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

WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Rules and Regulations

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

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participants' Choices of TSP Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to a final regulation that amended the Thrift Savings Plan regulations, which was published in the **Federal Register** of June 1, 2005 (70 FR 32208).

DATES: Effective on November 5, 2010.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at 202–942–1645.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

The final regulation that is the subject of this correction was published in the **Federal Register** on June 1, 2005 (70 FR 32208). As published, the final regulation contains an error or omission that may be misleading and needs to be clarified.

Section 1601.32 of 5 CFR states that contribution allocations or interfund transfer requests received at or before 12 noon eastern time of any business day will ordinarily be posted that business day. However, TSP participant publications all state that contribution allocations or interfund transfer requests received before 12 noon eastern time of any business day will ordinarily be posted that business day. Although the likelihood of the Agency receiving a request precisely at noon is low, and the modifier "ordinarily" would afford the Agency the opportunity to process the transaction the next business day, this final rule corrects the erroneous language to make the regulation consistent with TSP participant publications.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and which is administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the Government Accountability Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted 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 before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1601

Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

■ Accordingly, 5 CFR part 1601 is corrected by making the following correcting amendment:

PART 1601—PARTICIPANTS' CHOICES OF TSP FUNDS

■ 1. The authority citation for part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8438, 8474(b)(5) and (c)(1).

■ 2. Revise § 1601.32(a)(1) to read as follows:

§ 1601.32 Timing and posting dates.

(a) * * *

(1) A transaction request entered into the TSP record keeping system by a participant who uses the TSP Web site or the ThriftLine, or by a TSP Service Office participant service representative at the participant's request, before 12 noon eastern time of any business day, will ordinarily be posted that business day. A transaction request entered into the system at or after 12 noon eastern time of any business day will ordinarily be posted on the next business day.

* * * * *

[FR Doc. 2010–28000 Filed 11–4–10; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1082; Directorate Identifier 2009–SW–041–AD; Amendment 39–16491; AD 2010–23–02]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (Eurocopter) Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the

specified Eurocopter model helicopters. This action requires amending the Limitations section of the Rotorcraft Flight Manual (RFM) to limit the never-exceed velocity (VNE) to 150 Knots Indicated Air Speed (KIAS) and to add a 1,500 ft/minute rate of descent (R/D) limitation beyond 140 KIAS. This action also requires installing one or more placards on the cockpit instrument panel in full view of the pilot and co-pilot. This amendment is prompted by failures of the horizontal stabilizers on recently delivered Model AS 365 N3 helicopters. Tests indicate that the failures were due to a vibration phenomenon that may arise during the descent flight phases at high speed regardless of the stabilizer installed. The actions specified in this AD are intended to restrict the VNE, to prevent failure of the horizontal stabilizer, and subsequent loss of control of the helicopter.

DATES: Effective November 22, 2010.

Comments for inclusion in the Rules Docket must be received on or before January 4, 2011.

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

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

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.*

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD No. 2008–0204–E, dated December 4, 2008, to correct an unsafe condition for the specified Eurocopter model helicopters. EASA advises that Eurocopter has received reports of failed horizontal stabilizers on recently delivered AS 365 N3 helicopters. The failures occurred during acceptance test and training flights as part of the demonstration of the VNE and resulted in in-flight separation and loss of the failed sections. In each case, the helicopters succeeded in returning to base with no further problems. Tests conducted on the helicopter and in the laboratory have revealed the reported incidents were due to a vibration phenomenon that may arise in the descent flight phases at high speed "regardless of the stabilizer definition." Although EASA AD 2008–0110–E, dated June 6, 2008, which is superseded by EASA AD 2008–0204–E, dated December 4, 2008, applied to the Model SA–336G1, EASA states that the stabilizer assembly procedure on SA–366G1 helicopters modifies the dynamic behavior of the stabilizer. Since an unsafe condition does not exist on that helicopter, the SA–366G1 has been deleted from the EASA AD applicability.

Related Service Information

Eurocopter has issued an Emergency Alert Service Bulletin (EASB) with 3 numbers (01.00.60, 01.00.16, and 01.28), Revision 1, dated December 2, 2008. EASB No. 01.00.60 applies to U.S. type-certificated Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3 helicopters and also to military Model AS365F, Fs, Fi, and K helicopters that are not type certificated in the United States. EASB No. 01.00.16 applies to military Model AS565AA, MA, MB, SA, SB, and UB helicopters that are not type certificated in the United States. EASB 01.28 applies to the Model SA–366G1 helicopter. The EASB specifies bonding one or more locally-produced labels to the instrument panel stating that the VNE is limited to 150 KIAS and the R/D must not exceed 1,500 ft/min beyond 140 KIAS. Eurocopter states in the EASB that it is working on an enhanced definition that will be proposed as soon as possible. EASA classified this EASB as mandatory and issued Emergency AD No. 2008–0204–E, dated December 4, 2008, to ensure the continued airworthiness of these helicopters.

FAA's Evaluation and Unsafe Condition Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, their technical representative, has notified us of the unsafe condition described in the MCAI AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Differences Between This AD and the EASA AD

This AD uses a compliance time of before further flight rather than before next flight after June 7, 2008, as stated in the EASA AD.

FAA's Determination and Requirements of This AD

This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, this AD is being issued to restrict the VNE to prevent failure of the horizontal stabilizer and subsequent loss of control of the helicopter. This AD requires amending the Limitations section of the RFM to limit the VNE to 150 KIAS and to add a 1,500 ft/minute R/D limitation for airspeeds beyond 140 KIAS. This action also requires installing one or more placards on the cockpit instrument panel in full view of the pilot and co-pilot stating the limitations. The change to the Operating limitation section of the RFM may be made in pen and ink or a copy of this AD may be filed in the Limitations section of the RFM.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Amending the Limitations section of the RFM to limit the VNE to 150 KIAS and adding a 1,500 ft/minute R/D limitation beyond 140 KIAS are required before further flight and installing one or more placards on the cockpit instrument panel is required. Therefore, this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this

regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Costs of Compliance

We estimate that this AD will affect about 39 helicopters of U.S. registry. We also estimate that it will take about ½ work-hour per helicopter to make copies to include in the RFM and to make and install the placards. The average labor rate is $85 per work-hour. The parts costs are minimal. Based on these figures, we estimate the cost of this AD on U.S. operators is $1,658 for the fleet.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2010–1082; Directorate Identifier 2009–041–SW–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

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

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2010–23–02 Eurocopter France: Amendment 39–16491; Docket No. FAA–2010–1082; Directorate Identifier 2009–SW–041–AD.

Applicability: Model SA–365N, SA–365N1, AS–365N2, and AS 365 N3–helicopters, with a horizontal stabilizer, part number 365A13–3030–1901, –1902, –1903, –1904, –1905, –1906, –1908, –1909; 365A13–3036–00, –0001, –0002, –0003; or 365A13–3038–00, installed, certificated in any category.

Compliance: Before further flight, unless accomplished previously.

To restrict the never-exceed velocity (VNE) to prevent failure of the horizontal stabilizer, and subsequent loss of control of the helicopter, do the following:

(a) Revise the airspeed operating limitation in the Limitations section of the Rotorcraft Flight Manual (RFM) by making pen and ink changes or by inserting a copy of this AD into the RFM stating: "The never-exceed speed (VNE) is limited to 150 knots indicated airspeed (KIAS)," and "The rate-of-descent (R/D) must not exceed 1,500 ft/min when the airspeed is beyond 140 KIAS."

(b) Install one or more self-adhesive placards, with 6 millimeter red letters on white background, on the cockpit instrument panel in full view of the pilot and co-pilot to read as follows:

"VNE LIMITED TO 150 KIAS"

"R/D MUST NOT EXCEED 1,500 ft/min when airspeed is beyond 140 KIAS"

(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 Safety Management Group: ATTN: Gary Roach, Aerospace Engineer, FAA, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5130; fax: 817–222–5961, for information about previously approved alternative methods of compliance.

(d) The Joint Aircraft System/Component (JASC) Code is 5510: Horizontal Stabilizer Structure.

(e) This amendment becomes effective on November 22, 2010.

Note: The subject of this AD is addressed in European Aviation Safety Agency Emergency AD No. 2008–0204–E, dated December 4, 2008, and in Eurocopter Emergency Alert Service Bulletin No. 01.00.60, Revision 1, dated December 2, 2008, for the Model AS365N series helicopters.

Issued in Fort Worth, Texas, on October 15, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–27972 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0778 Directorate Identifier 2010–CE–034–AD; Amendment 39–16490; AD 2010–23–01]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Model PIAGGIO P–180 Airplanes

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

ACTION: Final rule.

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

Some cases of corrosion were detected in the interface between the elevator hinges fittings (metallic) and the horizontal stabilizer (carbon fibre); investigation identified the cause in galvanic corrosion between dissimilar materials.

If left uncorrected, this situation could lead to a structural failure of the elevator, which could result in possible loss of control of the aeroplane.

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

DATES: This AD becomes effective December 10, 2010.

On December 10, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

For service information identified in this AD, contact Piaggio Aero Industries S.p.a., Via Cibrario, 4–16154 Genoa, Italy; *phone:* +39 010 6481 800; *fax:* +39 010 6481 374; *e-mail: tech.support@piaggioaero.it;* Internet: *http://www.piaggioaero.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; *fax:* (816) 329–4090; *e-mail: sarjapur.nagarajan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 9, 2010 (75 FR 47734). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Some cases of corrosion were detected in the interface between the elevator hinges fittings (metallic) and the horizontal stabilizer (carbon fibre); investigation identified the cause in galvanic corrosion between dissimilar materials.

If left uncorrected, this situation could lead to a structural failure of the elevator, which could result in possible loss of control of the aeroplane.

This AD requires:

(1) Inspection of the hinges fittings for corrosion and of the stabilizer for delamination;

(2) Repair of the stabilizer, if necessary;

(3) Replacement of the fittings, if corroded;

(4) Improvement of fittings installation;

(5) Installation of aluminum strips in the stabilizer to improve bonding, in accordance with Piaggio Aero Industries (PAI) Service Bulletin (SB) 80–0262 Revision 2.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this proposed AD will affect 96 products of U.S. registry. We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $73,440, or $765 per product.

In addition, we estimate that any necessary follow-on actions would take about 32 work-hours and require parts costing $11,000, for a cost of $13,720 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–01 Piaggio Aero Industries S.p.A.: Amendment 39–16490; Docket No. FAA–2010–0778; Directorate Identifier 2010–CE–034–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 10, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model PIAGGIO P–180 airplanes, serial numbers 1002 and 1004 through 1191, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 55: Stabilizers.

Reason

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

Some cases of corrosion were detected in the interface between the elevator hinges fittings (metallic) and the horizontal stabilizer (carbon fibre); investigation identified the cause in galvanic corrosion between dissimilar materials.

If left uncorrected, this situation could lead to a structural failure of the elevator, which could result in possible loss of control of the aeroplane.

This AD requires:

(1) Inspection of the hinges fittings for corrosion and of the stabilizer for delamination;

(2) Repair of the stabilizer, if necessary;

(3) Replacement of the fittings, if corroded;

(4) Improvement of fittings installation;

(5) Installation of aluminum strips in the stabilizer to improve bonding, in accordance with Piaggio Aero Industries (PAI) Service Bulletin (SB) 80–0262 Revision 2.

Actions and Compliance

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

(1) Within the next 1,500 hours time-in-service (TIS) after December 10, 2010 (the effective date of this AD) or within 4 years after December 10, 2010 (the effective date of this AD), whichever occurs first, do the following:

(i) Remove the left-hand (LH) and the right-hand (RH) elevators and do all of the inspections and corrective actions following the Accomplishment Instructions in Parts A, B, C, D, and E of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (MANDATORY) N.: SB–80–0262, Revision 2, dated March 17, 2010.

(ii) Reinstall the LH and RH elevators and do the final checks following the Accomplishment Instructions, Part F, of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (MANDATORY) N.: SB–80–0262 Revision 2, dated March 17, 2010.

(2) We will allow "unless already done" credit for inspections and corrective actions already done, before the effective date of this AD, following PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletins (MANDATORY) N.: SB–80–0262, original issue dated September 24, 2009; or Revision 1 dated December 23, 2009, for compliance with the requirements of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; *fax:* (816) 329–4090; *e-mail: sarjapur.nagarajan@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI EASA AD No.: 2010–0124 (Correction: June 22, 2010), dated June 22, 2010; and PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (MANDATORY) N.: SB–80–0262, Revision 2, dated March 17, 2010, for related information.

Material Incorporated by Reference

(i) You must use PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (MANDATORY) N.: SB–80–0262, Revision 2, dated March 17, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Piaggio Aero Industries S.p.a., Via Cibrario, 4–16154 Genoa, Italy; *phone:* +39 010 6481 800; *fax:* +39 010 6481 374; *e-mail: tech.support@piaggioaero.it;* Internet: *http://www.piaggioaero.com.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

Issued in Kansas City, Missouri, on October 21, 2010.

Christina L. Marsh,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–27456 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1041; Directorate Identifier 2010–NM–198–AD; Amendment 39–16493; AD 2010–23–04]

RIN 2120–AA64

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

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

ACTION: Final rule; request for comments.

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

Several reports have been received of cracked nacelle attachment fittings. The preliminary investigation determined the cause to be stress corrosion. Stress corrosion cracking could compromise the structural integrity of the nacelle attachment fitting and could adversely affect the safe landing of the aeroplane.

Failure of the fitting could result in collapse of the landing gear. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 22, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 22, 2010.

We must receive comments on this AD by December 20, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Craig Yates, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7355; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–30R1, dated September 21, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Several reports have been received of cracked nacelle attachment fittings. The preliminary investigation determined the cause to be stress corrosion. Stress corrosion cracking could compromise the structural integrity of the nacelle attachment fitting and could adversely affect the safe landing of the aeroplane.

This [Canadian] directive, as an interim, mandates a detailed visual inspection [for cracking] and conductivity check of each of the four (4) nacelle attachment fittings.

Revision 1 of this [Canadian] directive is issued to update the aircraft serial number (S/N) applicability based on the latest crack findings and also to revise the acceptable conductivity values in Part I.A. In addition, Part II. has been added to provide instructions for newly affected aircraft and aircraft that have replaced nacelle attachment fittings.

Failure of the fitting could result in collapse of the landing gear. Required actions include repetitive detailed inspections and replacement of the fittings, depending on inspection findings. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–54–14, Revision J, dated September 17, 2010. For certain airplanes, this service bulletin describes procedures for a conductivity inspection and a repetitive detailed inspection for cracking of the nacelle attachment fittings. If the inspections find cracking, this service bulletin specifies replacement of the fitting, or if the inspection finds certain conductivity results, a daily repetitive detailed inspection until replacement of the fitting is accomplished. For certain other airplanes, this service bulletin describes repetitive detailed inspections for cracking of the nacelle attachment fittings and replacement of the fitting if any cracking is found. For all airplanes, this service bulletin specifies that replacement of the fitting extends the compliance time for the first repetitive detailed inspection on that fitting. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there is a possibility that stress corrosion cracking of the fitting, if undetected, could adversely affect safe landing. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1041; Directorate Identifier 2010–NM–198–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–04 Bombardier, Inc.: Amendment 39–16493. Docket No. FAA–2010–1041; Directorate Identifier 2010–NM–198–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 22, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Reason

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

Several reports have been received of cracked nacelle attachment fittings. The preliminary investigation determined the cause to be stress corrosion. Stress corrosion cracking could compromise the structural integrity of the nacelle attachment fitting and could adversely affect the safe landing of the aeroplane.

Failure of the fitting could result in collapse of the landing gear.

Compliance

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

Actions

Inspection and Conductivity Inspection of the Nacelle Attachment Fitting Assembly, Part Number 85414663, for Certain Airplanes

(g) For airplanes having serial numbers 4001 through 4304 inclusive, 4314, and 4315: Within 100 flight hours after the effective date of this AD, do a detailed inspection for cracking, and a conductivity inspection on each of the 4 nacelle attachment fittings, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–54–14, Revision J, dated September 17, 2010. Repeat the detailed inspection at intervals not to exceed 300 flight hours, except as provided by paragraph (j) of this AD.

(1) If any nacelle attachment fitting is found cracked, before further flight, replace the fitting with a new fitting in accordance with paragraph (3) of Part A of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–14, Revision J, dated September 17, 2010.

(2) If the conductivity of any test points on any fitting is found to be greater than 45.0 percent International Annealed Copper Standard (IACS) or if the conductivity of any test points on any fitting is found to be less than 38.0 percent IACS, do the actions required by paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Within 24 hours after accomplishing the conductivity inspection specified in paragraph (g) of this AD, do a detailed inspection of the nacelle attachment fitting for cracking, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–54–14, Revision J, dated September 17, 2010, and repeat thereafter at intervals not to exceed 24 hours. If cracking is found, before further flight, replace the fitting with a new fitting in accordance with the requirements of paragraph (g)(2)(ii) of this AD. Replacement of the fitting terminates the daily detailed inspection requirements of this paragraph.

(ii) Except as required by paragraph (g)(2)(i) of this AD: Within 300 flight hours after accomplishing the conductivity inspection specified in paragraph (g) of this AD, replace the fitting with a new fitting in accordance with paragraph (3) of Part A of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–14, Revision J, dated September 17, 2010.

