, how long it would take to inventory them, and the cost of such an inventory. The Commission also asks what existing methods utilities currently use, such as the National Joint Utilities Notification System (NJUNS) or Alden Systems' Joint Use services. How can the Commission ensure participation by all relevant parties, including timely updates of information? For example, is it reasonable for a utility to require all attachers to actively use or populate a system it uses, such as NJUNS, to inventory pole attachments, perhaps as a term of the master agreement? How can the Commission ensure that the costs are shared equitably by pole owners and other users of the data? The Commission also seeks comment on the challenges to creating and maintaining such a database, including security issues, access for prospective attachers, and the potential burden to small utilities, as well as on any additional benefits such data would have for maintaining safe and reliable infrastructure.

40. The Commission also expects that the timeline and related rules proposed above will help expedite pole access, and proposes that it monitor whether those rules, if adopted, achieve the intended results. The Commission seeks comment on the most appropriate method for it to use in this regard. Would the other possible improvements to the collection and availability discussed above provide a source of such information? If not, should the Commission otherwise collect such information, either formally, or through a periodic Public Notice or Notice of Inquiry? Similarly, is there other

information that the Commission should collect to monitor the effectiveness of any other pole access, enforcement, or pricing rules it might adopt?

B. Improving the Enforcement Process

41. *Revising Pole Attachment Dispute Resolution Procedures.* In response to the Pole Attachment Notice, the Commission received several comments suggesting that the Commission modify its procedures for resolving pole attachment complaints. In addition, the National Broadband Plan included recommendations that the Commission implement institutional changes, such as the creation of specialized forums and processes for attachment disputes, and adopt process changes to expedite dispute resolution.

42. The Commission asks whether it should modify its existing procedural rules governing pole attachment complaints. Should the Commission adopt additional rules or procedures to address specific issues that arise with wireline or wireless attachments? Do any of the Commission's other procedural rules, such as the rules governing formal complaints under section 208 of the Act, or the rules governing complaints related to cable service, provide a suitable model in developing new procedural rules for pole attachment complaints? What other issues concerning dispute resolution processes should the Commission consider?

43. If the Commission were to establish specialized forums to handle pole attachment disputes, what form and structure should these forums take? Under what legal authority could the Commission authorize the formation of such forums? How would the forums be formed, managed, and funded? How should forum participants be selected? What specific expertise should staff of these forums have? What role should the Commission or Commission staff play with regard to the forums? What specific role should such forums play in the resolution of pole attachment disputes? Should the forums engage in mediation or other alternative dispute resolution mechanisms? Should the use of the forums for dispute resolution be mandatory or voluntary? Should these specialized forums issue decisions in specific cases? How could the decisions of the forums be challenged, and pursuant to what standard? Should such decisions be appealable to the Commission? What kinds of rules or procedures should govern the work of the specialized forums? How would the forum participants avoid conflicts of interest when engaging in dispute resolution processes with industry participants? Do the Transition Administrator procedures established in the 800 MHz Report and Order provide a suitable model in developing these forums? The Commission invites comment.

44. *Efficient Informal Dispute Resolution Process.* In the Pole Attachment Notice, the Commission noted that the Commission has encouraged parties to participate in staff-supervised, informal dispute resolution processes and that these processes have been successful in resolving pole attachment matters. If parties are able informally to agree to a resolution of their problems, they can avoid the time and expense attendant to formal litigation. Some attachment disputes may be more quickly or cost-effectively resolved by the companies involved themselves or through other local dispute resolution processes outside the Commission's auspices. The Commission seeks comment on whether the Commission should attempt to encourage this type of local dispute resolution with a set of "best practices," or in other ways. If the Commission were to develop a set of best practices, what would the likely impact be on the process compared with how disputes are resolved today? Should the best practices or local processes apply to all attachment disputes, safety and engineering issues only, or have some other scope? The New York Commission, for instance, requires some resolution at the company level before a formal complaint can be filed. Should the Commission encourage similar efforts, suggest that parties seek mediation or arbitration before filing a complaint, or are there other processes that parties have found helpful and can recommend? Are there other ways that the Commission should encourage this type of dispute resolution?

45. The Pole Attachment Notice questioned whether § 1.1404(m) has had the unintended consequence of discouraging informal resolution of disputes. For that reason, the Commission sought comment on whether the rule should be amended or eliminated. The Commission received no substantive comment concerning § 1.1404(m), which provides that potential attachers who are denied access to a pole, duct, or conduit must file a complaint "within 30 days of such denial." The experience of handling pole attachment complaints, however, leads us to believe that the rule hinders informal resolution of disputes. Specifically, the existence of the rule deters attachers from pursuing pre-complaint mediation and has prompted the premature filing of complaints. Indeed, several complainants have indicated to Commission staff that, although they would be interested in mediation, they felt they had no choice but to file a complaint first, because of § 1.1404(m). Thus, the Commission believes the rule unnecessarily pushes some parties into formal litigation at a stage when informal resolution still is possible. Accordingly, the Commission proposes that the 30-day requirement in § 1.1404(m) be eliminated.

46. *Remedies.* Under section 224 of the Act, the Commission is charged with a duty to "regulate the rates, terms, and conditions for pole attachments" and to "adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions." The Commission has broad authority to "enforc[e] any determinations resulting from complaint procedures" and to "take such action as it deems appropriate and necessary, including issuing cease and desist orders * * *." In furtherance of these statutory duties, the Commission has adopted procedural rules governing complaints alleging both unreasonable rates, terms, and conditions for pole attachment, and the unlawful denial of pole access.

47. Section 1.1410 of the pole attachment rules lists the remedies available in a complaint proceeding where the Commission determines that a challenged rate, term, or condition is not just and reasonable. In such cases, the Commission may terminate the unjust and unreasonable rate, term, or condition, or substitute a just and reasonable rate, term, or condition established by the Commission. Moreover, § 1.1410(c) also permits a monetary award in the form of a "refund, or payment," which will "normally be the difference between the amount paid under the unjust and/or unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the Commission from the date that the complaint, as acceptable, was filed, plus interest." Although the Commission occasionally has departed from the notion that the filing of a pole attachment complaint marks the beginning of a refund period, it usually has used the complaint filing date as the starting point for determining refunds.

48. The Commission's rules do not expressly set forth the remedies available where the Commission determines that a utility has wrongfully denied or delayed access to poles in violation of section 224(f) of the Act. In addition, the rules do not provide for an award of compensatory damages in cases where either an unlawful denial or

delay of access is established, or a rate, term, or condition is found to be unjust or unreasonable. The Commission proposes that § 1.1410 of the Commission's pole attachment complaint rules be amended to enumerate the remedies available to an attacher that proves a utility has unlawfully delayed or denied access to its poles. The Commission proposes that the rule specify that one remedy available for an unlawful denial or delay of access is a Commission order directing that access be granted within a specified time frame, and/or under specific rates, terms, and conditions. Because the Commission already has authority to issue such orders, and has done so in the past, this rule change would simply codify existing precedent.

49. The Commission further proposes amending § 1.1410 to specify that compensatory damages may be awarded where an unlawful denial or delay of access is established, or a rate, term, or condition is found to be unjust or unreasonable. Because the current rule provides no monetary remedy for a delay or denial of access, utilities have little disincentive to refrain from conduct that obstructs or delays access. Under the current rule, the only consequence a utility engaging in such conduct is likely to face in a complaint proceeding is a Commission order requiring the utility to provide the access it was obligated to grant in the first place. Currently, a utility that competes with the attacher may calculate that the cost of defending an access complaint before the Commission, even if it receives an adverse ruling, may be justified by the advantage the pole owner has gained by delaying a rival's build-out plans. Allowing an award of compensatory damages for unlawful delays or denials of access would provide an important disincentive to pole owners to obstruct access. It would also give the Commission the ability to ensure that the attacher is "made whole" for the delay it has suffered.

50. Should § 1.1410 be amended to provide for an award of compensatory damages where a rate, term, or condition is found to be unjust or unreasonable? Under the current rule, the only monetary remedy specified in such cases is a refund. Although the refund remedy may adequately compensate an attacher who has been charged excessive rental rates or make-ready fees, it does not compensate the attacher for unreasonable terms and conditions of attachment that do not involve payments to the pole owner. For example, a pole owner that unlawfully bars an attacher from using the boxing technique on poles may increase the charges an attacher must pay third parties to attach its facilities to poles. Just compensation in such a case would not involve a refund by the pole owner, but might require it to reimburse the attacher for costs the attacher would not have incurred but for the owner's unreasonable ban on boxing.

51. Finally, as noted above, § 1.1410(c) also permits a monetary award in the form of a "refund, or payment," measured "from the date that the complaint, as acceptable, was filed, plus interest." The Commission adopted § 1.1410(c) in 1978 to "avoid abuse and encourage early filing when rates are considered objectionable by the CATV operator." But the experience in handling pole attachment complaints leads us to believe that § 1.1410(c) fails to make injured attachers whole. Generally speaking, a plaintiff is entitled to recompense going back as far as the applicable statute of limitations allows. There does not appear to be a justification for treating pole attachment disputes differently. Moreover, the Commission finds that § 1.1410(c) discourages private negotiations between parties about the reasonableness of terms and conditions of attachment and instead encourages an attacher first to file a complaint and then to negotiate with the utility. For these reasons, the Commission proposes that § 1.1410(c) be modified by deleting the phrase "from the date that the complaint, as acceptable, was filed." Additionally, the Commission proposes that the phrase "consistent with the applicable statute of limitations" be added to emphasize that any relief sought is governed by the relevant limitations period.