Inspection Reports

(h) Submit a report of the findings (both positive and negative) of the conductivity inspection required by paragraph (g) of this AD to Bombardier, at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, in accordance with Bombardier Service Bulletin 84–54–14, Revision J, dated September 17, 2010. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of flight cycles and flight hours on the airplane.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 14 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 14 days after the effective date of this AD.

Inspection of the Nacelle Attachment Fitting Assembly, Part Number 85414663, for Certain Other Airplanes

(i) For airplanes having serial numbers 4305 through 4313 inclusive, and 4316 and subsequent: Within 1,200 flight hours after the effective date of this AD, do a detailed inspection for cracking on each of the 4 nacelle attachment fittings, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–54–14, Revision J, dated September 17, 2010. If any nacelle attachment fitting is found cracked, before further flight, replace the fitting with a new fitting in accordance with paragraph (3) of Part A of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–14, Revision J, dated September 17, 2010. Thereafter, repeat the detailed inspection at intervals not to exceed 300 flight hours, except as provided by paragraph (j) of this AD.

Initial Inspection Compliance Time for New Fittings

(j) For any fitting that is replaced in accordance with paragraph (3) of Part A of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–14, Revision J, dated September 17, 2010, as specified in paragraph (g) or (i) of this AD: Within 1,200 flight hours after replacing the fitting, do a detailed inspection of that replaced fitting as specified in paragraph (g) or (i) of this AD, and repeat the detailed inspection thereafter at intervals not to exceed 300 flight hours.

Credit for Replacing the Fitting Using Previous Service Information

(k) Accomplishing the replacement of the nacelle fittings in accordance with any Bombardier service bulletin identified in Table 1 of this AD before the effective date of this AD is also acceptable for compliance with the fitting replacements specified in paragraphs (g) and (i) of this AD.

TABLE 1—ACCEPTABLE SERVICE INFORMATION

Bombardier Service Bulletin—	Revision—	Dated—
84–54–14	Original	April 16, 2010.
84–54–14	A	April 22, 2010.
84–54–14	B	June 11, 2010.
84–54–14	C	June 30, 2010.
84–54–14	D	July 5, 2010.
84–54–14	E	August 19, 2010.
84–54–14	F	August 20, 2010.
84–54–14	G	September 9, 2010.
84–54–14	H	September 10, 2010.

Credit for Inspections Accomplished in Accordance With Previous Service Information

(l) Accomplishment of the inspections required by paragraphs (g) and (i) of this AD before the effective date of this AD in accordance with any Bombardier service bulletin identified in Table 1 of this AD is acceptable for compliance with the corresponding actions required by paragraphs (g) and (i) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although the MCAI does not state a requirement for submitting inspection reports, this AD requires inspection reports to be submitted to the manufacturer so the manufacturer can gather information on the extent of the problem and develop corrective actions. Based on the results of these reports, we might determine that further rulemaking is warranted. This difference has been coordinated with TCCA.

Other FAA AD Provisions

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

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

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

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

Related Information

(n) Refer to MCAI Canadian Airworthiness Directive CF–2010–30R1, dated September 21, 2010; and Bombardier Service Bulletin 84–54–14, Revision J, dated September 17, 2010; for related information.

Material Incorporated by Reference

(o) You must use Bombardier Service Bulletin 84–54–14, Revision J, dated September 17, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on October 18, 2010.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–27611 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1040; Directorate Identifier 2010–NM–207–AD; Amendment 39–16492; AD 2010–23–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757 and 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires repetitive testing for correct functioning of the engine indication and crew alerting system (EICAS) to ensure that it receives both the LOW FUEL and FUEL CONFIG discrete signals from the fuel quantity processor unit, and alerts the flightcrew of a low fuel situation, and if the test fails, troubleshooting to find wire faults and damaged equipment, and corrective actions if necessary. This AD was prompted by a report that the EICAS failed to alert the flightcrew of an improper fuel system configuration during flight. Later in that flight, the EICAS failed to alert the flightcrew that the fuel in the left- and right-hand main tanks was depleted below the minimum of 2,200 pounds. We are issuing this AD to detect and correct a single latent failure of the FUEL CONFIG discrete signal, which disables both the FUEL CONFIG and LOW FUEL messages. Such failure, combined with a flightcrew error in configuring the fuel system, could lead to depletion of the fuel in the main tanks and possible flame out of both engines. A dual engine flame out could result in inaccessibility of the remaining fuel in the center tank due to loss of electrical power to the pumps, consequent unrecoverable dual engine shutdown, and forced landing of the airplane.

DATES: This AD is effective November 22, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 22, 2010.

We must receive comments on this AD by December 20, 2010.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6499; fax (425) 917–6590; *e-mail: takahisa.kobayashi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a report from an operator of a Model 757–200 series airplane that the engine indication and crew alerting system (EICAS) failed to alert the flightcrew of an improper fuel system configuration during flight. Later in that flight, the EICAS failed to alert the flightcrew that the fuel in the left- and right-hand main tanks was depleted below the minimum of 2,200 pounds. The EICAS receives both the LOW FUEL and FUEL CONFIG discrete signals from the fuel quantity processor unit to display certain messages to alert the flightcrew. When the center fuel tank pump switches are off with more than 200 pounds of fuel in the center tank the EICAS should display the FUEL CONFIG advisory message. When the fuel in either main tank is below 2,200 pounds, the EICAS should display the LOW FUEL caution message. The EICAS design allows a single latent failure of the FUEL CONFIG discrete signal, which disables both the FUEL CONFIG and LOW FUEL messages. Such failure, combined with a flightcrew error in configuring the fuel system, could lead to depletion of the fuel in the main tanks and possible flame out of both engines. A dual engine flame out could result in inaccessibility of the remaining fuel in the center tank due to loss of electrical power to the pumps, consequent unrecoverable dual engine shutdown, and forced landing of the airplane.

The fuel quantity indicating system (FQIS), EICAS, and large format display system (LFDS) installed on Model 757–200 series airplanes are similar to the systems installed on Model 767 airplanes. Therefore, Model 767 airplanes are also subject to the identified unsafe condition and are included in the applicability of this AD.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletins 757–28–0121, dated August 18, 2010; and 767–28–0106, dated August 25, 2010. The service information describes procedures for repetitive testing for correct functioning of the EICAS, and if the test fails, troubleshooting to find wire faults, bent connector pins, or damaged equipment. Boeing Special Attention Service Bulletin 757–28–0121, dated August 18, 2010, also specifies procedures for corrective actions if any wire fault or damaged equipment (including bent connector pins) is found. The corrective actions include repairing or replacing affected wires and damaged equipment (including bent connector pins).

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the AD and the Service Information."

Difference Between the AD and the Service Information

Boeing Special Attention Service Bulletins 767–28–0106, dated August 25, 2010, does not specify instructions on how to repair certain conditions, but this AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because if the EICAS malfunctions, the flightcrew will not be alerted of a low fuel situation, which could result in depletion of the fuel in the main tanks and consequent unrecoverable dual engine shutdown and forced landing of the airplane. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1040; Directorate Identifier 2010–NM–207–AD;" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 686 Model 757 airplanes and 425 Model 767 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
EICAS test	1 work-hour × $85 per hour = $85 per test cycle.	N/A	$85 per test cycle ..	$58,310 (for Model 757 airplanes). $36,125 (for Model 767 airplanes).

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–03 The Boeing Company: Amendment 39–16492; Docket No. FAA–2010–1040; Directorate Identifier 2010–NM–207–AD.

Effective Date

(a) This AD is effective November 22, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 757–200, 200CB, –200PF,

and –300 series airplanes, line numbers 1 through 1050 inclusive, and all Model 767–200, –300, –300F, and –400ER series airplanes; certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD was prompted by a report that the EICAS failed to alert the flightcrew of an improper fuel system configuration during flight. Later in that flight the EICAS failed to alert the flightcrew that the fuel in the left- and right-hand main tanks was depleted below the minimum of 2,200 pounds. We are issuing this AD to detect and correct a single latent failure of the FUEL CONFIG discrete signal, which disables both the FUEL CONFIG and LOW FUEL messages. Such failure, combined with a flightcrew error in configuring the fuel system, could lead to depletion of the fuel in the main tanks and possible flame out of both engines. A dual engine flame out could result in inaccessibility of the remaining fuel in the center tank due to loss of electrical power to the pumps, consequent unrecoverable dual engine shutdown, and forced landing of the airplane.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Repetitive Tests

(g) Within 100 flight hours after the effective date of this AD: Do a test for correct functioning of the EICAS to ensure that it receives both the LOW FUEL and FUEL CONFIG discrete signals from the fuel quantity processor unit, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–28–0121, dated August 18, 2010; or Boeing Special Attention Service Bulletin 767–28–0106, dated August 25, 2010; as applicable. Repeat the test thereafter at intervals not to exceed 100 flight hours.

Corrective Actions If Necessary

(h) If any test required by paragraph (g) of this AD fails, before further flight, troubleshoot to find any wire faults, and damaged equipment (including bent connector pins), in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–28–0121, dated August 18, 2010; or Boeing Special Attention Service Bulletin 767–28–0106, dated August 25, 2010; as applicable.

(i) If, during any troubleshooting required by paragraph (h) of this AD, any wire fault or damaged equipment (including bent connector pins) is found, before further flight, do the applicable actions specified in paragraph (i)(1) or (i)(2) of this AD.

(1) For airplanes identified in Boeing Special Attention Service Bulletin 757–28–0121, dated August 18, 2010: Repair or replace affected wires and equipment (including bent connector pins), in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–28–0121, dated August 18, 2010.

(2) For airplanes identified in Boeing Special Attention Service Bulletin 767–28–0106, dated August 25, 2010: Do corrective actions using a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Note 1: Guidance on doing corrective actions can be found in Chapter 28, Subject 28–41–00, Section July, of the Boeing 767 Fault Isolation Manual (FIM).

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(k) For more information about this AD, contact Tak Kobayashi, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6499; fax (425) 917–6590; e-mail *takahisa.kobayashi@faa.gov.*

Material Incorporated by Reference

(l) You must use Boeing Special Attention Service Bulletin 757–28–0121, dated August 18, 2010; or Boeing Special Attention Service Bulletin 767–28–0106, dated August 25, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on October 20, 2010.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–27610 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1055; Directorate Identifier 2010–NE–35–AD; Amendment 39–16498; AD 2010–23–09]

RIN 2120–AA64

Airworthiness Directives; Austro Engine GmbH Model E4 Diesel Piston Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

Several power loss events have been reported, due to rail pressure control failures. Analyses have shown that high pressure (HP) fuel pumps failed as a result of pressure oscillations in the fuel supply line.

We are issuing this AD to prevent engine power loss or in-flight shutdown, which could result in loss of control of the airplane.

DATES: This AD becomes effective November 22, 2010.

We must receive comments on this AD by December 6, 2010.

The Director of the Federal Register approved the incorporation by reference of Austro Engine GmbH Work Instruction No. WI–MSB–E4–009, dated October 7, 2010, listed in the AD as of November 22, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0206–E, dated October 8, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Several power loss events have been reported, due to rail pressure control failures. Analyses have shown that high pressure (HP) fuel pumps failed as a result of pressure oscillations in the fuel supply line.

Frequent inspections of the fuel pressure supply for excessive oscillations are required to determine if high-pressure fuel pumps have been exposed to damaging pressure oscillations. Pumps that have been exposed require replacement before further flight. We are issuing this AD to prevent engine power loss or in-flight shutdown, which could result in loss of control of the airplane.

Relevant Service Information

Austro Engine GmbH has issued Work Instruction No. WI–MSB–E4–009, dated October 7, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of Austria and is approved for operation in the United States. Pursuant to our bilateral agreement with Austria, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires initial and repetitive inspections of the fuel pressure supply for excessive oscillations and replacement before further flight of the high-pressure fuel pump if the fuel pressure supply oscillations are excessive.

Interim Action

We consider this AD interim action.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short compliance time of within 10 flight hours, in the AD. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1055; Directorate Identifier 2010–NE–35–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–09 Austro Engine GmbH: Amendment 39–16498; Docket No. FAA–2010–1055; Directorate Identifier 2010–NE–35–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 22, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Austro Engine GmbH model E4 diesel piston engines. These engines are installed on, but not limited to, Diamond Aircraft Industries DA 40 NG and DA 42 NG airplanes.

Reason

(d) Several power loss events have been reported, due to rail pressure control failures. Analyses have shown that high pressure (HP) fuel pumps failed as a result of pressure oscillations in the fuel supply line.

We are issuing this AD to prevent engine power loss or in-flight shutdown, which could result in loss of control of the airplane.

Actions and Compliance

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

(1) Inspect the fuel pressure supply for excessive oscillations using the inspection schedule in Table 1 of this AD.

TABLE 1—INSPECTION SCHEDULE

Accumulated time-since-new:	Compliance time:
45 flight hours or more, on the effective date of this AD.	Within 10 flight hours after the effective date of this AD.
Fewer than 45 flight hours, on the effective date of this AD.	At the next scheduled 50 flight hour inspection.
Repetitive inspections.	At each 50 flight-hour scheduled inspection.

(2) Replace the high-pressure fuel pump before further flight with a serviceable high-pressure fuel pump if the oscillations exceed 300mV (750hPa).

(3) Use Austro Engine GmbH Work Instruction No. WI–MSB–E4–009, dated October 7, 2010, to do the inspections.

FAA AD Differences

(f) None.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0206–E, dated October 8, 2010, and Austro Engine GmbH Mandatory Service Bulletin No. MSB–E4–009, dated October 7, 2010, for related information. Contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A–2700 Weiner Neustadt, Austria, telephone: +43 2622 23000; fax: +43 2622 23000–2711, or go to: *http://www.austroengine.at,* for a copy of this service bulletin.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Austro Engine GmbH Work Instruction No. WI–MSB–E4–009, dated October 7, 2010, to do the inspections required by this AD.

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

(2) For service information identified in this AD, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A–2700 Weiner Neustadt, Austria, *telephone:* +43 2622 23000; *fax:* +43 2622 23000–2711, or go to: *http://www.austroengine.at.*

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

Issued in Burlington, Massachusetts, on October 27, 2010.

Karen M. Grant,

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

[FR Doc. 2010–27609 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0279; Directorate Identifier 2009–NM–148–AD; Amendment 39–16496; AD 2010–23–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

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

ACTION: Final rule.

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

Surface defects were visually detected on the rudder of one A319 and one A321 in-service aeroplane.

Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were a result of de-bonding between the skin and honeycomb core.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

* * * * *

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

DATES: This AD becomes effective December 10, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 10, 2010.

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA,

1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 2, 2010 (75 FR 16689). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Surface defects were visually detected on the rudder of one A319 and one A321 in-service aeroplane.
>
> Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were a result of de-bonding between the skin and honeycomb core.
>
> An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.
>
> This AD requires inspections of specific areas and, when necessary, the application of corrective actions for those rudders where production reworks have been identified.

Inspections include vacuum loss inspections for de-bonding of the rudders in reinforced areas and other areas (splice/lower rib/upper edge/leading edge/other specified locations), and elasticity laminate checks for de-bonding of the rudders in the trailing edge area and other areas (splice/lower rib/upper edge/leading edge/other specified locations). Corrective actions include contacting Airbus for further instruction and doing the repair.

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

Comments

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

Request To Clarify Additional Work in Paragraph (k) of the Proposed AD

Airbus requested that we clarify in paragraph (k) of the proposed AD that there is additional work for operators to comply with, i.e., in Airbus All Operators Telex (AOT) A320–55A1038, Revision 02, dated September 28, 2009. Airbus explained that there is an additional ultrasonic inspection for rudders on which a temporary vacuum loss hole restoration with resin or a permanent vacuum loss hole restoration has been performed previously in the reinforced area.

We agree that additional work is included in Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009, which is referenced in the NPRM as the appropriate source of service information. However, the additional work specified in Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009, is not required by this final rule. Therefore, we have revised paragraphs (g) and (h) of the final rule to allow operators to perform the required actions of this AD in accordance with Airbus AOT A320–55A1038, Revision 01, dated June 10, 2009; or Revision 02, dated September 28, 2009. Also, we have revised paragraph (k) of this AD by removing reference to Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009, to clarify that only the additional areas specified in Airbus AOT A320–55A1038, Revision 01, dated June 10, 2009, must be inspected. We might consider further rulemaking to address the additional work specified in Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009.

Request To Include Alternative Contact Address for Positive Findings

Airbus requested that we include the Airbus Technical Aircraft on Ground (AOG) Center (AIRTAC) as a contact to report positive findings from the inspections in paragraphs (g) and (h) of the NPRM.

We agree to include the AIRTAC as a contact and have revised paragraph (j) of the final rule accordingly.

Clarification of Paragraph (l) of This AD

We have clarified the statement "unless the rudder is in compliance with this AD" in paragraph (l) of this AD by specifying that applicable inspections in paragraphs (g) or (h) of this AD must be done and applicable actions in paragraph (i) of this AD must be done.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 155 products of U.S. registry. We also estimate that it will take about 11 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $144,925, or $935 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–23–07 Airbus: Amendment 39–16496. Docket No. FAA–2010–0279; Directorate Identifier 2009–NM–148–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 10, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category, all manufacturer serial numbers (S/Ns), if equipped with carbon fiber reinforced plastic rudders having part numbers (P/Ns) and S/Ns as listed in Table 1 of this AD.

TABLE 1—RUDDER PART NUMBER AND AFFECTED RUDDER SERIAL NUMBER

Rudder P/N	Affected rudder S/N
D554 71000 010 00	TS–1069
D554 71000 010 00	TS–1090
D554 71000 012 00	TS–1227
D554 71000 014 00	TS–1350
D554 71000 014 00	TS–1366
D554 71000 014 00	TS–1371
D554 71000 014 00	TS–1383
D554 71000 014 00	TS–1387
D554 71000 016 00	TS–1412
D554 71000 018 00	TS–1443
D554 71000 018 00	TS–1444
D554 71000 018 00	TS–1468
D554 71000 020 00	TS–1480
D554 71000 020 00	TS–1491
D554 71000 020 00	TS–1495
D554 71000 020 00	TS–1498
D554 71000 020 00	TS–1499
D554 71000 020 00	TS–1500
D554 71000 020 00	TS–1505
D554 71000 020 00	TS–1506
D554 71000 020 00	TS–1507
D554 71000 020 00	TS–1509
D554 71000 020 00	TS–1515
D554 71000 020 00	TS–1528
D554 71000 020 00	TS–1530
D554 71000 020 00	TS–1532
D554 71000 020 00	TS–1535
D554 71000 020 00	TS–1536
D554 71000 020 00	TS–1538
D554 71000 000 00	TS–1537
D554 71001 00 000	TS–1540
D554 71001 000 00	TS–1541
D554 71001 000 00	TS–1543
D554 71001 000 00	TS–1548
D554 71001 000 00	TS–1549
D554 71001 000 00	TS–1551
D554 71001 000 00	TS–1554
D554 71001 000 00	TS–1555
D554 71001 000 00	TS–1556
D554 71001 000 00	TS–1557
D554 71001 000 00	TS–1559
D554 71001 000 00	TS–1562
D554 71001 000 00	TS–1563
D554 71001 000 00	TS–1564
D554 71001 000 00	TS–1565
D554 71001 000 00	TS–1566
D554 71001 000 00	TS–1567
D554 71001 000 00	TS–1568
D554 71001 000 00	TS–1569
D554 71001 000 00	TS–1570
D554 71001 000 00	TS–1573
D554 71001 000 00	TS–1575
D554 71001 000 00	TS–1578
D554 71001 000 00	TS–1579
D554 71001 000 00	TS–1580
D554 71001 000 00	TS–1581
D554 71001 000 00	TS–1582
D554 71001 000 00	TS-1584
D554 71001 000 00	TS–1593
D554 71001 000 00	TS–1594
D554 71001 000 00	TS–1596
D554 71001 000 00	TS–1599
D554 71001 000 00	TS–1603
D554 71001 000 00	TS–1609
D554 71001 000 00	TS–1621
D554 71001 000 00	TS–1626
D554 71001 000 00	TS–1627
D554 71001 000 00	TS–1635
D554 71001 000 00	TS–1637
D554 71002 000 00	TS–2306

TABLE 1—RUDDER PART NUMBER AND AFFECTED RUDDER SERIAL NUMBER—Continued

Rudder P/N	Affected rudder S/N
D554 71002 000 00 0001	TS–2003
D554 71002 000 00 0001	TS–2005
D554 71002 000 00 0001	TS–2013
D554 71002 000 00 0001	TS–2016
D554 71002 000 00 0001	TS–2019
D554 71002 000 00 0001	TS–2020
D554 71002 000 00 0001	TS–2022
D554 71002 000 00 0001	TS–2024
D554 71002 000 00 0001	TS–2026
D554 71002 000 00 0001	TS–2031
D554 71002 000 00 0001	TS–2033
D554 71002 000 00 0001	TS–2043
D554 71002 000 00 0001	TS–2047
D554 71002 000 00 0001	TS–2048
D554 71002 000 00 0001	TS–2054
D554 71002 000 00 0001	TS–2058
D554 71002 000 00 0001	TS–2059
D554 71002 000 00 0001	TS–2064
D554 71002 000 00 0001	TS–Z072
D554 71002 000 00 0001	TS–2075
D554 71002 000 00 0001	TS–2076
D554 71002 000 00 0001	TS–2079
D554 71002 000 00 0001	TS–2083
D554 71002 000 00 0001	TS–2089
D554 71002 000 00 0002	TS–2090
D554 71002 000 00 0002	TS–2095
D554 71002 000 00 0002	TS–2103
D554 71002 000 00 0002	TS–2116
D55471002 000 00 0002	TS–2122
D554 71002 000 00 0002	TS–2133
D554 71002 000 00 0002	TS–2142
D554 71002 000 00 0002	TS–2147
D554 71002 000 00 0002	TS–2157
D554 71002 000 00 0002	TS–2158
D554 71002 000 00 0002	TS–2162
D554 71002 000 00 0002	TS–2167
D554 71002 000 00 0002	TS–2174
D554 71002 000 00 0002	TS–2176
D554 71002 000 00 0002	TS–2181
D554 71002 000 00 0002	TS–2189
D554 71002 000 00 0002	TS–2191
D554 71002 000 00 0002	TS–2203
D554 71002 000 00 0002	TS–2205
D554 71002 000 00 0002	TS–2207
D554 71002 000 00 0002	TS–2224
D554 71002 000 00 0002	TS–2229
D554 71002 000 00 0002	TS–2233
D554 71002 000 00 0002	TS–2241
D554 71002 000 00 0002	TS–2246
D554 71002 000 00 0002	TS–2249
D554 71002 000 00 0002	TS–2270
D554 71002 000 00 0002	TS–2275
D554 71002 000 00 0002	TS–2289
D554 71002 000 00 0002	TS–2290
D554 71002 000 00 0002	TS–2294
D554 71002 000 00 0002	TS–2309
D554 71002 000 00 0002	TS–2347
D554 71002 000 00 0002	TS–2348
D554 71002 000 00 0002	TS–2349
D554 71002 000 00 0002	TS–2357
D554 71002 000 00 0002	TS–2361
D554 71002 000 00 0002	TS–2380
D554 71002 000 00 0002	TS–2383
D554 71002 000 00 0002	TS–2390
D554 71002 000 00 0002	TS–2394
D554 71002 000 00 0002	TS–2396
D554 71002 000 00 0002	TS–2401
D554 71002 000 00 0002	TS–2406
D554 71002 000 00 0002	TS–2461

TABLE 1—RUDDER PART NUMBER AND AFFECTED RUDDER SERIAL NUMBER—Continued

Rudder P/N	Affected rudder S/N
D554 71002 000 00 0002	TS–2468
D554 71002 000 00 0002	TS–2516
D554 71002 000 00 0002	TS–2537
D554 71002 000 00 0002	TS–2543
D554 71002 000 00 0002	TS–2546
D554 71002 000 00 0002	TS–2619
D554 71002 000 00 0002	TS–2684
D554 71002 000 00 0003	TS–2752
D554 71002 000 00 0003	TS–2869
D554 71002 000 00 0003	TS–2876
D554 71002 000 00 0003	TS–2970
D554 11002 000 00 0003	TS–2971
D554 71002 000 00 0003	TS–2987
D554 11004 000 00 0000	TS–3083
D554 71004 000 00 0000	TS–3197

Note 1: Only rudder P/N D554 71000 010 00 having affected rudder S/N TS–1069 and TS–1090 and rudder P/N D554 71000 012 00 having affected rudder S/N TS–1227, have a core density of 24 kilogram (kg)/meters cubed (m^3).

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

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

Surface defects were visually detected on the rudder of one A319 and one A321 in-service aeroplane.

Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the defects were a result of de-bonding between the skin and honeycomb core.

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

This AD requires inspections of specific areas and, when necessary, the application of corrective actions for those rudders where production reworks have been identified.

Inspections include vacuum loss inspections for de-bonding of the rudders in reinforced areas and other areas (splice/lower rib/upper edge/leading edge/other specified locations), and elasticity laminate checks for de-bonding of the rudders in the trailing edge area and other areas (splice/lower rib/upper edge/leading edge/other specified locations). Corrective actions include contacting Airbus for further instruction and doing the repair.

Compliance

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

Actions

(g) For rudders with a honeycomb core density of 24 kg/m^3 (rudder P/N D554 71000 010 00 having affected rudder S/Ns TS–1069 and TS–1090 and rudder P/N D554 71000 012 00 having affected rudder S/N TS–1227), do the actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, in accordance with Airbus All Operators Telex (AOT) A320–55A1038, Revision 01, dated June 10, 2009; or Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009; for the locations defined in the AOT.

(1) Within 200 days after the effective date of this AD, perform a vacuum loss inspection on the rudder reinforced area.

(2) Within 20 months after the effective date of this AD, perform an elasticity laminate checker inspection on the rudder trailing edge area. Repeat the inspection two times, at intervals not to exceed 4,500 flight cycles but not sooner than 4,000 flight cycles after the last inspection.

(3) Within 200 days after the effective date of this AD, perform an elasticity laminate checker inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Repeat the inspection at intervals not to exceed 1,500 flight cycles or 200 days, whichever comes first.

(4) Within 20 months after the effective date of this AD, perform a vacuum loss inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Accomplishment of the action specified in paragraph (g)(4) of this AD terminates the requirements of paragraph (g)(3) of this AD.

(h) For rudders that do not have a honeycomb core density of 24 kg/m^3 (all rudders identified in Table 1 of this AD, except: Rudder P/N D554 71000 010 00 having affected rudder S/Ns TS–1069 and TS–1090 and rudder P/N D554 71000 012 00 having affected rudder S/N TS–1227), do the actions specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, in accordance with Airbus AOT A320–55A1038, Revision 01, dated June 10, 2009; or Airbus AOT A320–55A1038, Revision 02, dated September 28, 2009; for the locations defined in the AOT. For this AD, "reference date" is defined as the effective date of this AD or the date when the rudder will accumulate 20,000 total flight cycles from its first installation on an airplane, whichever occurs later.

(1) Within 200 days after the reference date, perform a vacuum loss inspection on the rudder reinforced area.

(2) Within 20 months after the reference date, perform an elasticity laminate checker inspection on the rudder trailing edge area. Repeat the inspection two times at intervals not to exceed 4,500 flight cycles but not sooner than 4,000 flight cycles after the last inspection.

(3) Within 200 days after the reference date, perform an elasticity laminate checker inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Repeat the inspection at intervals not to exceed 1,500 flight cycles or 200 days, whichever comes first.

(4) Within 20 months after the reference date, perform a vacuum loss inspection of the other areas (splice/lower rib/upper edge/leading edge/other specified locations). Accomplishment of the actions specified in this paragraph terminates the requirements of paragraph (h)(3) of this AD.

(i) In case of de-bonding found during any inspection required by paragraph (g) or (h) of this AD, before further flight, contact Airbus for further instructions and apply the associated instructions and corrective actions in accordance with the approved data provided.

(j) At the applicable time specified in paragraph (j)(1) or (j)(2) of this AD, submit a report of the findings (both positive and negative), of each inspection required by paragraphs (g) and (h) of this AD. The report must include the inspection results, as specified in Airbus Technical Disposition TD/K4/S2/27086/2009, Issue E, dated September 17, 2009. For positive findings, submit the report to either the Manager, Seer1/Seer2/Seer3 Customer Services; fax +33 (0)5 61 93 28 73; e-mail *region1.structurerepairsupport@airbus.com, region2.structurerepairsupport@airbus.com,* or *region3.structurerepairsupport@airbus.com,* or AIRTAC (Airbus Technical AOG Center) Customer Services; telephone +33 (0)5 61 93 34 00; fax +33 (0)5 61 93 35 00; e-mail *airtac@airbus.com.* For negative findings, submit the report to Nicolas Seynaeve, Sees1, Customer Services; telephone +33 (0)5 61 93 34 38; fax +33 (0)5 61 93 36 14; e-mail *nicolas.seynaeve@airbus.com.*

(1) For any inspection done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) For any inspection done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) All rudders that have passed the inspection specified in paragraphs (g)(1), (g)(2), (g)(3), (g)(4), (h)(1), (h)(2), (h)(3), and (h)(4) of this AD before the effective date of this AD, in accordance with Airbus AOT A320–55A1038, dated April 22, 2009; or Airbus Technical Disposition TD/K4/S2/27051/2009, Issue B, dated February 25, 2009; are compliant with this AD only for the areas inspected. Additional areas defined in Section 0, "Reason for Revision," of Airbus AOT A320–55A1038, Revision 01, dated June 10, 2009, must be inspected as specified in paragraph (g) or (h) of this AD. For all areas, the repetitive inspections required by paragraph (g) or (h) of this AD remain applicable.

(l) After the effective date of this AD, no rudder listed in Table 1 of this AD may be installed on any airplane, unless the rudder is inspected in accordance with paragraph (g) or (h) of this AD, as applicable, and all applicable actions specified in paragraph (i) of this AD are done.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International

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

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

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

Related Information

(n) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0141, dated July 2, 2009, and the service information identified in Table 2 of this AD, for related information.

TABLE 2—AIRBUS SERVICE INFORMATION

Document	Revision/issue	Date
Airbus All Operators Telex A320–55A1038	Revision 01	June 10, 2009.
Airbus All Operators Telex A320–55A1038	Revision 02	September 28, 2009.
Airbus Technical Disposition TD/K4/S2/27086/2009	Issue E	September 17, 2009.

Material Incorporated by Reference

(o) You must use the service information contained in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Document	Revision/issue	Date
Airbus All Operators Telex A320–55A1038*	Revision 01	June 10, 2009.
Airbus All Operators Telex A320–55A1038*	Revision 02	September 28, 2009.
Airbus Technical Disposition TD/K4/S2/27086/2009	Issue E	September 17, 2009.

(* The first page of these documents contain the document number, revision level, and date; no other pages contain this information.)

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

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

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

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

Issued in Renton, Washington, on October 26, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–27614 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0640; Directorate Identifier 2009–NM–142–AD; Amendment 39–16494; AD 2010–23–05]

RIN 2120–AA64

Airworthiness Directives; EADS CASA (Type Certificate Previously Held by Construcciones Aeronauticas, S.A.) Model CN–235, CN–235–100, CN–235–200, and CN–235–300 Airplanes, and Model C–295 Airplanes

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

ACTION: Final rule.

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

Prompted by [an] accident * * *the FAA published SFAR 88 (Special Federal Aviation Regulation 88) * * *.

* * * * *

Fuel Airworthiness Limitations arising from the required systems safety analysis are items that have been shown to have failure mode(s) associated with an 'unsafe condition' * * *. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the corrective actions(s) developed by the TC [type certificate] holder.

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

DATES: This AD becomes effective December 10, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 10, 2010.

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

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 29, 2010 (75 FR 37339), and proposed to supersede AD 2008–09–22, Amendment 39–15503 (73 FR 23939, May 1, 2008). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Prompted by [an] accident * * *, the FAA published SFAR 88 (Special Federal Aviation Regulation 88). Subsequently, the Joint Aviation Authorities (JAA) recommended the application of a similar regulation to the National Aviation Authorities (NAA) of its member countries. Under this regulation, all holders of type certificates for passenger transport aeroplanes with either a passenger capacity of 30 or more, or a payload capacity of 3 402 kg (7 500 lbs) or more, which have received their certification since 01 January 1958, are required to conduct a design review against explosion risks.
>
> In August 2005, EASA published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO), that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results.
>
> Fuel Airworthiness Limitations arising from the required systems safety analysis are items that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in the FAA memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the corrective action(s) developed by the TC [type certificate] holder.
>
> To address these potential unsafe conditions, EASA issued AD 2007–0007, mandating the Fuel System Airworthiness Limitations, comprising maintenance and inspection tasks and Critical Design Configuration Control Limitations (CDCCL) that were, at that moment, defined in issue C of EADS–CASA document DT–0–C00–05001. That document has now been revised and updated to issue D.
>
> For the reasons described above, this EASA AD retains the requirements of AD 2007–0007, which is superseded [and corresponds to FAA AD 2008–09–22], and requires the implementation of the revised Fuel Airworthiness Limitations contained in issue D of EADS–CASA document DT–0–C00–05001 and accomplishment of related modifications.

The required actions are retaining the limitations for fuel tank systems, adding thermal insulation to the air condition compression system, applying double bonding connection on fuel tubes, and modifying the separation between the center wing electrical harness and fuel tubes. The application of double bonding connections on fuel tubes includes doing general visual inspections for damage of the inside of the fuel tanks, and corrective actions if necessary. The corrective actions include contacting EADS CASA for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

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

Comments

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

Corrections to Table 1 of This AD

In the NPRM, the reference to Eaton Component Maintenance Manual (CMM) with Illustrated Parts List 28–10–63, Revision 003, dated June 20, 2006, was incorrectly published as Eaton CMM with Illustrated Parts List 28–0–63. This final rule refers to Eaton CMM with Illustrated Parts List 28–10–63.

We have changed Table 1 of this AD to fix a typographical error, which is specified in EADS CASA CMM with Illustrated Parts List 28–21–12, Revision 003, dated June 15, 2007. The title page of that document specifies "Revision 002." The correct revision level is "Revision 003."

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 8 products of U.S. registry.