52. *Unauthorized Attachments.* In the Pole Attachment Notice, the Commission sought comment on the prevalence of attachments installed on poles without a lawful agreement with the pole owner (so-called "unauthorized attachments"). In response, several utilities claim that a significant number of pole attachments on their poles are unauthorized and violate relevant safety codes. For example, Florida Power and Light reports finding 33,350 unauthorized attachments in an audit conducted in 2006. EEI and UTC maintain that, for some utilities, unauthorized attachments meet or exceed 30 percent of attachments. AEP submits the results of surveys conducted by five utilities indicating that unauthorized attachment rates in the double-digits are common. In contrast, other utilities report percentages that are significantly lower. For instance, Progress Energy, Xcel Energy, and Wheeling Power report unauthorized attachment rates of 6.18 percent, 4.79 percent, and 2 percent, respectively.

53. Attachers maintain that utilities' allegations of unauthorized attachments are "overblown." Time Warner Cable, for instance, contends that such assertions often are based on poor recordkeeping (including incorrect system maps), changes in pole ownership (*e.g.,* a utility considers a once-authorized attachment on a pole to be unauthorized after ownership is transferred to the utility), use of novel and inappropriate definitions of attachment that deviate from the parties' past practices and industry standards, and utilities' offering of financial incentives to their contractors to find unauthorized attachments. Other attachers are of a similar mind.

54. Based on the current record, the Commission is unable to gauge with certainty the extent of the problem of unauthorized attachments. Indeed, the data suggest that the number of unauthorized attachments can vary dramatically from one pole system to another. Nevertheless, the Commission believes the dangers presented by unauthorized attachments transcend the theoretical. True unauthorized attachments can compromise safety because they bypass even the most routine safeguards, such as verifying that the new attachment will not interfere with existing facilities, that adequate clearances are maintained, that the pole can safely bear the additional load, and that the attachment meets the appropriate safety requirements of the utility and the NESC. The question becomes, then, how best to address the problem of unauthorized attachments.

55. The Commission sought comment in the Pole Attachment Notice on whether existing enforcement mechanisms adequately address alleged unlawful practices by attachers and ensure the safety and reliability of critical electric infrastructure. Under current precedent, unauthorized attachment fees imposed by utilities are not "per se unreasonable," and the "penalty may exceed the annual pole attachment rate." A "reasonable penalty," however, cannot "exceed an amount approximately equal to the annual pole attachment fee for the number of years since the most recent inventory or five years, whichever is less, plus interest * * *."

56. Pole owners complain that this precedent results in penalties that are not steep enough to deter attachers from mounting facilities for which they have no permit or that fail to comply with relevant safety and engineering

standards. In one utility's words, the unauthorized attachment penalty approved by the Commission is "not a penalty at all in most cases," because the attacher ends up having to pay only what it would have owed had it followed appropriate permitting procedures in the first place. In contrast, some attachers insist that the current regime is sufficient, while others assert that allowing the imposition of penalties would contravene principles of contract law.

57. Although the Commission makes no specific findings today as to whether the Commission should allow stricter penalties for unauthorized attachments, it appears that penalties amounting to little more than back rent may not discourage non-compliance with authorization processes. In other words, competitive pressure to bring services to market may overwhelm the deterrent effect of modest penalties. And so the Commission seeks additional comment on practical and lawful means of increasing compliance through the use of more substantial penalties.

58. One potential alternative to the Commission's present penalty regime is a system akin to the one adopted by the Oregon Public Utilities Commission (Oregon Commission). The Oregon Commission specifies penalties of $500 per pole, per year, for attachment of facilities without an agreement, and, for attachments without a permit, $100 per pole plus five times the current annual rental fee per pole. The Oregon system further includes, among other things, a provision for attacher notification, opportunity for an attacher to correct violations or submit a plan for correction, and a mechanism for resolution of factual disputes. The Oregon penalties have been tested and refined with assistance from the Oregon Joint Use Association.

59. The Commission seeks comment on whether the system of penalties instituted by the Oregon Commission has been effective in reducing the incidence of unauthorized attachments in that State. What are the benefits and shortcomings of the Oregon system? Should the Commission adopt the Oregon standards as presumptively reasonable penalties for unauthorized attachments? Would the Commission need to modify the Oregon standards before adopting them as national standards? If so, in what ways? Should there be a threshold number of unauthorized attachments necessary before penalties apply? Should exceptions be made for violations caused or contributed to by the pole owner (*e.g.,* a utility that assumes ownership of a pole formerly owned by another entity, creates a hazard by adding facilities, changes its safety standards, renegotiates an attachment agreement, or otherwise causes a formerly permitted and safe attachment to lose that status)?

60. How could the Oregon standards be enforced—through provisions in pole attachment agreements, through the complaint resolution mechanism in section 224 of the Act, or through both? Would changes to the Commission's pole attachment rules (47 CFR 1.1401–1.1418) be necessary to enable utilities to bring unauthorized attachment complaints?

61. If the Oregon system is not adopted, what are alternative penalty systems that would deter unauthorized attachments? Are there other models the Commission should consider? What are the contours of such alternatives, including notice to attachers, safe harbors, opportunities for correction, exceptions for safety violations caused/contributed to by pole owners, and means of dispute resolution?

62. *The "Sign and Sue" Rule.* Under current Commission rules and precedent, an attacher may execute a pole attachment agreement with a utility, and then later file a complaint challenging the lawfulness of a provision of that agreement. This process, sometimes called "the sign and sue rule," allows an attacher to seek relief where it claims that a utility has coerced it to accept unreasonable or discriminatory contract terms to gain access to utility poles. In the Pole Attachment Notice, the Commission sought comment on the "sign and sue" rule, and asked whether the Commission should adopt some contours to the rule, such as time-frames for raising written concerns about a provision of a pole attachment agreement. As discussed below, the Commission proposes that the sign and sue "rule" should be retained, but also proposes that it be modified through an amendment to the Commission's rules that would require an attacher to provide a pole owner with notice, during contract negotiations, of the terms it considers unreasonable or discriminatory.

63. In response to the Pole Attachment Notice, a number of attachers filed comments supporting retention of the sign and sue rule in its present form. The attachers assert that, because utilities have inherently superior bargaining power in negotiating pole attachment agreements, attachers may be forced to accept unreasonable rates, terms, and conditions in order to gain the prompt access to poles that is vital to their business plans. One commenter observes that "cable operators or telecom providers may need to sign an unreasonable pole attachment agreement while they are undergoing time-sensitive build-outs or plant upgrades and cannot afford to be delayed by protracted negotiations or litigation before the Commission." The Commission's willingness to review the reasonableness of contract provisions, in the view of some attachers, has served to check the utilities' abuse of their superior bargaining and encourage them to negotiate in good faith, thus reducing the incidence of disputes.

64. Attachers oppose amending the Commission's rules to impose time limits on the right to challenge the provisions in a pole attachment agreement. They argue that such time limits are inappropriate because a given term in a pole attachment agreement may not be unreasonable on its face, but may only become so through a utility's later interpretation or application. They predict that imposing time limits on challenges to the reasonableness of terms would lead to unnecessary pole attachment litigation because attachers would be forced immediately to challenge terms that may, hypothetically, be unreasonably applied or interpreted in the future.

65. Several utilities filed comments opposing the sign and sue rule and suggesting that it be modified or eliminated. They contend that the rule has engendered distrust between pole-owning utilities and attaching entities. According to these utilities, attachers are willing to sign virtually any pole attachment agreement as a matter of expediency, knowing they can use the Commission's complaint process "to forestall or upset the utility's ability to enforce the agreement." The Commission's willingness to entertain pole attachment complaints at any time, they argue, undermines a pole owner's confidence "that it will realize the bargain it has struck with an attaching entity." As one commenter put it, the sign and sue rule "allows attachers to 'cherry pick' contractual provisions that they would like to disavow, while not extending the same privilege to utilities."

66. Utilities have proposed a number of fixes to these perceived problems with the sign and sue rule. One commenter urged the Commission to adopt a presumption that an executed pole attachment agreement is just and reasonable. Similarly, another commenter asked the Commission to make explicit that both parties to a pole attachment agreement are subject to a duty to negotiate in good faith, and bar

complaints as to the reasonableness of executed pole attachment agreements, absent extrinsic evidence of coercion or undue influence as would be sufficient to make the agreement void or voidable under the common law. Another utility asked the Commission to require that any challenges to pole attachment agreements be brought in State court under well-defined State law standards of unconscionability.

67. The Commission adopted the sign and sue rule in recognition that utilities have monopoly power over pole access. The Commission was concerned that a utility could nullify the statutory rights of a cable system or a telecommunications carrier by making "take it or leave it demand[s]" that it relinquish valuable rights under section 224 "without any *quid pro quo* other than the ability to attach its wires on unreasonable or discriminatory terms." The record does not demonstrate that the potential for utilities to exert such coercive pressure in pole attachment agreement negotiations is less significant today than when the Commission first adopted the sign and sue rule. Because there remains a real possibility that utilities may abuse their monopoly power during the negotiating process, the Commission proposes that the sign and sue rule should be retained in some form. For similar reasons, the Commission proposes that the record does not support adoption of a presumption that executed pole attachment agreements are just and reasonable.

68. To be sure, utilities have raised valid concerns about the need to ensure that both parties to a pole attachment agreement negotiate in good faith. Their suggestion, however, that the Commission's review of pole attachment agreements be limited to determining whether the agreement would be deemed unconscionable or voidable under State contract law appears inconsistent with the Commission's statutory mandate under section 224. Section 224 grants cable systems and telecommunications carriers rights to pole access, and to reasonable rates, terms, and conditions for pole attachment, that are independent and distinct from rights granted under contract law. The Commission has a duty under section 224 to "adopt procedures necessary and appropriate to hear and resolve complaints concerning * * * rates, terms, and conditions" of pole attachment pursuant to the requirements of section 224. The Commission would not be fulfilling that duty if it were to substitute the requirements of contract law for the dictates of section 224.

69. It is important to note, however, that section 224 does not grant attachers an unfettered right to "cherry pick" contractual terms they wish to disavow, while retaining the benefits of more favorable terms. An attacher is entitled to relief under the sign and sue rule only if it can show that a rate, term, or condition is unlawful under section 224, not merely unfavorable to the attacher. Further, the Commission has recognized that in some circumstances, a utility "may give a valuable concession in exchange for the provision the attacher subsequently challenges as unreasonable." Where such a *quid pro quo* is established, the Commission will not disturb the bargained-for package of provisions.

70. As the Commission has previously stated, the Commission encourages, supports and fully expects that mutually beneficial exchanges will take place between the utility and the attaching entity. The Commission wants to promote efforts by attachers and utilities to negotiate innovative and mutually beneficial solutions to contested contract issues. In furtherance of that goal, the Commission proposes that the Commission amend § 1.1404(d) of the rules to add a requirement that an attacher provide a utility with written notice of objections to a provision in a proposed pole attachment agreement, during contract negotiations, as a prerequisite for later bringing a complaint challenging that provision.

71. Should the amended rule include an exception addressing attachers' concerns that a given contract provision may not be unreasonable on its face, but only become so through a utility's later interpretation or application? The Commission thus proposes to include language in amended § 1.1404(d) allowing the attacher to challenge the lawfulness of a rate, term, or condition in an executed agreement, without prior notice to the utility during contract negotiations, where the attacher establishes that the rate, term, or condition was not unjust and unreasonable on its face, but only as later applied by the utility, and the attacher could not reasonably have anticipated that the utility would apply the challenged rate, term, or condition in such an unjust and unreasonable manner. The Commission believes that this amendment to § 1.1404(d) will prevent utilities from being blind-sided by an attacher's post-execution challenge to the lawfulness of contract provisions, and will encourage the parties to reach mutually acceptable compromises on disputed terms, before the agreement is executed.

72. Finally, the Commission asks for comment on when an attacher's cause of action challenging a rate, term, or condition in a pole attachment agreement accrues for purposes of applying the appropriate statute of limitations. The Commission proposes that the cause of action be deemed to accrue at the time the challenged contract provision is first applied against the attacher in an unlawful manner—regardless of whether the provision is facially invalid—because that is the point in time when the attacher suffers an injury. By contrast, if the cause of action were instead deemed to accrue at the time the agreement was executed, attachers might feel compelled to bring a complaint challenging a contract provision that may never be applied against them, merely to avoid having their claims extinguished by the statute of limitations. The Commission seeks comment on this proposed rule of accrual. Further, with respect to other claims involving pole attachments, the Commission seeks comment on whether the Commission should continue to follow common law principles in determining the time of accrual, or adopt other, alternative approaches.

C. Pole Rental Rates

73. Telecommunications carriers and cable operators generally pay for access to utility poles in two separate ways. First, as noted above, attachers pay nonrecurring charges to cover the costs of "make-ready" work—that is, rearranging existing pole attachments or installing new poles as needed to enable the provider to attach to the pole. Second, attachers generally also pay an annual pole rental fee, which currently is designed to recover a portion of the utility's operating and capital costs attributable to the pole. Both of these costs can impact communications service providers' investment decisions. In a prior section, this FNPRM seeks comment on ways to reduce make-ready costs. Below, the Commission seeks comment on ways to minimize the distortionary effects arising from the differences in current pole rental rates, consistent with the objectives of the National Broadband Plan and the existing statutory framework.

74. By virtue of the 1996 Act revisions, section 224 of the Act now sets forth two separate formulas to determine the maximum rates for pole attachments—one applies to pole attachments used by providers of telecommunications services (the telecom rate formula), and the other to pole attachments used "solely to provide cable service" (the cable rate formula).

As the Commission has implemented these statutory formulas, the telecom rate formula generally results in higher pole rental rates than the cable rate formula. The difference between the two formulas under current Commission rules is the manner in which they allocate the costs associated with the unusable portion of the pole—that is, the space on the pole that cannot be used for attachments. The cable rate formula and the telecom rate formula both allocate the costs of usable space on a pole based on the fraction of the usable space that an attachment occupies. Under the cable rate formula, the costs of unusable space on a pole are allocated in the same way, i.e., based on the portion of usable space an attachment occupies. Under the telecom rate formula, however, two-thirds of the costs of the unusable space is allocated equally among the number of attachers, including the owner, and the remaining one third of these costs is allocated solely to the pole owner.

75. At the same time that the Commission adopted a rule implementing the telecom rate formula, it addressed the issues of cable attachments used to offer commingled cable and Internet access services. In particular, the Commission held that cable television systems that offer commingled cable and Internet access service should continue to pay the cable rate. In 2000, the Supreme Court upheld this decision, finding that section 224(b) gives the Commission authority to adopt just and reasonable rates for attachments within the general scope of section 224 of the Act, but outside the "self-described scope" of the telecom rate formula or cable rate formula as specified under sections 224(d) and (e).

76. *Effects of Current Pole Rental Rates.* The National Broadband Plan recommends that the Commission "establish rental rates for pole attachments that are as low and close to uniform as possible, consistent with [s]ection 224 of the [Act], to promote broadband deployment." In particular, the Plan observes that "[a]pplying different rates based on whether the attacher is classified as a 'cable' or a 'telecommunications' company distorts attachers' deployment decisions." There have been many disputes about the applicability of "cable" or "telecommunications" rates to broadband, voice over Internet protocol and wireless services, among others. The Plan found that "[t]his uncertainty may be deterring broadband providers that pay lower pole rates from extending their networks or adding capabilities (such as high-capacity links to wireless towers)," based on the risk that, by doing so, a higher pole rental rate might be applied for their entire network.

77. The record here likewise bears out these concerns. A number of cable operators confirm that they have been deterred from offering new, advanced services, such as to anchor institutions or wireless towers, based on the possible financial impact if, as a result, they were required to pay the current telecom rate for all their poles. The National Broadband Plan estimated an average annual difference between the telecom rate and cable rate of approximately $3 today. Although that difference in rates might not seem significant in isolation, it could amount to approximately $90 million to $120 million annually, given the estimated 30–40 million poles subject to Commission-regulated rates used by the cable industry. Cable commenters estimate an even greater difference between the two rates of $208 million to $672 million for the cable industry as a whole. Moreover, the Commission anticipated that rate differences could deter cable operators from offering new services when it applied the cable rate to cable operators' attachments used for both video and Internet services, concluding that: In specifying [the cable] rate, the Commission intends to encourage cable operators to make Internet services available to their customers. The Commission believes that specifying a higher rate might deter an operator from providing non-traditional services. Such a result would not serve the public interest. Rather, the Commission believes that specifying the [cable rate] will encourage greater competition in the provision of Internet service and greater benefits to consumers.

78. Previously, the Pole Attachment Notice sought comment on, among other things, the difference in pole attachment rates paid by cable systems, incumbent LECs, and competing telecommunications carriers that provide the same or similar services. The Commission likewise recognized "the importance of promoting broadband deployment and the importance of technological neutrality," and thus "tentatively conclude[d] that all categories of providers should pay the same pole attachment rate for all attachments used for broadband Internet access service." The Pole Attachment Notice went on to tentatively conclude, however, that "the [uniform] rate should be higher than the current cable rate, yet no greater than the telecommunications rate."

79. The Commission declines to pursue the approach proposed by the Pole Attachment Notice for several reasons. The Commission believes that pursuing uniformity by increasing cable operators' pole rental rates—potentially up to the level yielded by the current telecom formula—would come at the cost of increased broadband prices and reduced incentives for deployment. Instead, by seeking to limit the distortions present in the current pole rental rates by reinterpreting the telecom rate to a lower level consistent with the Act, the Commission expects to increase the availability of, and competition for, advanced services to anchor institutions and as middle-mile inputs to wireless services and other broadband services.