The actions that are required by AD 2008–09–22 and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it will take about 90 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $61,200, or $7,650 per product, depending on airplane configuration.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15503 (73 FR 23939, May 1, 2008) and adding the following new AD:

2010–23–05 EADS CASA (Type Certificate Previously Held by Construcciones Aeronauticas, S.A.): Amendment 39–16494. Docket No. FAA–2010–0640; Directorate Identifier 2009–NM–142–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 10, 2010.

Affected ADs

(b) This AD supersedes AD 2008–09–22, Amendment 39–15503.

Applicability

(c) This AD applies to EADS CASA (Type Certificate previously held by Construcciones Aeronauticas, S.A.) Model CN–235, CN–235–100, CN–235–200, and CN–235–300 airplanes, and Model C–295 airplanes, all serial numbers; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

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

Prompted by [an] accident * * *, the FAA published SFAR 88 (Special Federal Aviation Regulation 88). Subsequently, the Joint Aviation Authorities (JAA) recommended the application of a similar regulation to the National Aviation Authorities (NAA) of its member countries. Under this regulation, all holders of type certificates for passenger transport aeroplanes with either a passenger capacity of 30 or more, or a payload capacity of 3 402 kg (7 500 lbs) or more, which have received their certification since 01 January 1958, are required to conduct a design review against explosion risks.

In August 2005, EASA [European Aviation Safety Agency] published a policy statement on the process for developing instructions for maintenance and inspection of Fuel Tank System ignition source prevention (EASA D 2005/CPRO), that also included the EASA expectations with regard to compliance times of the corrective actions on the unsafe and the not unsafe part of the harmonised design review results.

Fuel Airworthiness Limitations arising from the required systems safety analysis are items that have been shown to have failure mode(s) associated with an 'unsafe condition' as defined in the FAA memo 2003–112–15 'SFAR 88—Mandatory Action Decision Criteria'. These are identified in Failure Conditions for which an unacceptable probability of ignition risk could exist if specific tasks and/or practices are not performed in accordance with the corrective action(s) developed by the TC [type certificate] holder.

To address these potential unsafe conditions, EASA issued AD 2007–0007, mandating the Fuel System Airworthiness Limitations, comprising maintenance and inspection tasks and Critical Design Configuration Control Limitations (CDCCL) that were, at that moment, defined in issue C of EADS–CASA document DT–0–C00–05001. That document has now been revised and updated to issue D.

For the reasons described above, this EASA AD retains the requirements of AD 2007–0007, which is superseded [and corresponds to FAA AD 2008–09–22], and requires the implementation of the revised Fuel Airworthiness Limitations contained in issue D of EADS–CASA document DT–0–C00–05001 and accomplishment of related modifications.

The required actions are retaining the limitations for fuel tank systems, adding thermal insulation to the air condition compression system, applying double bonding connection on fuel tubes, and modifying the separation between the center wing electrical harness and fuel tubes. The application of double bonding connections on fuel tubes includes doing general visual inspections for damage of the inside of the fuel tanks, and corrective actions if necessary. The corrective actions include contacting EADS CASA for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Compliance

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

Restatement of Requirements of AD 2008–09–22, With Revised Paragraph Formatting

(g) Do the following actions.

(1) Within 6 months after June 5, 2008 (the effective date of AD 2008–09–22), do the revisions specified in (g)(1)(i) or (g)(1)(ii) of this AD.

(i) Revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness to include the CDCCL data using a method approved in accordance with the procedures specified in paragraph (i)(1) of this AD.

(ii) Revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating the information in EADS CASA CN–235/C–295 Technical Document DT–0–C00–05001, Issue C, dated October 2006. Where this EADS CASA technical document refers to an EADS CASA component maintenance manual (CMM), use the applicable CMM specified in Table 1 of this AD.

TABLE 1—APPLICABLE CMMS

CDCCL number	CDCCL description	CMM	Revision	Date
8	Fuel pumps	Parker Hannifin CMM with Illustrated Parts List 28–22–12 (replaces CM 1C12–34).	5	January 10, 2008.
8	Centrifugal fuel boost pump	Parker Hannifin CMM with Illustrated Parts List CM 1C7–20, –21 (replaces CMM RR54170).	B	November 20, 2006.
9	Low level sensor	EADS CASA CMM with Illustrated Parts List 28–21–12.	003	June 15, 2007.
10	3/4″ shutoff motorized valve	Eaton CMM with Illustrated Parts List 28–20–81	2	June 20, 2006.

TABLE 1—APPLICABLE CMMS—Continued

CDCCL number	CDCCL description	CMM	Revision	Date
11	2″ motorized spherical plug pressure relief valve.	Eaton CMM with Illustrated Parts List 28–10–63	3	June 20, 2006.
12	Signal conditioner	Gull CMM with Illustrated Parts List 28–40–61	3	June 28, 2007.
13	Fuel control unit	Zodiac Intertechnique CMM with Illustrated Parts List 28–41–05.	3	September 25, 2006.

Note 1: Table 1 of this AD does not include CMMs 28–22–15, CE 400150–E01, and C 17MQ0020–005SE, which are listed in EADS CASA CN–235/C–295 Technical Document DT–0–C00–05001, Issue C, dated October 2006. These CMM document numbers no longer apply. In addition, CMM document number 28–21–81 in EADS CASA CN–235/C–295 Technical Document DT–0–C00–05001, Issue C, dated October 2006, should be CMM document number 28–20–81.

(2) After accomplishing the actions specified in paragraph (g)(1) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

New Requirements of This AD

(h) Do the following actions.

(1) Within 3 months after the effective date of this AD, revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating the information in EADS CASA CN–235/C–295 Technical Document DT–0–C00–05001, Issue D, dated October 2008. Where this EADS CASA technical document refers to an EADS CASA CMM, use the applicable CMM specified in Table 1 of this AD. Doing this revision terminates the requirements specified in paragraph (g) of this AD.

Note 2: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the fuel airworthiness limitations, as required by paragraphs (g) and (h) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the fuel airworthiness limitations have been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

(2) After accomplishing the actions specified in paragraph (h)(1) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (i)(1) of this AD.

(3) Within 6 months after the effective date of this AD, accomplish the modifications specified in paragraphs (h)(3)(i), (h)(3)(ii), and (h)(3)(iii) of this AD, as applicable.

(i) For Model CN–235, CN–235–200, and CN–235–300 airplanes having serial numbers identified in EADS CASA Service Bulletin SB–235–21–18, dated August 2, 2007: Add thermal insulation to the air condition compression system, in accordance with the Accomplishment Instructions of EADS CASA Service Bulletin SB–235–21–18, dated August 2, 2007.

(ii) For Model CN–235, CN–235–200, and CN–235–300 airplanes having serial numbers identified in EADS CASA Service Bulletin SB–235–28–18, dated August 2, 2007: Apply double bonding connections on fuel tubes and do general visual inspections for damage inside of the tank, in accordance with the Accomplishment Instructions of EADS CASA Service Bulletin SB–235–28–18, dated August 2, 2007. If any damage is found inside the tank, before further flight, contact EADS CASA for repair instructions and do the repair.

(iii) For Model CN–235, CN–235–200, and CN–235–300 airplanes having serial numbers identified in EADS CASA Service Bulletin SB–235–24–20, dated August 2, 2007: Modify the separation between the center wing electrical harnesses and fuel tubes, in accordance with the Accomplishment Instructions of EADS CASA Service Bulletin SB–235–24–20, dated August 2, 2007.

FAA AD Difference

Note 3: This AD differs from the MCAI and/or service information as follows:

(1) The European Aviation Safety Agency (EASA) AD 2009–0146, dated July 3, 2009, inadvertently refers to the incorrect service bulletins. For applying double bonding connections on fuel tubes and doing general visual inspections for damage inside the tank, we refer to EADS CASA Service Bulletin SB–235–28–18, dated August 2, 2007. For modifying the separation between the center wing electrical harnesses and fuel tubes, we refer to EADS CASA Service Bulletin SB–235–24–20, dated August 2, 2007.

(2) The EASA AD 2009–0146, dated July 3, 2009; and EADS CASA Service Bulletin SB–235–28–18, dated August 2, 2007; do not specify corrective actions if any damage is found inside the tank. If any damage is found inside the tank, this AD requires contacting EADS CASA for repair instructions and doing the repair.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(j) Refer to MCAI EASA Airworthiness Directive 2009–0146, dated July 3, 2009, the CMMs identified in Table 1 of this AD, and the service information identified in Table 2 of this AD, for related information.

TABLE 2—SERVICE INFORMATION

Document	Issue	Date
EADS CASA Service Bulletin SB–235–21–18	Original	August 2, 2007.
EADS CASA Service Bulletin SB–235–24–20	Original	August 2, 2007.
EADS CASA Service Bulletin SB–235–28–18	Original	August 2, 2007.
EADS CASA CN–235/C–295 Technical Document DT-0-C00-05001	Issue C	October 2006.

TABLE 2—SERVICE INFORMATION—Continued

Document	Issue	Date
EADS CASA CN–235/C–295 Technical Document, DT–0–C00–05001	Issue D	October 2008.

Material Incorporated by Reference

(k) You must use the service information contained in Table 3 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact EADS–CASA, Military Transport Aircraft Division (MTAD), Integrated Customer Services (ICS), Technical Services, Avenida de Aragón 404, 28022 Madrid, Spain; telephone +34 91 585 55 84; fax +34 91 585 55 05; e-mail *MTA.TechnicalService@casa.eads.net;* Internet *http://www.eads.net.*

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

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

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Document	Revision/issue	Date
EADS CASA CMM with Illustrated Parts List 28–21–12	Revision 003	June 15, 2007.
EADS CASA CN–235/C–295 Technical Document DT–0–C00–05001	Issue C	October 2006.
EADS CASA CN–235/C–295 Technical Document DT–0–C00–05001	Issue D	October 2008.
EADS CASA Service Bulletin SB–235–21–18	Original	August 2, 2007.
EADS CASA Service Bulletin SB–235–24–20	Original	August 2, 2007.
EADS CASA Service Bulletin SB–235–28–18	Original	August 2, 2007.
Eaton CMM with Illustrated Parts List 28–10–63	Revision 3	June 20, 2006.
Eaton CMM with Illustrated Parts List 28–20–81	Revision 2	June 20, 2006.
Gull CMM with Illustrated Parts List 28–40–61	Revision 3	June 28, 2007.
Parker Hannifin CMM with Illustrated Parts List 28–22–12	Revision 5	January 10, 2008.
Parker Hannifin CMM with Illustrated Parts List CM 1C7–20, –21	Revision B	November 20, 2006.
Zodiac Intertechnique CMM with Illustrated Parts List 28–41–05	Revision 3	September 25, 2006.

(The title page of EADS CASA CMM with Illustrated Parts List 28–21–12 contains an incorrect revision level; the correct revision level is 003. The issue date of EADS CASA CN–235/C–295 Technical Document DT–0–C00–05001, Issue C; and EADS CASA CN–235/C–295 Technical Document DT–0–C00–05001, Issue D; can only be found on the title page and in the Revisions Record. Certain pages of EADS CASA Service Bulletin SB–235–28–18 have missing or incomplete document numbers and dates; the correct document number and dates for those pages can be found on the first page of that document. The date shown on the List of Effective Pages for Eaton CMM with Illustrated Parts List 28–10–63, and Eaton CMM with Illustrated Parts List 28–20–81, is incorrect; the correct date for that page of those documents is June 20, 2006. The revision level shown on page 7 of Parker Hannifin CMM with Illustrated Parts List CM 1C7–20, –21 (replaces CMM RR54170), is incorrect; the correct revision level for that page is B. The revision level of EADS CASA CN–235/C–295 Technical Document DT–0–C00–05001, Issue C; EADS CASA CN–235/C–295 Technical Document DT–0–C00–05001, Issue D; and Eaton CMM with Illustrated Parts List 28–20–81; is located only in the Record of Revisions for those documents.)

Issued in Renton, Washington, on October 20, 2010.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2009–0022; Amendment No.: 121–350]

RIN 2120–AJ30

Crewmember Requirements When Passengers are Onboard

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Currently, during passenger boarding and deplaning, all flight attendants are required to be on board the airplane. This final rule will allow one required flight attendant to deplane during passenger boarding, to conduct safety-related duties, as long as certain conditions are met. In addition, this rule will allow a pilot or flight engineer not assigned to the flight to substitute for a flight attendant when that flight attendant does not remain within the immediate vicinity of the door through which passengers are boarding. This rule will also allow a reduction of flight attendants remaining on board the airplane during passenger deplaning, as long as certain conditions are met. The FAA has determined that these revisions to current regulations can be made as a result of recent safety enhancements to airplane equipment and procedures. These changes have mitigated the risks to passengers during ground operations that previously required all flight attendants to be on board the airplane during passenger boarding and deplaning.

DATES: These amendments become effective January 4, 2011.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact Nancy Lauck Claussen, Air Transportation Division AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166; facsimile (202) 267–5229, e-mail *Nancy.L.Claussen@faa.gov.* For legal questions concerning this final rule contact Paul G. Greer, Regulations

Division, AGC–200; telephone (202) 267–3073, e-mail *Paul.G.Greer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44701. Under that section, the FAA is charged with promoting safe flight of civil aircraft by prescribing regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority since it prescribes minimum flight attendant requirements during passenger boarding and deplaning.

Background

Current regulations prohibit a flight attendant from stepping off the airplane during passenger boarding and deplaning to perform any duties if the flight attendant is one of the flight attendants required by § 121.391. However, during passenger boarding and deplaning, a flight attendant may need to conduct safety-related duties outside the airplane cabin. The FAA believes that changes to regulations since 1985 have reduced the hazards to passengers during boarding and deplaning. These changes have reduced risks to passengers during these phases of operation by improving requirements for firefighting equipment, increasing the time available to evacuate an airplane, and improving accessibility to exits. Examples include:

- Requiring lavatory smoke detectors, automatic lavatory waste receptacle fire extinguishers, and Halon 1211 extinguishers;
- Improving cabin interior flammability standards to enhance survivability by increasing the time before flashover occurs;
- Improving thermal insulation standards to reduce the risk of fire in inaccessible parts of the airplane cabin and increase the time available for a passenger evacuation; and
- Improving passenger access to Type III (typically overwing) emergency exits.

In addition to these changes in aircraft certification regulatory requirements, the FAA has revised several operational regulations since 1985, which has also reduced the risks to passengers during boarding and deplaning. Prior to 1987, air carriers were not required to screen passengers for the size and amount of carry-on baggage prior to boarding the aircraft. Current carry-on baggage regulations require air carriers to limit the size and amount of carry-on baggage that each passenger may bring onboard the aircraft. This has provided flight attendants with additional tools to manage the handling of carry-on baggage during passenger boarding. In addition, § 121.585, promulgated in 1990, requires an air carrier to assign exit seats to passengers based on a list of exit seat selection criteria and the passenger's ability to perform exit seat functions. Because the majority of passengers in exit seats have been screened to meet exit seat criteria, these considerations lead to exit seat passengers being more likely to initiate "self-help" actions in the event of an emergency during passenger boarding. The changes to FAA operational regulations have also been complemented by Transportation Security Administration (TSA) regulations, which have reduced the risk of a security-related threat during passenger boarding or deplaning even further. All of these changes have mitigated the risks to which passengers are exposed during boarding and deplaning.

Summary of the Notice of Proposed Rulemaking (NPRM)

In January 2009 the FAA issued an NPRM, Crewmember Requirements When Passengers Are Onboard (74 FR 3469; January 21, 2009), that proposed to allow one required flight attendant to deplane during passenger boarding, and conduct safety-related duties, as long as certain conditions were met. In addition, the NPRM would allow a flightcrew member to substitute for a flight attendant when that flight attendant does not remain within 30 feet of the door through which passengers are boarding. The NPRM also proposed to allow a reduction of flight attendants remaining on board the airplane during passenger deplaning, as long as certain conditions were met. The close of the comment period was April 21, 2009.

Passenger Boarding

The NPRM addressed two possible scenarios during boarding that involved a reduction, by one, of the number of flight attendants required for boarding by § 121.391, on an airplane that requires more than one flight attendant. The first scenario was when one required flight attendant stepped off the airplane during boarding to perform safety related duties and remained within 30 feet of the boarding door.

The second scenario was when one required flight attendant did not remain within 30 feet of the boarding door. In this case, the NPRM proposed to allow a qualified flightcrew member, such as a pilot or flight engineer, to substitute in the cabin for one required flight attendant who was not on the airplane when boarding commenced or who was not within 30 feet of the boarding door.

The NPRM proposed that the flightcrew member who substituted for the required flight attendant must be trained and qualified on that aircraft type as a pilot or a flight engineer for that certificate holder. This proposed requirement ensured that the flightcrew member had received emergency and security training that is specific to that aircraft type and that certificate holder.

The NPRM also proposed that the substitute crewmember had to be prepared to conduct his or her duties by having in his or her possession all items required for duty by the air carrier, such as a flight operations or flight attendant manual. The substitute crewmember also had to be identifiable to the passengers as a working "crewmember."

In addition, the certificate holder had to ensure that the substitute crewmember continued to meet the duty and rest requirements of part 121. Therefore, a person substituting for an assigned flight attendant would be considered "on duty" under the proposal.