80. *USTelecom and AT&T/Verizon Broadband Rate Proposals.* As an initial matter, the Commission seeks comment on two alternatives, filed after the comment cycle closed in the Pole Attachment Notice, to establish a uniform rate for all pole attachments used to provide broadband Internet access services, including those by telecommunications carriers. As described below, both the USTelecom and AT&T/Verizon proposals would allocate costs among attachers differently than they are allocated today based on different assumptions about numbers of attachers and the space each occupies on a pole. Presently, under the cable rate formula, attachers (other than a pole owner) pay an average of 7.4 percent of the annual costs of a pole. Under the current telecom rate formula, each attacher (other than a pole owner), pays an average of 11.2 percent of the annual costs of a pole in urban areas and 16.89 percent in non-urban areas. Under USTelecom's rate proposal, by contrast, any attacher (other than a pole owner) would pay 11 percent of the annual cost of a pole, regardless of the number of attachers or amount of space each attacher uses. Under the AT&T/Verizon proposal, it appears that each attacher (other than the pole owner) would pay 18.67 percent of the annual costs of the pole.

81. Both rate proposals consist of formulas that are different from those prescribed in section 224 of the Act. USTelecom and AT&T/Verizon argue that the Commission "is not limited to the particular rate formulas incorporating factors such as usable space set forth in [s]ection 224(d) and (e) for pole attachments of non-incumbent telecommunications carriers and cable television systems." Thus, USTelecom asserts that the Commission "has broad authority, within the bounds of reasonableness, 'to derive its own view of just and reasonable rates' * * * regardless of conventional considerations such as usable space."

The Commission seeks comment on this view of the Commission's authority. Although the Supreme Court has confirmed that the Commission can rely on its general section 224(b) authority to ensure "just and reasonable rates" to regulate pole rental rates, under that holding the Commission would appear to be bound by the statutory rate formulas within their "self-described scope." To the extent that Congress intended a particular rate formula to apply only when a provider was exclusively providing a particular type of service, it clearly knew how to do so. Thus, the statute provides that the section 224(d) cable rate formula applies to "any pole attachment used by a cable television system solely to provide cable service." The section 224(e) telecom rate formula is not limited in this manner, and thus the "self-described scope" of that formula would seem to encompass any attachments by telecommunications carriers so long as they are being used to provide telecommunications services—whether exclusively or in combination with other services. However, the Commission seeks comment on whether alternative interpretations of the statute would be reasonable. Alternatively, is there a way in which the USTelecom or AT&T/Verizon proposals could be reconciled with the pole rental rate formulas specified in sections 224(d) and (e) of the Act?

82. The Commission also seeks comment on whether the USTelecom or AT&T/Verizon proposals are in the public interest. In particular, the Commission notes that, under the USTelecom proposal, the rates paid by telecom attachers generally would be lower than those rates are today, but the rates paid by cable attachers would be higher. With respect to the AT&T/Verizon proposal, the Commission notes that it appears that both telecommunications carriers and cable operators generally would pay higher pole rental rates than yielded by the current telecom rate formula. While those outcomes would provide uniformity of rates, would they undermine investment incentives or otherwise increase the cost of or reduce competition for communications services?

83. *Reinterpreting the Telecom Rate.* Rather than deviating from the statutory telecom rate formula, the Commission seeks comment on ways to reinterpret the section 224(e) telecom rate formula so as to yield pole rental rates that reduce disputes and investment disincentives which can arise from the disparate rates yielded by the Commission's current rules. As the National Broadband Plan recognizes, this disparity largely results from the existing statutory framework, as implemented by the Commission. Although the National Broadband Plan recommended that Congress "consider amending [s]ection 224 of the Act to establish a harmonized access policy for all poles, ducts, conduits and rights-of-way," it also recommended that the Commission take what actions it can to address these rate disparities within the existing statutory framework. The Commission seeks comment below on alternatives for reinterpreting the telecom rate formula, the proposal based in part on one of those alternatives, as well as other alternative approaches to reinterpreting the telecom rate formula within the existing statutory framework.

84. *TWTC Proposal.* TWTC submitted a proposal to revise the interpretation of the telecom rate formula to "eliminate or dramatically reduce the differential in pole attachment rates." The Commission sought comment on this proposal in the Pole Attachment Notice in the context of the somewhat different focus and proposals considered there. The Commission revisits this proposal in light of the pole rate recommendation of the National Broadband Plan. In addition to the specific comment sought below, the Commission asks commenters to refresh the record regarding the questions raised about the TWTC proposal in the Pole Attachment Notice in the context of the issues under consideration here.

85. Specifically, TWTC asserts that, despite the textual differences between section 224(d) and section 224(e) regarding the costs to be included in the cable rate formula and the telecom rate formula, "the FCC currently includes the same cost categories in its implementing regulations" reflected in the two formulas. In particular, TWTC contends that the telecom rate includes costs not mentioned in section 224(e), citing: (1) Rate of return; (2) depreciation; and (3) taxes. TWTC alleges that such costs "bear no relation" to the cost of providing space for an attachment and are not necessitated by the language of section 224(e). In particular, TWTC contends that "none of these 'costs' has anything to do with actually providing 'space' on a pole for pole attachments because a utility would incur these costs 'regardless of the presence of pole attachments.'" Thus, TWTC proposes that those costs should be eliminated from the telecom rate.

86. TWTC suggests instead that utilities should determine "how much extra a utility must incur to provide non-usable and usable space on poles for pole attachments (in both construction and maintenance costs) and then fully allocate those costs based on the cost-apportionment formulas under Section 224(e)(2) and (3)." The underlying economic or analytical theory for TWTC's proposal is not entirely clear, however.

87. To the extent that TWTC is arguing for "costs" to be defined as marginal or incremental costs for purposes of section 224(e), the Commission is skeptical of that theory. Marginal cost can be defined either as the rate of change in total cost when output changes by an infinitesimal unit or as the change in total cost when output changes by a single unit. The term incremental cost refers to a discrete change in total cost when output changes by any non-infinitesimal amount, which might range from a single unit to a large increment representing a firm's entire output. The Eleventh Circuit, in addressing a takings challenge, has held that a pole attachment rate above marginal cost can provide just compensation, and marginal or incremental cost pricing can be an appropriate approach to setting regulated rates. Indeed, section 224(d) establishes such an approach as the low end of permissible rates under the cable rate formula. However, the section 224(e) formulas allocate the relevant costs in such a way that simply defining "cost" as equal to incremental cost would result in pole rental rates below incremental cost. In particular, section 224(e) allocates portions of the relevant "cost" to both the pole owner and the attachers. Thus, if the Commission precisely calculated the relevant incremental costs, and then applied the section 224(e) cost allocation formulas, the resulting pole rental rate would recover less than the utility's incremental cost, effectively resulting in a subsidy to the attacher. In other words, the pole owner would bear more costs than if there were no third party attachments on the pole at all. The Commission thus believes that defining the "cost of providing space" as incremental cost in the manner TWTC seems to suggest would be inconsistent with the section 224(e) framework, given the manner in which the statutory provision allocates the relevant "costs." Nevertheless, the Commission seeks comment on whether any party believes that, to the contrary, such an interpretation is permissible.

88. The Commission also seeks comment on whether there are other rationales that, consistent with the existing statutory framework, could support TWTC's proposed approach, possibly in a modified form. For example, what standard could the

Commission use to determine whether particular costs 'bear any relation' to the cost of providing space on a pole within the meaning of TWTC's proposal? To what extent would such an approach be consistent with the section 224 framework? As a practical matter, how would the particular costs be calculated, and what sources of data could be used to implement TWTC's proposal? In this regard, the Commission believes that the proposal below draws on some of the underlying elements of TWTC's proposal, but is more consistent with the statutory framework and readily administrable. However, the Commission also seeks comment on other possible approaches as well, to the extent that they have advantages over that proposal.

89. *Commission Rate Proposal.* The Commission proposes an alternative approach which would recognize that the Commission has substantial—but not unlimited—discretion under the statutory framework to interpret the term "cost" for purposes of section 224(e). This proposal would view the range of possible interpretations of "cost" under section 224(e) as yielding a range of permissible rates, from the current application of the telecom rate formula at the higher end of the range, to an alternative application of the telecom rate formula based on cost causation principles at the lower end. Under this approach, the Commission would select a particular rate from within that range as the appropriate telecom rate.

90. *Interpretation of the Statutory Framework.* The existing statutory framework consists of several key provisions, and any revised telecom rate formula must be consistent with those provisions. For one, section 224(b) imposes an over-arching duty that the Commission ensure that rates are "just and reasonable." As the Commission has recognized, "[r]ather than insisting upon a single regulatory method for determining whether rates are just and reasonable, courts and other Federal agencies with rate authority similar to the own evaluate whether an established regulatory scheme produces rates that fall within a "zone of reasonableness." For rates to fall within the zone of reasonableness, the agency rate order must undertake a 'reasonable balancing' of the 'investor interest in maintaining financial integrity and access to capital markets and the consumer interest in being charged non-exploitative rates.' " With respect to each of the alternatives for interpreting the telecom rate formula discussed below, as well as any others raised by commenters, the Commission seeks comment on how well the proposal ensures "just and reasonable" rates. In particular, the Commission seeks comment from pole owners, in addition to attachers and other interested persons. The Commission notes that pole owners' perspective regarding the costs and other characteristics of their infrastructure might give them unique insight into ways the Commission could reinterpret the section 224(e) telecom rate formula to yield pole rental rates "that are as low and close to uniform as possible, consistent with [s]ection 224 of the [Act], to promote broadband deployment."