The NPRM also proposed to require that the certificate holder describe in its manual system additional procedures including:

- The functions to be performed by the substitute flightcrew member and remaining flight attendants in an emergency or situation requiring emergency evacuation. Similar to the requirements found in § 121.397, the certificate holder would have to show that these functions were realistic, could be practically accomplished, and would meet any reasonably anticipated emergency;
- A method to ensure that the substitution of a flightcrew member for a flight attendant during passenger boarding would not interfere with the safe operation of the flight (*e.g.,* interfering with the completion of the flightcrew member's pre-flight duties, *etc.*);
- A method to ensure that the flightcrew member was located in the passenger cabin during the time that person was substituting for the flight attendant;
- A method to ensure that other regulatory safety functions performed by a flight attendant, such as scanning passenger carry-on baggage, handling

issues such as intoxicated or disruptive passengers, verifying the suitability of exit seat passengers, and monitoring the use of child restraint systems, would be accomplished by the flightcrew member and the remaining flight attendants on the airplane; and

• A method to ensure that the substitute flightcrew member was trained in all assigned flight attendant duties.

Passenger Deplaning

In the NPRM, the FAA also proposed to permit a reduction to half the number of flight attendants required by § 121.391, rounded down to the next lower number in the case of a fraction, but never fewer than one, during passenger deplaning provided certain conditions were met. At the time of deplaning, each passenger has already received all required safety information briefings and had an opportunity to review the passenger safety information card and all posted signs and placards. In addition, a crewmember has verified the suitability of exit seat passengers, and the exit seat passengers have had an opportunity to ask questions about their exit seat responsibilities. These passengers are better prepared to assist themselves in an emergency evacuation than those passengers just boarding an airplane. During deplaning, passengers are in the process of leaving the airplane through one or more floor-level exits with pre-positioned passenger loading bridges or boarding stairs which lessens the exposure time to the risk of an emergency or a possible evacuation.

Additional Limitations Applicable During Boarding and Deplaning of Passengers

In addition to the specific limitations previously described, the FAA proposed requiring a certificate holder to duplicate ground conditions designed to reduce risks to passengers when a reduced number of flight attendants are on board an airplane as set forth in § 121.393. The proposed conditions required the airplane to be stationary in a level attitude with at least one floor-level exit open and all engines to be shut down, mitigating the risk of an engine torching or overheating. If the specific ground conditions were not met, the certificate holder would not be permitted to reduce the flight attendant crew below the requirements of § 121.391.

Finally, the FAA proposed that the flight attendants remaining on board the airplane be evenly distributed near the floor-level exits. This proposed requirement would ensure that the flight attendants were available to deal more effectively with an emergency evacuation, should the need arise. If only one flight attendant remained on board the airplane during passenger boarding, he or she had to be located in accordance with the air carrier's FAA-approved operating procedures.

Summary of the Final Rule

In the final rule the FAA has retained most of the proposed requirements in the NPRM. The changes are described in this summary.

In the NPRM, the FAA proposed that any flightcrew member trained and qualified on the aircraft type for that certificate holder, including a flightcrew member who was assigned to that same flight, would be permitted to substitute for a flight attendant who left the airplane and did not remain within 30 feet of the boarding door. The FAA received comments that a pilot's ability to provide full time attention to the safe operation of the aircraft would be degraded by adding the additional responsibility of substituting for a flight attendant during passenger boarding. Specifically, commenters noted that this additional responsibility might divert the pilot's attention from performing preflight duties.

Upon further review, the FAA has determined that substituting a flightcrew member assigned to the flight for a required flight attendant may affect the safety of the operation. Therefore, the FAA has amended the final rule to require that the substituting flightcrew member not be assigned to operate that specific flight.

In the NPRM, the FAA proposed that a required flight attendant could step off the airplane to perform safety related duties if that flight attendant remained within 30 feet of the boarding door. The FAA received comments that the proposed limitation of 30 feet was not restrictive enough, was difficult for a flight attendant to discern, and would cause the airline to focus on compliance issues with the 30 foot rule that are not necessarily related to the identified risks of not having a full complement of required flight attendants onboard during passenger boarding or deplaning.

In the final rule, the FAA has revised the proposed requirement that a flight attendant remain within 30 feet of the boarding door. Instead, the FAA is requiring the deplaning flight attendant to remain in the immediate vicinity of the passenger boarding door.

This revision permits a flight attendant to perform safety related duties such as removing a piece of carry-on baggage or using the telephone in the cab of the passenger loading bridge to coordinate with ground personnel regarding compliance with approved exit seat or carry-on baggage programs. It also permits the flight attendant to observe passenger boarding and hear other crewmembers and passengers in the airplane.

The NPRM did not address the emergency training requirements pertaining to evacuation management, evacuation commands, and frequency of performance drills for exit operations for pilots and flight engineers substituting for flight attendants. Current emergency training requirements for these crewmembers are identical. However, the FAA published an NPRM, Qualification, Service and Use of Crewmembers and Aircraft Dispatchers (74 FR 1280; January 12, 2009) that would, if adopted, result in different emergency training requirements for flightcrew members and flight attendants. The NPRM on which this final rule is based did not take this potential difference in emergency training requirements into account.

The FAA considers it essential that certain emergency training requirements for substituting pilots and flight engineers are identical to those of flight attendants, regardless of the content of the adopted final rule based upon the January 12, 2009 NPRM. Accordingly, the FAA has modified the requirements for substituting pilots and flight engineers in this final rule to specifically require that certificate holders ensure that substituting pilots and flight engineers meet the emergency training requirements for flight attendants in evacuation management and evacuation commands, as appropriate, and the frequency of performance drills for exit operations. A substituting pilot or flight engineer therefore would be required to receive training in evacuation management and commands for unplanned land evacuations.

Additionally, in the final rule the FAA has clarified its intent that the minimum number of required flight attendants is based on the provisions of § 121.391 (a) or (b), as appropriate. Proposed § 121.394(a) and (b), however, only referred to § 121.391(a). Accordingly, the FAA has revised § 121.394(a) and (b), to refer to § 121.391.

In § 121.394(a)(2)(vii) of the NPRM the FAA proposed that when a flightcrew member is substituted for a flight attendant the certificate holder must ensure that the time spent by the substituting flightcrew member applies towards daily duty time limits and is considered when determining crewmember rest requirements. In

§ 121.394(d) the FAA has clarified its intent that the time spent by any crewmember conducting passenger boarding or deplaning duties is considered duty time. See Legal Interpretation to Brent Harper, Southwest Airlines, Inflight Standards—Manager, Regulatory Compliance, from Rebecca B. MacPherson, Assistant Chief Counsel, Regulations Division (August 12, 2008).

Disposition of Comments

The FAA received 15 comments on the proposed rule. Six comments were received from airlines (American, Continental, Southwest, Delta, Horizon, and US Airways), two were received from airline trade associations (Air Transport Association (ATA) and the Regional Airline Association (RAA)), two were received from labor organizations (Association of Flight Attendants (AFA) and Air Line Pilots Association (ALPA)), and five comments were received from individuals.

The majority of the comments that the FAA received addressed: (1) The substitution of flightcrew members for flight attendants; (2) the use of a 30 foot limitation to determine minimum crewmember requirements; (3) the duties that may be performed by a flight attendant who has left the aircraft during passenger boarding; and (4) whether the proposed rule provides a level of safety equivalent to current requirements.

Substitution of Flightcrew Members for Flight Attendants

(1) Diverting Flightcrew Members From Pre-Flight Duties

ALPA commented that it was not appropriate for a qualified flightcrew member of the certificate holder to substitute for a flight attendant and that it must take strong exception to the proposal. ALPA noted that with the proposal, as with its comment to *Docket No. FAA 2006–25466, Southwest Airlines Co. Petition for Clarification or Amendment of Exemption 9382,* dated July 28, 2008, during any stop, flightcrew members have defined duties intended to ensure the safety and security of the current flight or the next flight. ALPA stated that frequently, at stops of short duration, the time to accomplish flight crew duties can already be significantly compressed, adding to the need to avoid additional tasks that would be imposed by the proposed rule. ALPA also commented that the proposed rule does not directly address the potential impact of the suggested procedures on the normal activities and duties of the flightcrew member who might be tasked with additional emergency evacuation duties. ALPA further noted that significant operational demands on flightcrew members' attention during preparation for flight provide them far less opportunity to observe unusual events that would be more quickly recognized by a dedicated flight attendant, consequently increasing the response time critical to the successful performance of evacuation duties. ALPA further commented that the additional responsibility of substituting for a flight attendant would also detract from a pilot's ability to provide full time and attention to the safe operation of the aircraft.

Many individual commenters also questioned whether this additional responsibility for pilots might detract from a pilot's ability to attend to the safe operation of the airplane or similarly how a pilot's pre-flight duties might interfere with his or her ability to adequately monitor the boarding of passengers.

One individual commented that a flightcrew member is fully capable under the requirements in the proposed rule to take on the role of substituting for a temporarily absent flight attendant. However, another individual commented that he was unable to comprehend how passenger safety is enhanced when a pilot ceases his or her pre-flight duties by allowing a pilot or flight engineer to substitute for a flight attendant and suggested that a flight attendant should contact the airline to request additional personnel for assistance rather than asking the pilot to stop performing his or her pre- or post-flight duties. This individual further asked for additional justification by the FAA for allowing this change in requirements.

Upon further review, the FAA has determined that this change, as proposed, may affect the safety of the flight. Therefore, the FAA is amending proposed § 121.394(a)(2) to require that the substituting flightcrew member not be assigned to operate that specific flight. This provides a certificate holder with the operational flexibility to substitute a "deadheading" or otherwise available flightcrew member for one flight attendant, provided the other conditions of § 121.394(a)(2) are met, without the potential of interfering with the duties of the flightcrew members who are responsible for the safe operation of that flight.

In addition, in the final rule the FAA is clarifying that a substitute pilot or flight engineer is "substituting" for a required flight attendant under strictly limited conditions and is not "serving" as a required flight attendant. The substitute pilot or flight engineer must meet the requirements of § 121.394, but does not need to meet other flight attendant training and qualification requirements that are inapplicable to passenger boarding.

(2) Emergency Training and Performance Drills for Flightcrew Members and Flight Attendants

The Association of Flight Attendants (AFA) commented that it is imperative that the FAA require that the air carrier ensure that the flightcrew member is trained according to the requirements of § 121.417, Crewmember emergency training. The AFA also noted that the FAA has issued another NPRM, Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers (74 FR 1280; January 12, 2009) that proposes to change the current training regulations. The AFA stated that under the proposed emergency training requirements in that NPRM, flight attendants would need to complete "hands on" performance drills using emergency equipment and procedures every 12 months. AFA noted in contrast, that the proposed frequency of performance drills for flightcrew members in the NPRM will be extended from 24 months to 36 months. AFA commented that, if the requirements in the proposed rule become effective as a final rule, the difference in the frequency of performance drills for flight attendants and flightcrew members will not provide an equivalent level of safety.

The FAA notes that under the current requirements, all crewmembers, including flightcrew members, are required to meet the training requirements of § 121.417, Crewmember emergency training. This training must include specific training in emergency assignments, individual instruction in the location, function, and operation of emergency exits in the emergency modes with the evacuation slide/raft pack attached, instruction in the handling of emergency situations, including evacuation, and emergency drill training in each type of emergency exit in the emergency mode, including the actions and forces required in the deployment of the emergency evacuation slides. In addition, § 121.417 requires each crewmember to have training in emergency assignments and procedures, as appropriate for that crewmember. To substitute for a flight attendant it is necessary for pilots and flight engineers to receive emergency training regarding evacuation management and evacuation commands.

This training will adequately allow them to perform the duties of the flight attendants for whom they are substituting.

Current requirements regarding the frequency of emergency exit operation performance drills for flightcrew members and flight attendants are identical. The FAA recognizes that the frequency of performance drills for flightcrew members and flight attendants as proposed in the NPRM Qualification, Service and Use of Crewmembers and Aircraft Dispatchers, (74 FR 1280; January 12, 2009) are not identical. To ensure that the necessary training in evacuation management, evacuation commands and frequency of performance drills for exit operations for pilots and flight engineers substituting for required flight attendants are identical to those of flight attendants, the FAA is amending the language in the final rule. This language will require that the substitute flightcrew member meet the emergency training requirements for flight attendants in evacuation management and evacuation commands, as appropriate, as well as the frequency of performance drills regarding operation of exits in the normal and emergency modes on that type aircraft.

Use of a 30-Foot Limitation To Determine Minimum Crewmember Requirements

Continental, Delta, US Airways, and ATA requested that the restriction that limits a flight attendant to remain within 30 feet of the aircraft door be changed to permit the flight attendant to remain within the length of the passenger loading bridge. They commented that this change would eliminate the potential for confusion regarding estimation of a 30-foot radius from the aircraft door and also prevent unintentional violations of the regulation caused by an incorrect calculation of this distance. They further commented that because passenger loading bridge phones are not always available and ground staff may not be on board the aircraft during boarding, this change would also facilitate communication with ground staff regarding safety related issues. The commenters stated that this change to the proposed requirements would still ensure that a flight attendant on the passenger loading bridge would be able to assist in an evacuation by directing passengers into the terminal and could, in fact, assist in expeditious egress. American and ATA further suggested that the permitted distance could be increased to 50 feet to account for the use of stairs on wide-body aircraft.

Individuals commented that the 30-foot limitation would keep flight attendants close to the aircraft but ensure that they would be available if they became needed. Another individual commented that the NPRM failed to provide any basis as to why 30 feet is an appropriate distance. Two individuals requested that the final regulation provide justification for the distance the FAA chooses. These individuals further stated that they are unaware of any safety related duties that would require moving more than just a few feet outside the aircraft and that a much smaller distance than 30 feet would be appropriate. These commenters suggested that the FAA change the limitation in the final rule to "the area just outside the boarding door."

The FAA specifically requested comments on the proposed 30-foot limitation. Upon review of the comments, the FAA has determined that the proposed 30-foot limitation is unduly prescriptive. However, the FAA does not believe that a flight attendant should be permitted "to travel the length of the passenger loading bridge." The flight attendant must still be able to maintain situational awareness of the cabin and the passenger boarding process and this may not be possible in the event the passenger loading bridge is long or contains multiple corridors.

Horizon Air commented that the requirement for the flight attendant to remain within 30 feet of the passenger boarding door will be difficult to meet without having boundaries drawn around the aircraft and requested that the FAA consider changing the text of the final rule to state that "the flight attendant shall remain in the surrounding area of the aircraft."

The Regional Airline Association (RAA) supported the intent of this proposal but considered the language of the proposal to be unduly prescriptive and therefore burdensome. The RAA also stated that "the difficulty with the proposed text is that it causes the airline to focus on compliance issues that are not necessarily related to the identified hazard of not having a full complement of required flight attendants onboard during passenger boarding or deplaning."

In the final rule, the FAA is requiring the deplaning flight attendant to remain "within the immediate vicinity of the door through which passengers are boarding." This permits a flight attendant to step into the cab of the loading bridge to remove a piece of carry-on baggage and place it adjacent to the stair to the ramp area or use the telephone, while still permitting the flight attendant to observe passenger boarding and hear other crewmembers and passengers in the airplane. It also establishes appropriate and clear parameters for the flight attendant who steps off the airplane.

The FAA considers the "immediate vicinity" of the boarding door to be the area directly adjacent to the boarding door, the cab of the passenger loading bridge or the bottom of the airstairs (for airplanes equipped with an integrated airstairs). The FAA does not consider the "immediate vicinity" of the boarding door to include that portion of the loading bridge beyond the cab, inside the terminal, at the bottom of loading stairs that are not integrated aircraft equipment, or anywhere on the ramp other than at the bottom of integrated airstairs.

Safety Related Duties That May Be Performed by a Flight Attendant Who Has Left the Aircraft During Passenger Boarding

AFA, Horizon Air, and ATA stated their concern that "safety related duties" may have different interpretations for different air carriers which may be applied and enforced inconsistently. Delta and US Airways commented that safety related duties should pertain to communication to ensure required aircraft staffing, food and hydration, and the maintenance of equipment and facilities essential for the health, safety, and sanitation of all persons onboard the aircraft (*e.g.,* lavatory maintenance).

American specifically commented that a flight attendant who has left the aircraft to address safety related issues should be allowed to make calls concerning operational matters such as resolving catering issues. American also noted that resolving operational concerns can enhance a flight attendant's ability to devote his or her time to safety related duties. American further commented that operational issues can be resolved in a minimum amount of time if addressed when initially discovered and therefore have no impact on the level of safety.

Continental and US Airways requested that the FAA explicitly include the resolution of seat duplications under safety related duties. US Airways additionally commented that safety related duties should include the resolution of carry-on baggage compliance issues.

ATA recommended that the proposal be revised to permit a flight attendant to perform work related duties in addition to safety related duties. ATA also stated that "if operational issues or concerns (*e.g.,* duplicate seat assignments, catering matters, staffing questions) can

be addressed by the deplaning flight attendant, then the flight attendant's ability to devote their complete attention to safety related duties will be enhanced. This change will enhance passenger convenience and safety."

An individual commented that the requirement in the NPRM that stipulates the flight attendant may only perform safety related tasks while not onboard the aircraft would mean that the flight attendant would spend a minimal amount of time off the aircraft. Another individual commented that the proposed requirement that flight attendants may only conduct safety related duties helps to ensure that a flight attendant who has vacated the aircraft will be readily available if an emergency should occur.