91. In addition, sections 224(d) and (e) specify cable and telecom rate formulas. As discussed above, the Commission's rate rules already take account of one difference between those frameworks—namely, the treatment of unusable space. Other differences in those statutory provisions are not currently reflected in the Commission's rules, however. Although section 224(e) specifies how the pole space costs are to be allocated between the owner and attacher, it does not specify a cost methodology. In particular, section 224(e) describes how "[a] utility shall apportion the cost of providing space" on a pole—whether usable or unusable—but does not define "the cost of providing space." This is in contrast with the upper bound for the cable rate under section 224(d), which does identify particular costs to be included. The Commission initially implemented section 224(e) by interpreting "cost" to include the same cost categories that it was using in the cable rate formula, relying on a fully-distributed cost approach. This initial approach was not inherently unreasonable, as noted above, but it has resulted in rate disparities and disputes over which formula applies and impacted communications service providers' investment decisions.

92. This statutory framework bounds the ways in which the Commission can interpret and apply the telecom rate formula in section 224(e). The Commission agrees with commenters that the Commission has discretion to reinterpret the ambiguous term "cost" in section 224(e) and modify the cost methodology underlying the telecom rate formula to yield a different rate. Depending upon the relative magnitude of costs included, the telecom rate formula will yield relatively higher or lower rates. Identifying the upper- and lower-bound interpretations of "cost" that are consistent with the statute thus provides an upper and lower limit on the possible telecom rates that would be consistent with section 224(e). Any of the resulting rates within that range potentially could be adopted by the Commission as the "just and reasonable" rate for purposes of section 224(e).

93. *Upper Bound Rate.* To begin identifying the range of reasonable rates that could result from the telecom rate formula, the Commission first identifies the present telecom rate as a reasonable upper bound. The Commission's current telecom rate formula is based on a fully distributed cost methodology, which recovers costs that the pole owner incurs regardless of the presence of attachments. It includes a full range of costs, some of which, as TWTC argues, do not directly relate to or vary with the presence of pole attachments. For this reason, this interpretation of the statutory telecom rate formula could be considered at the higher end of the range of reasonable rates. In light of the National Broadband Plan's recommendation that the Commission seeks to achieve pole rental rates "that are as low and close to uniform as possible, consistent with [s]ection 224 of the [Act]," under this alternative the Commission ultimately would select a rate closer to the lower end of the range. Thus, within the context of this alternative, the Commission does not believe it is necessary to define the high end of the range more precisely, although the Commission seeks comment on that conclusion. The Commission also seeks comment on whether there is a cost methodology, other than a fully-distributed cost methodology, that could be considered as part of an upper-bound formula in addition, or instead.

94. *Lower Bound Rate.* In identifying the lower bound of reasonable rates under section 224(e), the Commission proposes that a rate that covers the pole owners' incremental cost associated with attachment would, in principle, provide a reasonable lower limit. For the reasons described above in the context of TWTC's proposal, however, to remain consistent with the statutory framework, this outcome cannot be achieved simply by defining costs as a precise calculation of incremental cost. Thus, the statutory framework makes it more difficult to identify a lower-bound rate that recovers a utility's marginal costs. Instead, some definition of "costs" somewhat above incremental cost would need to be used so that when those costs are allocated pursuant to the 224(e) formula, the resulting pole rental rate would allow the utility to recover the incremental cost associated with attachment.

95. For purposes of identifying such a lower-bound rate, the Commission continues to rely on the basic principles

of cost causation that would underlie a marginal cost rate. Under cost causation principles, if a customer is causally responsible for the incurrence of a cost, then that customer, the cost causer, pays a rate that covers this cost. This is consistent with the Commission's existing approach in the make-ready context where, for example, a pole owner recovers the entire capital cost of a new pole through make-ready charges from the new attacher when a new pole is needed to enable the attachment. Under this proposed approach, cost causation principles could be applied separately to each category of a pole owner's costs—broadly consisting of capital and operating costs—for purposes of the pole rental rate, as well.

96. The Commission recognizes that, under traditional ratemaking principles, rates may recover both operating expenses and capital costs, including a rate of return. Under the proposal, however, capital costs would be excluded for purposes of identifying a lower bound for the telecom pole rental rate. As an initial matter, the Commission notes that if capital costs arise from the make-ready process, the existing rules are designed to require attachers to bear the entire amount of those costs. With respect to other capital costs, the Commission believes it is likely that the attacher is the "cost causer" for, at most, a de minimis portion of these costs. It is likely that most, if not all, of the past investment in an existing pole would have been incurred regardless of the demand for attachments other than the owner's attachments. As a result, under a cost causation theory, where there is space available on a pole, an attacher would be required to pay for none, or at most a de minimis portion, of the capital costs of that pole. Given Congress' intention that the Commission not "embark upon a large-scale ratemaking proceeding in each case brought before it, or by general order" to establish pole rental rates, this alternative would simply exclude capital costs from the pole rental rate rather than perform a detailed cost analysis to identify the likely de minimis, if any, capital costs to include in the lower bound telecom rate. This is consistent with TWTC's argument, discussed above, that section 224(e) does not require the inclusion of these costs.

97. The Commission seeks comment on whether the exclusion of capital costs from the lower bound telecom rate under this approach is consistent both with principles of cost causation and the existing section 224 framework. To the extent that pole owners contend that they do, in fact, incur significant capital costs outside the make-ready context solely to accommodate third party attachers, the Commission seeks comment on the nature and extent of those costs. For example, the Coalition of Concerned Utilities argues that: (a) Communications attachers are responsible for incremental capital costs for the extra space on taller poles; and (b) those costs exceed the attachers' share of the capital costs for an entire pole that the attachers bear under the fully distributed cost methodology reflected in the Commission's existing rate formulas. In particular, the Coalition argues that utilities install taller poles routinely throughout their networks to satisfy their own needs and anticipated third-party attachment demand, and that they do not receive sufficient compensation for this option. For the reasons discussed above, the Commission questions how frequently such situations would arise. The Commission nevertheless invites parties to submit studies that isolate and quantify the effect of third-party attachment demand on pole height and therefore pole investment.

98. In addition, under the proposal, taxes would be treated as part of the capital costs that are excluded from the lower-bound telecom rate, based on cost-causation principles. The Commission seeks comment on the proposal to treat taxes as capital costs. The Commission also seeks comment more generally regarding the availability of space on poles today and in the future.

99. By contrast, this approach would continue to include certain operating expenses—namely maintenance and administrative expenses—in the definition of "cost" for purposes of the lower bound telecom rate formula. This is generally consistent with cost causation principles because it is likely that an attacher is causally responsible for some of the ongoing maintenance and administrative expenses relating to use of the pole. Although the attacher might not be the cost causer with respect to all the operating costs that would be included in the lower bound telecom rate under this approach, as noted above, Congress' intention was that the Commission not "embark upon a large-scale ratemaking proceeding in each case brought before it, or by general order" to establish pole rental rates, which the Commission believes counsels in favor of including the costs in the context of maintenance and administrative expenses. The Commission seeks comment on the reasonableness of including these operating costs, as well as the mechanics of such an approach. Is it appropriate to develop average per pole maintenance and administrative expenses from ARMIS or FERC 1 data and to allocate these per pole expenses between the owner and the attacher using the factors in section 224(e)? Would such an approach over- or under-allocate these expenses relative to the amount actually caused by the attacher? The Commission notes that the Coalition of Concerned Utilities argues that the incremental operating costs for attachments, which utilities contend are caused by communications attachers, exceed the attachers' share of the operating costs for a pole that the attachers bear under the fully distributed cost methodology reflected in the Commission's existing rate formulas. The Commission is skeptical of this claim because the Commission would expect that a significant portion of the pole-related maintenance and administrative expenses would be incurred for routine activities unrelated to the number of attachments. The Commission nevertheless invites parties to submit studies that isolate and quantify the effect of third-party attachment demand on operating expenses.

100. The Commission seeks comment on alternative proposals for determining a lower bound telecom rate. For example, should the Commission instead require a more precise identification of the costs to be included under such an approach? If so, would this be consistent with Congress' goal that the Commission's rate formulas be administrable? Commenters advocating such an approach should provide data calculating these costs consistent with their proposals, and identify how such data could be obtained for purposes of implementing their recommended alternative.

101. *Specific Rate Proposal.* Having proposed upper- and lower-bound telecom rates, the Commission considers the particular rate within that range that utilities may charge as the "just and reasonable" telecom rate. The Commission notes that it appears likely that, in most cases, the rates yielded by the current cable rate formula would fall within that range. The Commission seeks comment on whether these findings hold for pole attachments more generally. How likely is it that the cable rate will be higher than the telecom rate calculated using only maintenance and administrative expenses?

102. In particular, under this proposal, utilities would calculate the low-end telecom rate and the rate yielded by the current cable formula, and charge whichever is higher. Significantly, the cable rate formula has

been upheld by the courts as just, reasonable, and fully compensatory, and would result in greater rate parity between telecommunications and cable attachers. This approach would seem to further goals of the Act—to promote communications competition and the deployment of "advanced telecommunications capability." Moreover, as commenters point out, to the extent that attachers are, to the greatest extent possible, paying the same rates, this should minimize disputes that have resulted from the Commission's current rate formulas. This proposed alternative also appears to be readily administrable, consistent with Congress' instruction to develop a regulatory framework that may be applied in a "simple and expeditious" manner with "a minimum of staff, paperwork and procedures consistent with fair and efficient regulation." The Commission seeks comment on whether this proposal is consistent with other Commission policies, as well as whether it is consistent with the statutory mandate of section 224 to ensure "just and reasonable" pole rental rates, consistent with the statutory formulas.

103. *Other Alternatives and Overarching Considerations.* In addition to the specific alternatives for reinterpreting the telecom rate formula discussed above, the Commission seeks comment on any other possible approaches, including any approaches used by states that regulate pole attachments that commenters would recommend. For the approaches to reinterpreting the telecom rate formula discussed above, or other approaches identified by commenters, the Commission seeks comment on whether the proposal would be consistent with the Commission's obligations under the Act and whether it would further the public interest. How administrable is the proposed approach? To what extent would the proposed telecom rate be compensatory, and, when considered in conjunction with other revenues earned by the utility, would it both lead to adequate cost recovery and protect against double-recovery? Is the proposed approach consistent with the Commission's current rules governing make-ready charges—the other way in which attachers compensate pole owners for access to poles today? If not, how would the Commission's approach to make-ready payments need to be modified? Would it be possible for the Commission to forbear from applying the section 224(e) telecom rate, and adopt a different rate—such as the cable rate—pursuant to section 224(b), as some commenters have suggested?

104. *Incumbent LEC Rate Issues.* As part of their proposals discussed above, AT&T/Verizon and USTelecom assert that incumbent LECs should be subject to the just and reasonable rates provision in section 224(b) in the same manner as it applies to other providers. The issues related to incumbent LEC attachment rates, however, raise complex questions, and although the National Broadband Plan noted the possible effects of these rate disparities, the Plan did not include a recommendation specifically addressing this matter. As with the TWTC proposal discussed above, the Commission sought comment on the possibility of regulating the rates incumbent LECs pay for attachments in the Pole Attachment Notice in the context of the issues under consideration there. In contrast to the rate regulation proposals discussed above, the Commission does not propose specific rules in this FNPRM that would alter the Commission's current approach to the regulation of pole attachments by incumbent LECs. Rather, given the statutory and policy complexities, the Commission revisits the issue of regulation of rates paid by incumbent LEC attachers both in light of the specific telecom rate proposals, as well as the factual findings of the National Broadband Plan. In addition to the questions below, commenters should refresh the record regarding the questions raised regarding regulation of rates paid by incumbent LECs in the Pole Attachment Notice in the context of the issues under consideration here.

105. As an initial matter, the Commission seeks comment on the relationship between incumbent LEC pole attachments rates and deployment of broadband networks and affordability of broadband services. USTelecom asserts that pole attachment rates "can disproportionately affect the cost of delivering broadband in [rural] areas because the typically longer loops in rural areas often require more pole attachments per end user." Windstream, for example, argues that "[g]iven the importance of pole attachments in deploying advanced networks to rural consumers, any Commission action that reduces excessive pole attachment rates would promote, rather than stifle, a competitive marketplace for advanced communications networks," including broadband. Windstream thus urges the Commission to extend a lower uniform attachment rate that it may adopt to incumbent LECs because it relies heavily on pole attachments to deploy broadband service to rural consumers. Do commenters agree that uniform rates between incumbent LECs and other providers are necessary or helpful to promote broadband deployment in unserved or underserved areas of the country?

106. The Commission also seeks comment on the relationship between the pole rental rates paid by incumbent LECs and any other rights and responsibilities they have by virtue of their pole access agreements with utilities. For instance, incumbent LECs generally asserted in response to the Pole Attachment Notice that they presently are forced to pay rates for pole attachments that are unreasonably higher than those available to other attachers and that they need the protection of just and reasonable rates under section 224 to preclude being placed at a competitive disadvantage. Unlike other attachers, however, incumbent LECs generally attach to poles pursuant to joint use or joint ownership agreements. These arrangements between incumbent LECs and electric companies historically provide more favorable terms and conditions to attaching incumbent LECs than competitive LECs and cable operators receive from electric companies under license agreements. Electric utilities, cable operators, and competitive LECs thus argue that incumbent LECs have negotiated terms and conditions that give them advantages over cable operators and competitive LECs and, therefore, reducing attachment rates for incumbent LECs or allowing them to pay the same rate would provide them with an unfair competitive advantage. The Commission seeks further comment on how to reconcile these assessments and how the Commission should best pursue competitively neutral policies in these circumstances.

107. To the extent that section 224(b)'s "just and reasonable" rate regulation could apply to attachments by incumbent LECs, how would those rates be regulated to ensure that they are "just and reasonable," and how might they affect joint use or joint ownership agreements? Should the rate be the same as other attachers pay, notwithstanding the possible differences in pole access and utilization, as discussed above? And how should any approach be implemented? For instance, AT&T argues that, if incumbent LECs are entitled to attachments at regulated "just and reasonable" rates under section 224, any rate assessed by an electric company in excess of the statutory maximum rate should be unenforceable "because it would, by definition, be unjust and unreasonable" even if contained in an existing joint use agreement.

108. NCTA proposes an alternative plan whereby any attaching entity, including incumbent LECs, would be permitted to "opt in" to existing pole agreements. Under this proposal, each pole owner would make each pole attachment, joint ownership, or joint use agreement publicly available, and attachers could opt in to those agreements, accepting all the terms and conditions of the agreement. NCTA presumes "that pole owners will not be harmed by allowing third parties to attach to their poles at rates, terms, and conditions that the pole owner already has made available to at least one other attaching party in its service area." NCTA anticipates that "many ILECs may be reluctant to give up the favorable attachment rights that they typically possess under most joint use agreements," but provides them an alternative in cases where they believe a pole owner's rates are unreasonable. The Commission seeks input on the viability of these approaches, or other possible approaches. Could a remedy providing the ability for incumbent LECs unilaterally to opt out of joint use or joint ownership agreements in certain circumstances affect more than rate issues, such as safety and emergency response obligations, or negate other benefits that other utilities realize through joint use agreements? To what extent would any approach be readily administrable?

109. In addition to requesting the right to pay a uniform rate for pole attachments, incumbent LECs also generally assert that they should have "the same right as competitive LECs, wireless providers, and cable television systems to file complaints before the Commission to enforce their right to reasonable pole attachment rates, terms, and conditions for poles in which they lack an ownership interest." Some incumbent LECs assert they are left without any or sufficient recourse if electric utilities impose unreasonable rates, terms, and conditions and that this conflicts with the Commission's goals of promoting competition and broadband deployment. Electric utilities argue that incumbent LECs may seek recourse at the State level if they believe rates are unreasonable. The Commission seeks comment on what remedies incumbent LECs presently have to challenge any rates, terms, and conditions for pole attachments. Are those remedies sufficient? How, if at all, would the ability to file complaints with the Commission affect any State or local laws governing dispute resolution?

Procedural Matters

A. Paperwork Reduction Act Analysis

110. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements adopted in this Order.

B. Regulatory Flexibility Analysis

111. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this further notice of proposed rulemaking, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this further notice of proposed rulemaking. The IRFA is in Appendix C. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the further notice of proposed rulemaking. The Commission will send a copy of the notice of proposed rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the SBA. In addition, the notice of proposed rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**.

C. Ex Parte Presentations

112. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.

D. Initial Regulatory Flexibility Analysis

113. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

114. The FNPRM seeks comment on a variety of issues relating to implementation of section 224 pole attachment rules in light of increasing intermodal competition since the Commission began to implement the 1996 Act. Specifically, the FNPRM seeks comment on the adoption of a specific timeline regarding the pole attachment request, survey, and make-ready time period in order to provide greater certainty for the timely deployment of telecommunications, cable, and broadband services. Additionally, the FNPRM seeks comment on the adoption of several proposals regarding the ability of new attachers to use contractors to perform pole attachment make-ready work. The FNPRM also proposes improvements to the existing enforcement process. Finally, the FNPRM seeks comment on existing rules governing pole attachment rates for telecommunications carriers and incumbent local exchange carriers (LECs) in pursuit of a low, compensatory rate that will improve incentives for network deployment.

2. Legal Basis

115. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 4(i), 4(j), 224, 251(b)(4), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 224, 251(b)(4), 303.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

116. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business

concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

117. Small Businesses. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.

118. Small Organizations. Nationwide, as of 2002, there are approximately 1.6 million small organizations. A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

119. Small Governmental Jurisdictions. The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. The Commission estimates that, of this total, 84,377 entities were "small governmental jurisdictions." Thus, the Commission estimates that most governmental jurisdictions are small.

120. The Commission has included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent local exchange carriers in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

121. Incumbent Local Exchange Carriers ("ILECs"). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the proposed action.

122. Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"), "Shared-Tenant Service Providers," and "Other Local Service Providers." Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers." Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by the proposed action.

123. Interexchange Carriers ("IXCs"). Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by the proposed action.

124. Satellite Telecommunications and All Other Telecommunications. These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules. The second has a size standard of $25 million or less in annual receipts. The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in these categories.

125. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by the action.

126. The second category of All Other Telecommunications comprises, inter alia, "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems." For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by the action.

127. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications." Under the present and prior categories, the SBA has deemed a wireless business

to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, the Commission estimates that the majority of wireless firms are small.

128. Common Carrier Paging. As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite). Prior to that time, such firms were within the now-superseded category of "Paging." Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior category and associated data. The data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, the Commission estimates that the majority of paging firms are small.

129. In addition, in the Paging Second Report and Order, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.

130. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 281 carriers reported that they were engaged in the provision of "paging and messaging" services. Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees. The Commission estimates that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

131. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Trends in Telephone Service data, 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. The Commission has estimated that 222 of these are small under the SBA small business size standard.

132. Broadband Personal Communications Service. The broadband personal communications services ("PCS") spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.

133. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

134. Advanced Wireless Services. In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

135. Narrowband Personal Communications Services. In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second

auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

136. Cellular Radiotelephone Service. Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

137. Private Land Mobile Radio ("PLMR"). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

138. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

139. Fixed Microwave Services. Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

140. Local Multipoint Distribution Service. Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

141. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS"). In the present context, the Commission will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

142. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS") and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61

small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

143. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

144. Cable Television Distribution Services. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

145. Cable Companies and Systems. The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

146. Cable System Operators. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

147. Open Video Systems. The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for such services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less

than $25 million. Thus, the majority of cable firms can be considered small. In addition, the Commission notes that the Commission has certified some OVS operators, with some now providing service. Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

148. Cable Television Relay Service. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services the Commission must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

149. Multichannel Video Distribution and Data Service. MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years. These definitions were approved by the SBA. On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses. Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.

150. Internet Service Providers. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of ISP firms are small entities.

151. Electric Power Generation, Transmission and Distribution. The Census Bureau defines this category as follows: "This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer." This category includes Electric Power Distribution, Hydroelectric Power Generation, Fossil Fuel Power Generation, Nuclear Electric Power Generation, and Other Electric Power Generation. The SBA has developed a small business size standard for firms in this category: "A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours." According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and the Commission has not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, the Commission estimates that 1,644 or fewer firms may be considered small under the SBA small business size standard.

152. Natural Gas Distribution. This economic census category comprises: "(1) establishments primarily engaged in operating gas distribution systems (*e.g.,* mains, meters); (2) establishments known as gas marketers that buy gas from the well and sell it to a distribution system; (3) establishments known as gas brokers or agents that arrange the sale of gas over gas distribution systems operated by others; and (4) establishments primarily engaged in transmitting and distributing gas to final consumers." The SBA has developed a small business size standard for this industry, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2002, there were 468 firms in this category that operated for the entire year. Of this total, 424 firms had employment of fewer than 500 employees, and 18 firms had employment of 500 to 999 employees. Thus, the majority of firms in this category can be considered small.

153. Water Supply and Irrigation Systems. This economic census category "comprises establishments primarily engaged in operating water treatment plants and/or operating water supply systems." The SBA has developed a small business size standard for this industry, which is: All such firms having $6.5 million or less in annual receipts. According to Census Bureau data for 2002, there were 3,830 firms in this category that operated for the entire year. Of this total, 3,757 firms had annual sales of less than $5 million, and

37 firms had sales of $5 million or more but less than $10 million. Thus, the majority of firms in this category can be considered small.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

154. Should the Commission adopt the proposed regulations concerning access to poles, ducts, conduits, and rights-of-way, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping or other compliance requirements for pole owners and attaching entities. In particular, if the Commission adopts rules governing the timing of pole attachment preparation (i.e., survey and make-ready), as opposed to resolution on a case-specific complaint basis, reporting, recordkeeping or other compliance requirements could change. Examples of specific topics where recordkeeping, reporting, or compliance requirements could change by virtue of Commission action include: (1) Searches and surveys of both poles and conduits, including information management; (2) performance of make-ready work, including timeliness, safety, capacity, and the use of boxing and extension arms; and (3) the use of qualified third-party contract workers.

155. Should the Commission alter the enforcement process, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping, or other compliance requirements for pole owners and attaching entities. In particular, if the Commission eliminates the 30-day requirement in rule 1.404(m), a cable television operator or telecommunications carrier would no longer be required to file a complaint that it was denied access to a pole, duct, conduit or right-of-way despite a request made pursuant to section 47 U.S.C. 224(f) within 30 days of the denial. If the Commission adopts a penalty regime for unauthorized attachments similar to Oregon's, pole owners might be required to notify occupiers of alleged violations, and to allow the occupiers an opportunity to correct violations or submit a plan for correction, before pursuing relief under the Commission's rules. If the Commission modifies the "sign and sue" rule, such action might require attachers to provide notice during contact negotiations of terms they consider unreasonable or discriminatory.

156. Should the Commission alter the pole attachment rate structure, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping or other compliance requirements for pole owners and attaching entities. For example, if the Commission were to adopt a uniform rate for all pole attachments used for broadband Internet access service, providers of such services might be required to record and report where such service is offered. Changes to reporting, recordkeeping or other compliance requirements could either be new (*e.g.,* if telecommunications carriers begins to record or report where they offer broadband Internet access service) or could reconfigure existing requirements (*e.g.,* if cable television systems begin to record and report where they or their lessees offer broadband Internet access service, but cease to record and report where they or their lessees offer telecommunications services). If the Commission initiates regulation of the rates, terms, and conditions of pole attachment by incumbent LECs, such regulation could increase reporting, recordkeeping or other compliance requirements for pole owners and incumbent LECs where incumbent LECs attach to poles owned by other utilities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

157. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

158. The Commission proposes to adopt a specific timeline and several additional rules that provide a predictable, timely process for parties to seek and obtain pole attachments, while maintaining a utility's interest in preserving safety, reliability, and sound engineering. In the consideration of these proposals, the Commission seeks comment on whether adjustments based on the size of the utility to which the timeline applies are warranted. For instance, the Commission asks whether small utilities should negotiate all timelines individually or have the option of adjusting the timeline based on the size of the attachment request, and whether steps taken to improve the availability of pole data could potentially burden small pole owners. Further, the Commission does not have authority to regulate (and the proposed rules, thus, do not apply to) small utilities that are municipally or cooperatively owned.

159. The Commission also proposes to modify its rules to ensure that its enforcement process is suited to resolving access-related complaints and is fair to all parties. In particular, the Commission proposes to remove the 30-day requirement to file a complaint from § 1.404(m), amend § 1.1410 to enumerate the remedies available to an attacher and provide for compensatory damages, and amend § 1.404(d) to require an attacher to object in writing, during contract negotiations, to provisions it considers unreasonable or discriminatory. These modifications aim to streamline the complaint process and remove barriers to informal dispute resolution, and they should have minimal, if any, economic impact on small entities.

160. Finally, the Commission proposes to promote broadband deployment and competition by reinterpreting the section 224(e) telecom rate in a way that yields pole rental rates that are as low and close to uniform as possible. The Commission considered requiring all categories of providers to pay a uniform rate that would have been higher than the cable rate but lower than the telecom rate, but found that pursuing uniformity by increasing cable operators' pole rental rates would come at the cost of increased broadband prices and reduced incentives for deployment. The Commission also seeks comment on alternative proposals that would establish a uniform rate for all pole attachments used to provide broadband, and on whether the rates paid by incumbent LEC attachers should also be subject to the "just and reasonable" rates provision in section 224(b).

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

161. None.

Ordering Clauses

162. Accordingly, *It is ordered* that pursuant to sections 1, 4(i), 4(j), 224, 251(b)(4), and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 224, 251(b)(4), 303, this Order and Further Notice of Proposed Rulemaking in WC Docket No. 07–245 *is adopted.*

163. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of

this further notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Cable television, Communications common carriers, Communications equipment, Telecommunications, Telephone, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

Subpart J—Pole Attachment Procedures

1. The heading of Part 1, subpart J is amended to read as set forth above.

2. The authority citation for part 1, subpart J is added to read as follows:

Authority: 47 U.S.C. 224, 154(i).

3. Section 1.1402 is amended by adding paragraph (o) to read as follows:

§ 1.1402 Definitions.

* * * * *

(o) The term *authorized contractor* means an independent contractor that is approved by a utility and is certified by the utility to perform field surveys, engineering analyses, or make-ready work, and includes any contractor that the utility itself employs to perform such work.

4. Section 1.1403 is amended by revising paragraph (b) to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

* * * * *

(b) Requests for access to a utility's poles, ducts, conduits, or rights-of-way by a telecommunications carrier or cable operator must be in writing. If access is not granted within 45 days of the request for access, the utility must explain the denial or grant of access conditioned on performance of make-ready in writing by the 45th day. The utility's explanation shall be specific, shall include all relevant evidence and information supporting its decision and shall explain how such evidence and information relate to a denial or conditional grant of access for reasons of lack of capacity, safety, reliability or engineering standards.