The FAA considers the scope of "safety related duties" to generally consist of those duties that are normally performed by flight attendants that are related to the safety of the airplane and its occupants under § 121.391(d). Those duties, however may now be performed while in the immediate vicinity of the door through which passengers are boarding. Safety related duties are those that ensure compliance with the regulations or respond to emergency situations. For example, safety related duties include removing a piece of carry-on baggage, handling a medical event, using the telephone in the cab of the passenger loading bridge to coordinate with ground personnel regarding compliance with approved exit seat and carry-on baggage programs, and handling safety and security issues such as a disruptive passenger or a passenger who appears to be intoxicated.

These duties specifically do not include non-safety related duties, such as ordering galley supplies, resolving catering issues, handling passenger itineraries or seat duplications, completing company paperwork not required for the safe operation of the airplane, obtaining food and beverages for crewmembers, or conducting communications related to aircraft staffing, crew scheduling, or the maintenance of sanitation equipment and facilities.

As noted by commenters, restricting the type of duties that a flight attendant may perform will limit the time the flight attendant will be off the aircraft and ensure that a flight attendant who has left the aircraft will be readily available if an emergency should occur. Accordingly, in the final rule the FAA has retained the requirement that the flight attendant who has left the aircraft may only conduct safety duties related to the flight being boarded.

Equivalent Level of Safety of Final Rule to Existing Requirements

(1) Aviation Safety Improvements

AFA commented that it does not believe the proposed regulation creates an equivalent level of safety to that of the current requirements, that it was undertaken without full consideration of the potential consequences of the amendment, and therefore recommended that the NPRM be withdrawn in the public interest. AFA further commented that by permitting a reduction in the number of required flight attendants during boarding, the FAA was not assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce as directed by 49 U.S.C. 40101(d) because the proposed rule did not maintain the currently required ability to conduct an emergency evacuation of the aircraft. AFA noted that changes to the regulations since 1985, specifically provisions for improved firefighting equipment, improved interior flammability standards and thermal insulation, and improved access to Type III emergency exits have reduced the hazards to passengers. However, while AFA agrees that these changes have resulted in improvements in cabin survivability, AFA does not agree that they justify a reduction in flight attendant staffing requirements.

An individual commenter stated that the NPRM cites 49 U.S.C. 44701(a)(5) as the authority for this rulemaking. That section authorizes the head of the FAA to promulgate regulations "necessary for safety" on commercial aircraft. The commenter further noted that the NPRM argues that this authorized reduction of flight attendants "may be in the interest of the traveling public." This individual also noted that the NPRM does not contain any explanation of why this measure would be in the interest of the public or how it is required for safety. The commenter also stated that the NPRM focuses solely on why this measure would not impair safety. This individual expressed concern that the proposed rule does not seek to serve the safety interests of the passengers, but is rather a deregulatory measure designed to ease personnel burdens on air carriers and requested that the FAA explain how allowing a flight attendant to leave the cabin is "necessary for safety," and elaborate on why an airline cannot simply request additional assistance if such a safety issue exists. This individual also stated that the public deserves to know what the "unintentional consequences" of the current rule are and noted that if the FAA cannot advance such reasons, there are concerns as to whether U.S.C. 44701(a)(5) actually provides authorization for this regulation.

ALPA agrees that numerous cabin safety enhancements have been put in place on today's aircraft as a result of years of industry collaboration and cooperation. However, ALPA does not believe that the safety enhancements identified in the NPRM warrant the crewmember complement changes being proposed.

Continental, American, and ATA commented that they consider the proposed changes to be in the interest of the traveling public, supportive of flight attendants in the performance of their safety related duties, and that there would be no reduction in the level of safety for the traveling public under the proposed requirements. They noted that the FAA has correctly determined that the proposed reductions in flight attendant staffing can safely be made because past safety enhancements have mitigated the risks to passengers during ground operations.

Many individual commenters noted that new technology and procedures have reduced the workload of flight attendants during boarding and increased the safety of ground operations. They further commented that the risks associated with the proposed requirements would be minimal, and could result in significant safety and efficiency benefits for boarding operations. Commenters also noted that the proposed changes could increase the safety and security of passengers and with the improvements made in safety and security procedures and equipment, the current requirements are out of date. In addition, they commented that the workload placed on flight attendants has dramatically changed, requiring less personnel and effort to maintain a superior level of safety and that this proposed rule would better suit the airline operations of today, increasing efficiency, while taking no penalty in regards to the safety and security of travelers and employees.

When developing the final rule "Number of Flight Attendants Required During Intermediate Stops" (47 FR 56460; December 16, 1982) the FAA considered the safety concerns associated with reducing minimum flight attendant crew during intermediate stops. At that time the FAA determined that the unique conditions existing during intermediate stops permitted a reduction in the minimum flight attendant crew from that previously required by § 121.391. These conditions include that the airplane is stationary in a level attitude

with at least one floor-level exit open, all engines are shut down, thus mitigating the risk of an emergency arising from engine torching or overheating, and additional personnel are nearby to assist in the event of an emergency. This final rule requires that these conditions also exist during boarding and deplaning in order to permit a reduction in the minimum number of flight attendants. These conditions, along with the numerous safety enhancements enacted since the adoption of the 1982 Final Rule serve to maintain an equivalent level of safety as that provided by the current regulations.

Accordingly, the FAA has determined that it is appropriate to reduce the minimum required flight attendant crew from that required by § 121.391 and to allow one flight attendant to leave the aircraft to perform safety related duties during boarding provided the flight attendant remains within the immediate vicinity of the door through which passengers are boarding. The FAA contends that the regulations set forth in this final rule promote safe flight of civil aircraft in a manner necessary for safety in air commerce. The FAA believes that its action not only assigns, maintains, and enhances safety as the highest priorities in air commerce as directed by 49 U.S.C. 40101(d)(1), but also serves to regulate air commerce in a way that best promotes safety as required by 49 U.S.C. 40101(d)(2).

(2) Exit Seat Passengers

In the NPRM the FAA stated that passengers in exit seats will likely initiate their own self-help in the event of an emergency. AFA commented that it was inappropriate for the agency to use this assumption to justify a reduction in flight attendant staffing.

AFA commented that until a flight attendant has verified that an exit seat passenger meets appropriate criteria to occupy an exit row seat, and has been briefed on exit row responsibilities and the directions regarding the opening method of the emergency exit, the passenger could be sitting in an exit row seat during the entire boarding process without actually meeting the applicable criteria for occupying that seat.

ALPA commented that exit row briefings by a trained cabin crewmember do not qualify an individual to make time-critical decisions in terms of initiating a cabin evacuation. ALPA further stated that intervention on the part of a trained and qualified cabin crewmember must be available at all times.

An individual commented that current regulations fail to prevent any adult from sitting in an exit row and that 'screening' is quite minimal. This individual further commented that the assumption that an average citizen is just as well equipped to initiate and lead an evacuation as a trained flight attendant is a doubtful proposition.

Conversely, another individual commented that passengers in exit seats are now pre-screened to ensure they are capable of fulfilling emergency exit responsibilities.

The purpose of § 121.585, Exit seating, was to establish criteria for passengers who occupy seats adjacent to exits (55 FR 8072; March 6, 1990). The provisions of that rule require air carriers to only provide exit seats to passengers who appear to be able to perform functions in an emergency evacuation, and require that, prior to pushback or taxi, a crewmember verify that no exit seat is occupied by a person the crewmember determines is likely to be unable to perform the applicable functions of an exit seat. The FAA did not intend that passengers who occupy exit seats meet the training and qualification requirements that prepare a flight attendant to initiate and lead an evacuation. The FAA intended that these requirements would result in an airline passenger who occupies an exit seat to be able to physically open the exit, understand flight attendant commands and be able to understand and concentrate on their exit seat responsibilities. The FAA contends that the various provisions of the exit seat rule reduce the likelihood of passenger-caused evacuation delays. Many exit seat passengers are pre-screened by ground personnel or undergo selective procedures during online ticketing. The exit seat rule, in addition to the safety enhancements discussed earlier, has resulted in improvements in cabin survivability that facilitate the conditions necessary to initiate the regulatory changes in this final rule.

(3) Carry-On Baggage

AFA commented that carry-on bags were still a problem at their individual member air carriers and that the amount of carry-on baggage has not been reduced, as the FAA discussed in the NPRM. AFA stated that during passenger boarding the cabin can be a hectic, confusing environment with many passengers standing in the aisle, possibly moving in different directions. AFA further stated that stowage and removal of carry-on baggage is one of the factors that contribute to the confusion, contention, and additional movements in the aisle during boarding. AFA further commented that one of the main reasons flight attendants need to get off the aircraft to deal with removing carry-on baggage is because carriers are not adequately screening the amounts and size of carry-on baggage prior to boarding and do not have adequate ground staff to perform this function.

The FAA generally does not consider the movement of passengers in the aisles of the aircraft while boarding to be a safety issue. However, the FAA does agree that management of carry-on baggage in the aircraft cabin is a safety issue. Allowing flight attendants to step off the aircraft during boarding to remove excess carry-on bags to the passenger loading bridge, instead of having these bags in the aircraft aisle or galley area where they may impede emergency egress from the aircraft, is a positive safety enhancement. The FAA agrees with the commenters that flight attendants may need to step off the aircraft to remove excess carry-on baggage that can not be stowed safely in the cabin. Baggage screening and ground staffing issues, however, are beyond the scope of this rulemaking.

AFA commented that the FAA has neither thoroughly or even adequately considered the injury consequences that could result from flight attendants being required to lift and handle passenger bags. AFA further commented that this may also be contrary to many carrier policies that do not require flight attendants to lift passenger carry-on baggage, and in fact, have denied flight attendant industrial claims regarding injuries resulting from stowing of passenger carry-on baggage.

This rulemaking does not require an air carrier to change operational policies or procedures nor does it address air carrier policies regarding flight attendants lifting and handling passenger bags. The FAA also considers this comment to be outside the scope of this rulemaking.

(4) Emergency Evacuation Procedures

AFA commented that the FAA should determine who is going to be responsible for opening the emergency exit on the aircraft if the flight attendant assigned to that exit is permitted to be 30 feet up the jetway.

Under current rules the FAA does not require each flight attendant to remain directly adjacent to his or her assigned exit during boarding. Flight attendants typically move around the cabin during passenger boarding. If an emergency evacuation was necessary during boarding, the flight attendant would either return to his or her assigned exit, or another flight attendant would open the exit.

Based on this comment and other comments received, the FAA has revised the proposed language which

would have required a flight attendant to remain within 30 feet of the passenger boarding door. The final rule requires the flight attendant to remain within the immediate vicinity of the boarding door. Under the limitation in the final rule, a flight attendant who has stepped off the aircraft may be in a better position to assist in the opening of certain floor level exits and facilitating an evacuation than a flight attendant who is located in the middle of the cabin.

(5) Security Requirements

AFA commented that security situations can and do arise which could require an immediate response by the flight attendant crew acting as a coordinated team. The AFA further commented that despite stronger security regulations, threats still present themselves.

An individual commented that the NPRM failed to account for the potential impact on security and that the NPRM ignored public expectations of flight attendants during boarding. This individual noted that most members of the public look to flight attendants to spot potentially dangerous situations before they develop and that flight attendants are likely the only people on board trained to recognize and handle these situations. The commenter further noted that if a flight attendant leaves the cabin, there is one less person present to notice and respond to a dangerous circumstance. This individual stated that in addition to more thoroughly considering this issue, the FAA should explicitly consult the Department of Homeland Security (DHS) on this proposal. The commenter further noted that 6 U.S.C. 233 requires that the Secretary of Homeland Security consult the head of the FAA on measures affecting airline safety, although there does not appear to be a reciprocal requirement that the FAA contact the Secretary. The commenter also stated that this law evinces a Congressional intent that FAA and DHS consult on matters affecting airline safety.

This final rule provides operational flexibility while regulating air commerce in a manner that best promotes aviation safety. In response to comments, the FAA has revised the proposal to require that flight attendants who have stepped off the aircraft remain within the immediate vicinity of the boarding door. The FAA has determined that this revision will help to ensure that a flight attendant who steps off an aircraft can maintain awareness of potential security threats and the ability to immediately respond to those threats, to include threats that may make themselves apparent prior to passengers boarding an aircraft. Permitting a flight attendant to step off the aircraft to perform safety related duties does not result in a decreased ability to maintain awareness of potential security threats in the vicinity of an aircraft, but rather expands the area where those threats may be observed.

The FAA agrees that the DHS is required to consult with the agency before taking any action that might affect aviation safety. In addition, the FAA regularly consults with DHS, TSA, and other governmental agencies when developing regulations that could potentially affect aviation security.

Reduction in the Number of Required Flight Attendants During Passenger Deplaning

Delta, US Airways and Continental all generally commented that they support the FAA proposal to alter crew limitations applicable to passenger deplaning which would permit a reduction to half the number of flight attendants required by § 121.391(a), rounded down to the next lower number in the case of a fraction, but never fewer than one. They stated that this change in limitations would support occasions when a flight attendant may be asked to conduct other than safety related duties during passenger deplaning such as maintaining custody of an unaccompanied minor. One airline commented that "it would also help ensure appropriate crew nutrition (an effective element of fatigue mitigation) by permitting a crewmember leaving the aircraft to procure food or beverage between flights."

AFA commented that in the NPRM the FAA stated that a safety related reason a flight attendant may need to step off the aircraft during deplaning would be to maintain custody of an unaccompanied minor. AFA noted that this is not a safety related duty. The FAA agrees that maintaining custody of an unaccompanied minor is not a safety related duty and that the characterization of this action as safety related in the NPRM was in error. However, the FAA clarifies that the "safety related duty" test is only applied as criteria to allow one required flight attendant to step off the aircraft during passenger boarding. The provisions in the final rule that allow the reduction of flight attendants during passenger deplaning do not require the flight attendants who step off the aircraft to only accomplish safety related duties. Maintaining custody of an unaccompanied minor is therefore an appropriate duty for a flight attendant to perform during deplaning.

Miscellaneous

(1) Limitations on Leaving the Aircraft After Flight Attendant Substitution

AFA commented that the NPRM allows a reduction of two flight attendants for boarding due to the fact that the FAA is proposing to allow a flightcrew member to substitute for another flight attendant.

The NPRM, as well as the final rule, explicitly states that at no time during boarding may more than one required flight attendant leave the aircraft. A substituting pilot or flight engineer is not considered to be a flight attendant for purposes of meeting the minimum required compliment of flight attendants specified in § 121.391.

If a pilot or flight engineer is substituting for a required flight attendant under the provisions of this rule during passenger boarding, the substituting pilot or flight engineer and the remaining flight attendants may not leave the aircraft. Accordingly, a substituting pilot or flight engineer, or remaining flight attendant(s), may not leave the airplane with the intent to conduct safety related duties, even if that person remains within the immediate vicinity of the door through which passengers are boarding.

(2) Relationship of Rule to Previous Petitions for Exemption

AFA commented that it believes the proposal is an "extension" of Southwest Airlines' petition for exemption and therefore its previous comments to that petition for exemption are relevant for the FAA to consider in this rulemaking as well.

The FAA has considered those comments submitted in response to Southwest Airlines' petition for exemption (Docket No.: FAA–2006–25466) from §§ 121.391(a) and 121.393(b) in developing this proposal.

(3) Additional Comments Beyond the Scope of This Rulemaking

AFA commented that the FAA should also determine why passengers are able to bring excess and oversized carry-on baggage on board the aircraft and how to prevent this problem as a regulator instead of first reducing the number of flight attendants required during boarding and deplaning.

RAA supported the FAA's initiative to revise this regulation so that it offers airlines more flexibility in achieving their safety responsibilities. RAA suggested, however, that FAA's commitment to the Safety Management System requires that regulations be written in a style that clearly addresses the identified safety issue and that the

administrative issues necessary to ensure compliance with identified hazards be placed in an advisory circular, 8900 series order, or within the preamble to the regulation, and not within the regulation itself. RAA further commented that this action will permit airlines to develop and implement procedures and controls specific to their unique operations that will ensure that their hazard mitigation and regulatory compliance efforts are as efficient and effective as possible.

Regulations regarding carry-on baggage and the implementation of safety management systems are beyond the scope of this final rule.

Conclusion

The FAA has determined that these revisions to current regulations can be made as a result of safety enhancements to airplane certification and operational requirements. These changes have mitigated the risks to passengers during ground operations that previously required all flight attendants on board the airplane during passenger boarding and deplaning.

This final rule will increase safety and efficiency in commercial passenger operations by permitting one required flight attendant to deplane during passenger boarding, and conduct safety related duties, as long as certain conditions are met, and by allowing a reduction of flight attendants remaining on board the airplane during passenger deplaning, as long as certain conditions are met.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no current or new requirement for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465) prohibits agencies from setting standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, these acts require agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

Since this final rule only permits a reduction in the required number of flight attendants or the substitution of a pilot or flight engineer not assigned to the flight for a flight attendant during passenger boarding and allows a reduction of flight attendants remaining on board the airplane during passenger deplaning, the expected outcome will be a minimal impact with positive net benefits, and a regulatory evaluation was not prepared.

The FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Because there were no comments on the regulatory flexibility determination, our conclusion that there is no significant economic impact on a substantial number of small entities has not changed. As this final rule merely allows one required flight attendant to deplane during passenger boarding, and conduct safety related duties, the expected outcome will have only a minimal impact on any small entity affected by this rulemaking action.

Therefore, the FAA Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign

commerce of the United States. Pursuant to these Acts, the establishment of standards are not considered unnecessary obstacles to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statutes also require consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this rule to ensure it does not exclude imports that meet this objective. As a result, this final rule is not considered as creating an unnecessary obstacle to foreign commerce.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312(f) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

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

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

List of Subjects in 14 CFR Part 121

Aviation Safety, Air carriers, Air transportation, Airplanes, Airports, Boarding, Crewmembers, Deplaning, Flight attendants, Pilots, Transportation, Common carriers.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends chapter I, part 121 of title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 2. Revise § 121.391(a) introductory text to read as follows:

§ 121.391 Flight attendants.

(a) Except as specified in § 121.393 and § 121.394, each certificate holder must provide at least the following flight attendants on board each passenger-carrying airplane when passengers are on board:

* * * * *

■ 3. Add § 121.394 to read as follows:

§ 121.394 Flight attendant requirements during passenger boarding and deplaning.

(a) During passenger boarding, on each airplane for which more than one flight attendant is required by § 121.391, the certificate holder may:

(1) Reduce the number of required flight attendants by one, provided that:

(i) The flight attendant that leaves the aircraft remains within the immediate vicinity of the door through which passengers are boarding;

(ii) The flight attendant that leaves the aircraft only conducts safety duties related to the flight being boarded;

(iii) The airplane engines are shut down; and

(iv) At least one floor level exit remains open to provide for passenger egress; or

(2) Substitute a pilot or flight engineer employed by the certificate holder and trained and qualified on that type airplane for one flight attendant, provided the certificate holder—

(i) Describes in the manual required by § 121.133:

(A) The necessary functions to be performed by the substitute pilot or flight engineer in an emergency, to include a situation requiring an emergency evacuation. The certificate holder must show those functions are realistic, can be practically accomplished, and will meet any reasonably anticipated emergency; and

(B) How other regulatory functions performed by a flight attendant will be accomplished by the substitute pilot or flight engineer on the airplane.

(ii) Ensures that the following requirements are met:

(A) The substitute pilot or flight engineer is not assigned to operate the flight for which that person is substituting for a required flight attendant.

(B) The substitute pilot or flight engineer is trained in all assigned flight attendant duties regarding passenger handling.

(C) The substitute pilot or flight engineer meets the emergency training requirements for flight attendants in evacuation management and evacuation commands, as appropriate, and

frequency of performance drills regarding operation of exits in the normal and emergency modes on that type aircraft.

(D) The substitute pilot or flight engineer is in possession of all items required for duty.

(E) The substitute pilot or flight engineer is located in the passenger cabin.

(F) The substitute pilot or flight engineer is identified to the passengers.

(G) The substitution of a pilot or flight engineer for a required flight attendant does not interfere with the safe operation of the flight.

(H) The airplane engines are shut down.

(I) At least one floor-level exit remains open to provide for passenger egress.

(b) During passenger deplaning, on each airplane for which more than one flight attendant is required by § 121.391, the certificate holder may reduce the number of flight attendants required by that paragraph provided:

(1) The airplane engines are shut down;

(2) At least one floor level exit remains open to provide for passenger egress; and

(3) The number of flight attendants on board is at least half the number required by § 121.391, rounded down to the next lower number in the case of fractions, but never fewer than one.

(c) If only one flight attendant is on the airplane during passenger boarding or deplaning, that flight attendant must be located in accordance with the certificate holder's FAA-approved operating procedures. If more than one flight attendant is on the airplane during passenger boarding or deplaning, the flight attendants must be evenly distributed throughout the airplane cabin, in the vicinity of the floor-level exits, to provide the most effective assistance in the event of an emergency.

(d) The time spent by any crewmember conducting passenger boarding or deplaning duties is considered duty time.

Issued in Washington, DC, on October 28, 2010.

J. Randolph Babbitt,

Administrator, Federal Aviation Administration.

[FR Doc. 2010–28056 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–03–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 665

[Docket No. 0907211157–0522–04]

RIN 0648–AX76

Fisheries in the Western Pacific; Community Development Program Process

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

ACTION: Final rule; effectiveness of collection-of-information requirements.

SUMMARY: In this rule, NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in regulations implementing Amendment 1 to the Fishery Ecosystem Plans for American Samoa, Hawaii, the Mariana Archipelago, and Western Pacific Pelagic Fisheries, relating to the community development plan process. The intent of this final rule is to inform the public that OMB has approved the associated reporting requirements.

DATES: New 50 CFR 665.20(c), published at 75 FR 54044 (September 3, 2010), has been approved by OMB and is effective on December 6, 2010. The amendment to 15 CFR part 902 in this rule is effective December 6, 2010.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, attention Michael D. Tosatto, 1601 Kapiolani Blvd., Honolulu, HI 96814, and to OMB by e-mail to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS Pacific Islands Region (PIR), Sustainable Fisheries, tel 808–944–2108.

SUPPLEMENTARY INFORMATION: A final rule for Amendment 1 was published in the **Federal Register** on September 3, 2010 (75 FR 54044). The requirements of that final rule, other than the collection-of-information requirements, were effective on October 4, 2010. Because OMB had not approved the collection-of-information requirements by the date that final rule was published, the effective date of the associated permitting and reporting requirements in that rule was delayed. OMB approved the collection-of-information requirements contained in the final rule on September 22, 2010.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

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

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains new collection-of-information requirements subject to the PRA under OMB Control Number 0648–0612. The public reporting burden for developing and submitting a development plan is estimated to average six hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and to OMB by e-mail to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

List of Subjects in 15 CFR Part 902

Reporting and recordkeeping requirements.

Dated: November 2, 2010.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 15 CFR part 902 is amended as follows:

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, amend the table in paragraph (b), under the entry "50 CFR"

by adding the entry for § 665.20 in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) * * *

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CFR part or section where the information collection requirement is located	Current OMB control No. (all numbers begin with 0648–)
* * * * * * *	
50 CFR	
* * * * * * *	
665.20	–0612
* * * * * * *	

[FR Doc. 2010–28075 Filed 11–4–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. FDA–2008–N–0273]

Medical Devices; Radiology Devices; Reclassification of Full-Field Digital Mammography System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the reclassification of the full-field digital mammography (FFDM) system from class III (premarket approval) to class II (special controls). The device type is intended to produce planar digital x-ray images of the entire breast; this generic type of device may include digital mammography acquisition software, full-field digital image receptor, acquisition workstation, automatic exposure control, image processing and reconstruction programs, patient and equipment supports, component parts, and accessories. The special control that will apply to the device is the guidance document entitled "Class II Special Controls Guidance Document: Full-Field Digital Mammography System." FDA is reclassifying the device into class II (special controls) because general controls along with special controls will provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control for this device.

DATES: This rule is effective December 6, 2010.

FOR FURTHER INFORMATION CONTACT:

Mary Pastel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. G304, Silver Spring, MD 20993–0002, 301–796–6887; or

Kyle J. Myers, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, rm. 3118, Silver Spring, MD 20993–0002, 301–796–2533.

SUPPLEMENTARY INFORMATION:

I. Statutory Framework for Device Classification

The Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), and the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), among other amendments, established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as "preamendments devices." FDA classifies these devices after the Agency has taken the following steps:

1. Receives a recommendation from a device classification panel (an FDA advisory committee);

2. Publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and

3. Publishes a final regulation classifying the device type.

FDA has classified most preamendments devices under these procedures.

FDA refers to devices that were not in commercial distribution before May 28, 1976, as "postamendments devices." These devices are classified automatically by statute (section 513(f) of the FD&C Act) into class III without any FDA rulemaking process. These device types remain in class III and require premarket approval, unless and until:

1. FDA reclassifies the device type into class I or II;

2. FDA issues an order classifying the device type into class I or II in accordance with section 513(f)(2) of the FD&C Act, as amended by FDAMA; or

3. FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

Reclassification of classified postamendments devices is governed by section 513(f)(3) of the FD&C Act. This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the FD&C Act, or the manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order classifying the device into class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of these class III devices. To change the classification of the device, the proposed new class must

have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Under section 513(f)(3)(B)(i) of the FD&C Act, the Secretary may ask for a recommendation from a device classification panel on a proposed reclassification, whether initiated by FDA or a petitioner. The panel will make a recommendation to FDA concerning the proposed reclassification. The recommendation must contain the following information: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device that is the subject of the proposed reclassification.

Following the effective date of this final rule, any firm submitting a 510(k) for an FFDM system will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

II. Regulatory History of the Device

An FFDM system is a postamendments device classified into class III under section 513(f)(1) of the FD&C Act. This generic type of device cannot be placed in commercial distribution unless it is reclassified under section 513(f)(3) of the FD&C Act or subject to an approval of a premarket approval (PMA) application under section 515 of the FD&C Act (21 U.S.C. 360e). In accordance with section 513(f)(3) of the FD&C Act and based on information regarding the device, FDA, on its own initiative, is reclassifying this device type from class III to class II when intended to produce planar digital x-ray images of the entire breast. This generic type of device may include digital mammography acquisition software, full-field digital image receptor, acquisition workstation, automatic exposure control, image processing and reconstruction programs, patient and equipment supports, component parts, and accessories. Consistent with the FD&C Act and the regulation, FDA referred the proposed reclassification to the Radiological Devices Panel (the Panel) for its recommendation on the requested change in classification.

At a public meeting on May 23, 2006, the Panel unanimously recommended that the FFDM system be reclassified from class III to class II (special controls). The Panel believed that class II with a special controls guidance document, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device (Ref. 1).

Accordingly, in the **Federal Register** of May 30, 2008 (73 FR 31040), FDA issued a proposed rule to reclassify the device, full-field digital mammography system, from class III (premarket approval) into class II (special controls). FDA invited interested persons to comment on the proposed rule by August 28, 2008.

A second meeting of the Panel was held on November 17, 2009. This meeting was called because the comments received on the proposed rule raised the following new questions: Are separate data needed to demonstrate the equivalence of FFDM for screening and diagnosis indications? Are statistically significant clinical studies needed to demonstrate equivalence or can equivalence be demonstrated with laboratory and phantom studies along with limited clinical demonstrations? Are clinical data on various subgroups necessary to demonstrate equivalence?

The Panel unanimously recommended that the FFDM system be reclassified from class III to class II (special controls). The Panel also indicated that separate data are necessary for screening and diagnostic claims; that laboratory and phantom studies with limited clinical demonstration are adequate to establish equivalence; and that subcategory analysis is unnecessary.

III. Summary of Final Rule

The final rule contains revisions to the identification of the device type, FFDM system in the draft classification regulation, 21 CFR 892.1715. The final rule uses the term "planar" instead of "full-field" to describe digital x-ray images of the entire breast. The sentence stating what the generic type of device may include was revised by adding automatic exposure control, image processing and reconstruction programs, patient and equipment supports, component parts, and accessories, and by eliminating signal analysis programs. This change was made to clarify the description by explicitly listing aspects of the device and excluding signal analysis programs that are contained within the display devices, which are regulated separately. Display devices are not part of the FFDM system but rather are separate class II devices. The identification now reads: Intended to produce planar digital x-ray images of the entire breast. This generic type of device may include digital mammography acquisition software, full-field digital image receptor, acquisition workstation, automatic exposure control, image processing and reconstruction programs, patient and equipment supports, component parts, and accessories.

IV. Comments and FDA's Response

During the public comment period, 23 respondents submitted comments. The comments included manufacturers, professional organizations, trade associations, and individual medical professionals. All comments supported the reclassification of the FFDM system from class III (premarket approval) to class II (special controls).

(Comment 1) One comment suggested that the identification's use of the term "signal analysis" can be confusing in the context of FFDM systems and suggested that some items were not completely incorporated into the FFDM identification from the film/screen identification that should have been incorporated for clarity. The comment suggested that the regulation use the following identification to address those concerns: A full-field digital mammography system is a device intended to produce full-field digital x-ray images of the breast. This generic type of device may include one or more of the following: Digital mammography acquisition software, full-field digital image receptor, acquisition workstation, automatic exposure control, and image processing and reconstruction programs, patient and equipment supports, component parts, and accessories.

(Response) FDA agrees with the comment and has revised the identification to be similar to the language suggested by the comment.

V. FDA's Conclusions

Based on the information discussed in the preamble to the proposed rule (73 FR 31040) and comments on the proposed rule and draft special controls guidance, FDA concludes that special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the full-field digital mammography system. The Agency is reclassifying the full-field digital mammography system from class III (premarket approval) to class II (special controls) when intended to produce planar digital x-ray images of the entire breast. This generic type of device may include digital mammography acquisition software, full-field digital image receptor, acquisition workstation, automatic exposure control, image processing and reconstruction programs, patient and equipment supports, component parts, and accessories.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Full-Field Digital Mammography System" that the Agency intends to use as the special control for this device. The guidance addresses the information FDA believes should be included in a premarket notification submission (510(k)) for the FFDM system. FDA has identified the risks to health associated with the use of the device in the first column of table 1 of the special controls guidance document. The recommended mitigation measures are identified in the second column of table 1 of the special controls guidance document.

VI. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of this device into class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the FD&C Act and may permit small potential competitors to enter the marketplace by lowering their costs, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "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) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

FFDM devices are intended to produce planar digital x-ray images of the entire breast. This generic type of device may include digital mammography acquisition software, full-field digital image receptor, acquisition workstation, automatic exposure control, image processing and reconstruction programs, patient and equipment supports, component parts, and accessories. Based on the history of use of this type of device since the first PMA was approved in 2000, FDA concludes that reclassification from class III into class II (special controls) would ensure safety and effectiveness of these devices without undue regulatory burden. Manufacturers must address the issues identified by the special controls guidance document. Manufacturers of new or modified FFDM devices would be subject to premarket notification requirements, but the burden of submitting a 510(k) would be substantially less than that of preparing a PMA.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to "construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Federal law includes an express preemption provision that preempts certain State requirements "different from or in addition to" certain Federal requirements applicable to devices. 21 U.S.C. 360k; *See Medtronic* v. *Lohr* 518 U.S. 470 (1996); *Riegel* v. *Medtronic,* 552 U.S. 312 (2008). The special controls established by this final rule create "requirements" to address each identified risk to health presented by these specific medical devices under 21 U.S.C. 360k, even though product sponsors may have flexibility in how they meet those requirements. Cf. *Papike* v. *Tambrands, Inc.,* 107 F.3d 737, 740–42 (9th Cir. 1997).

IX. Paperwork Reduction Act of 1995

This final rule establishes as special controls a guidance document that refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Elsewhere in this issue of the **Federal Register**, FDA is issuing a document announcing the availability of the guidance document that will serve as the special control for this device. That document contains an analysis of the paperwork burden for the guidance document.

X. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Radiological Devices Panel, Transcript, pp. 142–156, available at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfAdvisory/details.cfm?mtg=659,* May 23, 2006.

2. Pisano, E., C. Gatsonis, E. Hendrick, *et al.,* "Digital Mammographic Imaging Screening Trial (DMIST) Investigators Group," "Diagnostic Performance of Digital Versus Film Mammography for Breast-Cancer Screening," *New England Journal of Medicine,* 353: 1773–1783, 2005.

3. Yaffe, M., A. Bloomquist, G. Mawdsley, *et al.,* "Quality Control for Digital Mammography: Part II Recommendations From the ACRIN DMIST Trial," *Medical Physics,* 33(3): 737–752, 2006.

4. Thomas, J., K. Chakrabarti, R. Kaczmarek, *et al.,* "Contrast Detail Phantom Scoring Methodology," *Medical Physics,* 32(3), 807, 2005.

5. Device Recalls Are Described in FDA's Briefing Information, Slide Number 12, available at *http://www.fda.gov/ohrms/dockets/ac/06/briefing/2006-4219b1_04_draft%20FDA%20presentation.pdf,* May 23, 2006.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 892 is amended as follows:

PART 892—RADIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 892.1715 is added to subpart B to read as follows:

§ 892.1715 Full-field digital mammography system.

(a) *Identification.* A full-field digital mammography system is a device intended to produce planar digital x-ray images of the entire breast. This generic type of device may include digital mammography acquisition software, full-field digital image receptor, acquisition workstation, automatic exposure control, image processing and reconstruction programs, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (special controls). The special control for the device is FDA's guidance document entitled "Class II Special Controls Guidance Document: Full-Field Digital Mammography System." *See* § 892.1(e) for the availability of this guidance document.

Dated: November 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–28007 Filed 11–4–10; 8:45 am]

BILLING CODE 4160–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4003 and 4903

Debt Collection

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's (PBGC) regulation on debt collection to conform to the Debt Collection Improvement Act of 1996, the Federal Claims Collection Standards and other legal requirements applicable to the collection of non-tax debts owed to PBGC. PBGC is adding salary offset and administrative wage garnishment to the collection methods allowed under the current regulation and making other changes to strengthen PBGC's debt collection program.

DATES: Effective December 6, 2010 (*See* Applicability in **SUPPLEMENTARY INFORMATION**.)