* * * * *

5. Section 1.1404 is amended by revising paragraphs (d) and (m) to read as follows:

§ 1.1404 Complaint.

* * * * *

(d) The complaint shall be accompanied by a copy of the pole attachment agreement, if any, between the cable system operator or telecommunications carrier and the utility. If the complainant contends that a rate, term, or condition in an executed pole attachment agreement is unjust and unreasonable, it shall attach to its complaint evidence documenting that the complainant provided written notice to the respondent, during negotiation of the agreement, that the complainant considered the rate, term, or condition unjust and unreasonable, and the basis for that conclusion. Proof of such notice to the respondent shall be a prerequisite to filing a complaint challenging a rate, term, or condition in an executed agreement, except where the complainant establishes that the rate, term, or condition was not unjust and unreasonable on its face, but only as applied by the respondent, and it could not reasonably have anticipated that the challenged rate, term, or condition would be applied or interpreted in such an unjust and unreasonable manner. If there is no present pole attachment agreement, the complaint shall contain:

(1) A statement that the utility uses or controls poles, ducts, or conduits used or designated, in whole or in part, for wire communication; and

(2) A statement that the cable television system operator or telecommunications carrier currently has attachments on the poles, ducts, conduits, or rights-of-way.

* * * * *

(m) In a case where a cable television system operator or telecommunications carrier claims that it has been denied access to a pole, duct, conduit or right-of-way despite a request made pursuant to section 47 U.S.C. 224(f), the complaint, in addition to meeting the other requirements of this section, shall include the data and information necessary to support the claim, including:

(1) The reasons given for the denial of access to the utility's poles, ducts, conduits and rights-of-way;

(2) The basis for the complainant's claim that the denial of access is improper;

(3) The remedy sought by the complainant;

(4) A copy of the written request to the utility for access to its poles, ducts, conduits or rights-of-way; and

(5) A copy of the utility's response to the written request including all information given by the utility to support its denial of access. A complaint alleging improper denial of access will not be dismissed if the complainant is unable to obtain a utility's written response, or if the utility denies the complainant any other information needed to establish a prima facie case.

6. Section 1.1409 is amended by revising paragraph (e)(2) to read as follows:

§ 1.1409 Commission consideration of the complaint.

* * * * *

(e) * * *

(2) With respect to attachments to poles by any telecommunications carrier or cable operator providing telecommunications services, the maximum just and reasonable rate shall be the higher of:

(i) The rate yielded by § 1.1409(e)(1), or

(ii) The rate yielded by the following formula:

Maximum Rate = Space Factor × Net Cost of a Bare Pole × [Carrying Charge Rate]

Where

Space Factor = [(Space Occupied) + [(⅔) × (Unusable Space/No. of Attaching Entities)]]/Pole Height

* * * * *

7. Section 1.1410 is revised to read as follows:

§ 1.1410 Remedies.

(a) If the Commission determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may:

(1) Terminate the unjust and unreasonable rate, term, or condition;

(2) Substitute in the pole attachment agreement the just and reasonable rate, term, or condition established by the Commission;

(3) Order a refund, or payment, if appropriate. The refund or payment will normally be the difference between the amount paid under the unjust and/or unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the Commission, plus interest, consistent with the applicable statute of limitations; and

(4) Order an award of compensatory damages, consistent with the applicable statute of limitations.

(b) If the Commission determines that access to a pole, duct, conduit, or right-of-way has been unlawfully denied or unreasonably delayed, it may:

(1) Order that access be permitted within a specified time frame and in accordance with specified rates, terms and conditions; and

(2) Order an award of compensatory damages, consistent with the applicable statute of limitations.

8. Add § 1.1420 to subpart J to read as follows:

§ 1.1420 Timeline for access to poles, ducts, conduits, and rights-of-way.

(a) All time limits in this section are to be calculated according to § 1.4.

(b) A request for access triggers a requirement to perform the obligations in § 1.1403(b) within 45 days, including a survey and engineering analysis used to support a utility's decision. If the utility fails to complete and deliver the survey to the requesting entity within 45 days after the request, the requesting entity may use a contractor to complete the survey and engineering analysis. The utility shall cooperate with the requesting entity in directing and supervising the authorized contractor.

(1) For poles, ducts, conduits, and rights-of-way owned by an incumbent LEC utility, the requesting entity shall use a contractor that has at least the same qualifications and training as the incumbent LEC's own workers that perform the same tasks.

(2) For poles, ducts, conduits, and rights-of-way owned by a non-incumbent LEC utility, the requesting entity shall use an authorized contractor.

(c) Within 14 days of providing a survey as required by § 1.1420(b), a utility shall tender an offer to perform all necessary make-ready work, including an estimate of its charges.

(1) The requesting entity may accept a valid offer and make an initial payment upon receipt, or until the offer is withdrawn.

(2) The utility may withdraw an outstanding offer to perform make-ready work after 14 days.

(d) Upon receipt of payment, a utility shall notify immediately all attaching entities that may be affected by the project, and shall specify the date after which the utility or its agents become entitled to move the facilities of the attaching entity.

(1) The utility shall set a date for completion of make-ready no later than 45 days after the notice.

(2) The utility shall direct and coordinate the sequence and timing of rearrangement of facilities to afford each attaching entity a reasonable opportunity to use its own personnel to move its facilities.

(3) Completion of all make-ready work and final payment by the requesting entity shall complete the grant of requested access and all necessary authorization.

(e) If make-ready work is not completed by any other attaching entities as required by paragraph (d) of this section, the utility or its agent shall complete all necessary make-ready work.

(1) An incumbent local exchange carrier's facilities may be rearranged or replaced by the utility or its agents 45 days after the notice required in paragraph (d) of this section.

(2) A cable system operator's or telecommunications carrier's remaining facilities may be rearranged or replaced by the utility or its agents 60 days after the notice required by paragraph (d) of this section.

(f) If make-ready work is not completed in the time specified in paragraph (e)(2) of this section, the requesting entity may use a contractor to complete all necessary make-ready work. For poles owned by an incumbent LEC utility, the requesting entity shall use a contractor that has at least the same qualifications and training as the incumbent LEC's own workers that perform the same tasks. For poles owned by a non-incumbent LEC utility, the requesting entity shall use an authorized contractor.

(1) The utility shall cooperate with the requesting entity in directing and supervising the contractor.

(2) Upon completion of make-ready, the requesting entity shall pay the utility for any outstanding expenses charged by the utility for expenses incurred to complete the make-ready.

(3) Upon receipt of payment or establishment that no further payment is due, the utility shall confirm that the request for access is granted.

(4) Once all make-ready work is performed and the request for access is granted, the requesting entity may use any contractor to install its facilities that has the same qualifications, in terms of training, as the utility's own workers, whether or not the contractor is authorized by the utility.

9. Add § 1.1422 to subpart J to read as follows:

§ 1.1422 Contractors.

(a) Utilities shall make available:

(1) A list of authorized contractors; and

(2) Criteria and procedures for becoming an authorized contractor.

(b) If a contractor has been hired according to conditions specified in § 1.1420, a utility may direct and supervise an authorized contractor in cooperation with the requesting entity.

(1) The attaching entity shall invite a utility representative to accompany the contractor and the utility representative may consult with the authorized contractor and the entity requesting access.

(2) The representative of a non-incumbent LEC utility may make final determinations on a nondiscriminatory basis that relate directly to insufficient capacity or the safety, reliability, and sound engineering of the infrastructure.

10. Add § 1.1424 to subpart J to read as follows:

§ 1.1424 Exclusion from work among the electric lines.

(a) Utilities may exclude non-utility personnel from working among the electric lines on a utility pole, except workers with specialized communications-equipment skills or training that the utility cannot duplicate which are necessary to add or maintain a pole attachment.

(b) Utilities shall permit workers with specialized skills or training concerning communications equipment to work among the electric lines:

(1) In concert with the utility's workforce; and

(2) When the utility deems it safe.

11. Add § 1.1426 to subpart J to read as follows:

§ 1.1426 Charges for access and make-ready.

(a) Utilities shall make available to attaching entities a schedule of common make-ready charges.

(b) Payment for make-ready charges is due in the following increments:

(1) Payment of 50 percent of estimated charges requires the recipient utility to begin make-ready performance.

(2) Payment of 25 percent of estimated charges is due 22 days after the first payment.

(3) Payment of remaining make-ready charges is due when access is granted.

12. Add § 1.1428 to subpart J to read as follows:

§ 1.1428 Administration of pole attachment requests.

(a) Where a pole is jointly owned by more than one utility:

(1) The owners shall designate a single owner to manage requests for pole attachment; and

(2) Each owner shall make publicly available the identity of the managing utility for its poles.

(b) Requesting entities shall not be required to interact with an owner other than the single managing pole owner.

(c) The managing pole owner shall:

(1) Collect from each existing attacher a statement of any costs attributable to rearrangement of the existing attacher's facilities to accommodate a new attacher.

(2) Bill the new attacher for these costs, plus any expenses the managing pole owner incurs in its role as clearinghouse; and

(3) Disburse compensatory payment to the existing attachers.

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