FOR FURTHER INFORMATION CONTACT: Margaret E. Drake, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4400 (extension 3228). (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400 (extension 3228)).

SUPPLEMENTARY INFORMATION: This final rule revises and replaces BGC's debt collection regulations found at 29 CFR Part 4903 to conform to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321, 1358 (April 26, 1996), the revised Federal Claims Collection Standards, 31 CFR Chapter IX (Parts 900 through 904), and other laws applicable to the collection of non-tax debt owed to the Government.

Background

In 1994, PBGC adopted a regulation on debt collection to provide procedures to implement administrative offset, as authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, *et seq.*), and in accordance with regulations issued by the Department of Justice and the General Accountability Office. In 1995, PBGC adopted a regulation on debt collection to provide procedures to implement tax refund offset, as required for participation in the Federal tax refund offset program authorized by 31 U.S.C. 3720A and in accordance with regulations issued by the Treasury Department. Together, these regulations comprise PBGC's current debt collection regulation (29 CFR part 4903) providing procedures for debt collection through administrative offset and tax refund offset. Administrative offset allows PBGC to request that debts owed to PBGC by a debtor (*e.g.,* in connection with government contractual obligations) be offset by amounts another Federal agency may owe to the debtor. Likewise, other Federal agencies may request the collection of debts owed to them be offset by amounts PBGC may owe the debtor. Tax refund offset allows PBGC to request that debts owed to PBGC by a debtor be offset by amounts the Government may owe to the debtor. The Debt Collection Improvement Act of 1996 (DCIA) fundamentally changed the manner in which the Federal government is required to manage the collection of its delinquent debts. Under DCIA, Congress directed that the management of delinquent obligations is to be centralized at the Treasury Department in order to increase the efficiency of the Government's collection efforts.

Pursuant to 31 U.S.C. 3716, to utilize the administrative offset tools under DCIA, Federal agencies had to "adopt, without change, regulations on collecting by administrative offset promulgated by the Department of Justice, the Government Accountability Office, or the Department of the Treasury," or promulgate their own regulations consistent with the regulations issued by the Department of Justice, the General Accountability Office, or the Department of the Treasury. On November 20, 2000, the Department of Justice and the Department of the Treasury revised the FCCS. 65 FR 70390 (Nov. 20, 2000).

On July 22, 2010 (at 75 FR 42662), PBGC published a proposed rule to revise its regulation on debt collection to conform the Debt Collection Improvement Act of 1996, the Federal Claims Collections Standards, other legal requirements applicable to non-tax debts owed to PBGC, and to add salary offset and administrative wage garnishment to the collection methods allowed under the current regulation and make other changes to strengthen PBGC's debt collection program. PBGC received no public comments on the proposed rule and the final regulation is unchanged from the proposed regulation.

Overview of Final Rule

This final regulation revises the procedures for the collection of non-tax debts owed to PBGC through administrative offset and tax refund offset. It adopts the FCCS and supplements it by prescribing procedures consistent with the FCCS, as necessary and appropriate for PBGC operations. The final regulation also provides for the collection of debts via salary offset and the use of administrative wage garnishment. Salary offset is the collection of debt owed by a Federal employee by withholding up to 15 percent of the employee's disposable pay. The procedures for salary offset are governed by 5 U.S.C. 5514, and Office of Personnel Management (OPM) regulations (5 CFR part 550, subpart k). OPM regulations provide for salary offset through the Treasury Offset Program.[1] Administrative wage

[1] PBGC has an internal directive which provides procedures to recover debts owed to PBGC from the current pay account of an employee, and to process

Continued

garnishment is the collection of a debt owed by a former Federal employee by ordering a non-Federal employer to withhold funds from a debtor's wages. The procedures for administrative wage garnishment are governed by 31 U.S.C. 3720D and 31 CFR 285.11.

As with PBGC's current debt collection regulation, the final regulation applies to collection of debts to PBGC by employers (*e.g.,* unpaid premium, penalty and interest under part 4007, information penalties under part 4071, and employer liability under part 4062) and to the recovery of benefit overpayments to participants in cases where PBGC does not recoup the overpayment under part 4022 (*e.g.,* where a participant is not entitled to future annuity benefits as of the plan's termination date). The final regulation also applies to debts owed to the United States by current and former PBGC employees.

The final regulation does not apply to the collection of tax debts, which is governed by the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and regulations, policies, and procedures issued by the Internal Revenue Service.

Under the final regulation, benefits paid by PBGC generally are not offset, in accordance with the anti-alienation provisions under 29 U.S.C. 1056(d) and 26 U.S.C. 401(a)(13). However, benefits paid by PBGC could be offset under certain limited exceptions from those provisions (*e.g.,* in certain fiduciary breach situations).

Nothing in the final regulation precludes the use of collection procedures not contained in the regulation. For example, PBGC may collect unused travel advances through setoff of an employee's pay under 5 U.S.C. 5705. Moreover, certain PBGC efforts to obtain payment of debts arising out of activities under ERISA are authorized by and subject to requirements prescribed under other Federal statutes. PBGC's activities will be consistent with such requirements, as well as with any other applicable requirements (*see e.g.,* parts 4000, 4003, 4007, and 4062). PBGC may use multiple collection methods at the same time to collect a debt, as permitted by law. Nothing in the final regulation requires PBGC to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

PBGC maintains a system of records to collect debts owed to PBGC by various individuals, PBGC–13, Debt Collection. *See* 75 FR 37842 (June 30, 2010).

Subpart A—4903.1 to 4903.4

Subpart A of the final regulation addresses the general provisions applicable to the collection of non-tax debts owed to PBGC. Section 4903.5 includes procedures for the collection of debts owed to PBGC, other than those subject to recoupment.

Under § 4903.2, PBGC is not required to duplicate notices or administrative proceedings provided by contract, this final regulation, or other laws or regulations. PBGC is not required to provide a debtor with two hearings on the same issue simply because PBGC used two different collection tools, each of which requires that the debtor be provided with a hearing. For example, if PBGC has provided a debtor with notice of unpaid premium under part 4007, it need not provide additional notice to the debtor before using this regulation to collect the debt owed to PBGC.

Section 4903.4 states that PBGC's rules under part 4000 regarding permissible methods of filing with PBGC, determining dates of filing and computation of time apply for purposes of this regulation.

Subpart B—4903.5 to 4903.20

Subpart B of the final regulation describes the procedures to be followed by PBGC when collecting debts owed to it. Among other things, subpart B outlines the due process procedures PBGC is required to follow when using offset (administrative, tax refund, and salary) to collect a debt owed to it, when garnishing a debtor's non-Federal wages, or before reporting a debt owed to it to a credit bureau. Specifically, PBGC is required to provide debtors with notice of the amount and type of the debt, the intended collection action to be taken, how a debtor may pay the debt or make alternate payment arrangements, how a debtor could review documents related to the debt, and the consequences to the debtor if the debt is not repaid. Subpart B also describes how a debtor may request a hearing to contest the noticed debt.

Subpart B also explains the circumstances under which PBGC could waive interest, penalties, and administrative costs. Such waivers are permitted only to the extent permitted by law. For example, part 4007 of this chapter does not permit waivers of interest charges on late premium payments. PBGC may provide additional guidance on how interest, penalties, and administrative costs are assessed on particular types of debts.

Subpart B updates PBGC procedures to reflect changes required by DCIA. For example, DCIA centralized the use of offset by requiring agencies to refer debts delinquent for more than 180 days to the Financial Management Service (FMS) of the Treasury Department for offset. *See* 31 U.S.C. 3716(c)(6). FMS is required to offset payments to persons who owe delinquent debts to the Government. The final regulation revises PBGC's regulations to comply with DCIA requirements for all types of offsets. This final regulation also incorporates procedures for several collection remedies authorized by DCIA, such as administrative wage garnishment.

Subpart C—4903.21 to 4903.22

Subpart C of the final regulation describes the procedures to be followed when a Federal agency, other than PBGC, wishes to use the offset process to collect a debt from a non-tax payment issued by PBGC as a payment agency. Subpart C governs the process for offsets that occur on a case-by-case basis to collect debts from payments made by PBGC to its employees, its vendors, and others whom PBGC is required or authorized to pay. While centralized offset through the Treasury Offset Program is the Government's primary offset collection tool, this final regulation provides the procedures to be used when centralized offset is not otherwise available or appropriate. An agency's use of the non-centralized administrative offset process does not provide grounds to invalidate any offset on the basis that centralized offset was not used.

Compliance With Rulemaking Guidelines

Executive Order 12866

PBGC has determined that this rule is not a "significant regulatory action" under Executive Order 12866.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this final regulation will not have a significant economic impact on a substantial number of small entities. The final rule is limited to procedures required by the Debt Collection Improvement Act of 1996, the Federal Claims Collection Standards and other laws applicable to the collection of non-tax debts owed to the United States. Thus, a small entity can avoid the application of this rule by paying such debts when due. Further, insofar as the provisions of this rule do apply, their

requests received from another Federal agency from the current pay account of a PBGC employee to recover debts owed to the agency.

primary effect would be to provide procedural protections to persons whose debts are otherwise subject to collection by administrative offset, tax refund offset, salary offset or administrative wage garnishment. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects

29 CFR Part 4003

Administrative practice and procedure, Organization and functions (Government agencies, Pension insurance, Pensions.

29 CFR Part 4903

Claims.

■ For the reasons given above, PBGC is amending 29 CFR parts 4003 and 4903 as follows:

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

■ 1. The authority citation for part 4003 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

■ 2. Amend § 4003.32 by removing "§ 4903.33 of this chapter, by a date 60 days (or more) thereafter" and replacing it with "part 4903 of this chapter, by the date".

■ 3. Amend § 4003.52 by removing "§ 4903.33 of this chapter, by a date 60 days (or more) thereafter" and replacing it with "part 4903 of this chapter, by the date".

■ 4. Part 4903 is revised to read as follows:

PART 4903—DEBT COLLECTION

Subpart A—General Provisions

Sec.
4903.1 What definitions apply to this part?
4903.2 What do these regulations cover?
4903.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?
4903.4 What rules apply for purposes of filing with PBGC, determining dates of filings, and computation of time?

Subpart B—Procedures to Collect Debts Owed to PBGC

4903.5 What notice will PBGC send to a debtor when collecting a debt owed to PBGC?
4903.6 How will PBGC add interest, penalty charges, and administrative costs to a debt owed to PBGC?
4903.7 When will PBGC allow a debtor to pay a debt owed to PBGC in installments instead of a lump sum?
4903.8 When will PBGC compromise a debt owed to PBGC?
4903.9 When will PBGC suspend or terminate debt collection on a debt owed to PBGC?
4903.10 When will PBGC transfer a debt owed to PBGC to the Treasury Department's Financial Management Service for collection?
4903.11 How will PBGC use administrative offset (offset of non-tax Federal payments) to collect a debt owed to PBGC?
4903.12 How will PBGC use tax refund offset to collect a debt owed to PBGC?
4903.13 How will PBGC offset a Federal employee's salary to collect a debt owed to PBGC?
4903.14 How will PBGC use administrative wage garnishment to collect a debt owed to PBGC from a debtor's wages?
4903.15 How will PBGC report debts owed to credit bureaus to PBGC?
4903.16 How will PBGC refer debts owed to private collection agencies to PBGC?
4903.17 When will PBGC refer debts owed to the Department of Justice to PBGC?
4903.18 Will a debtor who owes a debt to PBGC or another Federal agency, and persons controlled by or controlling such debtors, be ineligible for Federal loan assistance, grants, cooperative agreements, or other sources of Federal funds?
4903.19 How does a debtor request a special review based on a change in circumstances such as a catastrophic illness, divorce, death, or disability?
4903.20 Will PBGC issue a refund if money is erroneously collected on a debt?

Subpart C—Procedures for Offset of PBGC Payments to Collect Debts Owed to Other Federal Agencies

4903.21 How do other Federal agencies use the offset process to collect debts from payments issued by PBGC?
4903.22 What does PBGC do upon receipt of a request to offset the salary of a PBGC employee to collect a debt owed by the employee to another Federal agency?

Authority: 5 U.S.C. 5514; 29 U.S.C. 1302(b); 31 U.S.C. 3701–3719, 3720A; 5 CFR part 550, subpart K; 31 CFR part 285; 31 CFR parts 900–904.

Subpart A—General Provisions

§ 4903.1 What definitions apply to this part?

The following terms are defined in § 4001.2 of this chapter: Code, PBGC, and Person. In addition, for purposes of this part:

Administrative offset or offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a state government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term "administrative offset" can include, but is not limited to, the offset of Federal salary, vendor, retirement, and Social Security benefit payments. The terms "centralized administrative offset" and "centralized offset" refer to the process by which the Treasury Department's Financial Management Service offsets Federal payments through the Treasury Offset Program.

Administrative wage garnishment means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt, as authorized by 31 U.S.C. 3720D, 31 CFR 285.11, and this part.

Agency or Federal agency means an executive department or agency; a military department; the United States Postal Service; the Postal Regulatory Commission; any nonappropriated fund instrumentality described in 5 U.S.C. 2105(c); the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.

Creditor agency means any Federal agency that is owed a debt.

Debt means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States government, including government-owned corporations, by a person. As used in this part, the term "debt" can include a debt owed to PBGC, but does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

Debtor means a person who owes a debt to the United States.

Delinquent debt means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

Disposable pay has the same meaning as that term is defined in 5 CFR 550.1103.

Employee or *Federal employee* means a current employee of PBGC or other Federal agency, including a current member of the uniformed services, including the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, Commissioned Corps of the Public Health Service, the National Guard, and the reserve forces of the uniformed services.

FCCS means the Federal Claims Collection Standards, 31 CFR parts 900–904.

Financial Management Service (FMS) means the Treasury Department bureau that is responsible for the centralized collection of delinquent debts through

the offset of Federal payments and other means.

Payment agency or *Federal payment agency* means any Federal agency that transmits payment requests in the form of certified payment vouchers, or other similar forms, to a disbursing official for disbursement. The payment agency may be the agency that employs the debtor. In some cases, PBGC may be both the creditor agency and payment agency.

Salary offset means a type of administrative offset to collect a debt under Section 5514 of Title 5 of the United States Code and 5 CFR part 550, subpart K by deduction(s) at one or more officially established pay intervals from the current pay account of an employee with or without his or her consent.

Tax debt means a debt arising under the Code.

Tax refund offset means the reduction by the IRS of a tax overpayment payable to a taxpayer by the amount of past-due, legally enforceable debt owed by that taxpayer to a Federal agency pursuant to Treasury regulations.

§ 4903.2 What do these regulations cover?

(a) *Scope.* This part provides procedures for the collection of debts owed to PBGC, other than those subject to recoupment (29 CFR 4022, subpart E). This part also provides procedures for collection of other debts owed to the United States when a request for offset of a payment, for which PBGC is the payment agency, is received by PBGC from another agency (for example, when a PBGC employee owes a student loan debt to the United States Department of Education).

(b) *Applicability.*

(1) This part applies to PBGC when collecting a debt owed to PBGC; to persons who owe debts to PBGC; to persons controlled by or controlling persons who owe debts to a Federal agency, and to Federal agencies requesting offset of a payment issued by PBGC as a payment agency (including salary payments to PBGC employees).

(2) This part does not apply to debts owed to PBGC being collected through recoupment under subpart E of part 4022 of this chapter. Benefits paid by PBGC generally will not be offset, subject to limited exceptions (*e.g.,* in certain fiduciary breach situations).

(3) This part does not apply to tax debts, to any debt based in whole or in part on conduct in violation of the antitrust laws, nor to any debt for which there is an indication of fraud or misrepresentation, as described in § 900.3 of the FCCS, unless the debt is returned by the Department of Justice to PBGC for handling.

(4) Nothing in this part precludes the use of other statutory or regulatory authority to collect or dispose of any debt. *See,* for example, 5 U.S.C. 5705, Advancements and Deductions, which authorizes PBGC to recover travel advances by offset of up to 100 percent of a Federal employee's accrued pay. *See, also,* 5 U.S.C. 4108, governing the collection of training expenses.

(5) To the extent that provisions of laws, other regulations, and PBGC enforcement policies differ from the provisions of this part, those provisions of law, other regulations, and PBGC enforcement policies apply to the remission or mitigation of fines, penalties, and forfeitures, and to debts arising under ERISA, rather than the provisions of this part.

(c) *Additional policies and procedures.* PBGC may, but is not required to, promulgate additional policies and procedures consistent with this part, the FCCS, and other applicable law, policies, and procedures.

(1) PBGC does not intend this regulation to prohibit PBGC from demanding the return of specific property or the payment of its value.

(2) The failure of PBGC to comply with any provision in this regulation will not serve as a defense to the existence of the debt.

(d) *Duplication not required.* Nothing in this part requires PBGC to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

(e) *Use of multiple collection remedies allowed.* PBGC and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This part is intended to promote aggressive debt collection, using for each debt all available and appropriate collection remedies. To provide PBGC with flexibility in determining which remedies will be most efficient in collecting the particular debt, these remedies are not listed in any prescribed order.

§ 4903.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

This part adopts and incorporates all provisions of FCCS. This part also supplements the FCCS by prescribing procedures consistent with FCCS, as necessary and appropriate for PBGC operations.

§ 4903.4 What rules apply for purposes of filing with PBGC, determining dates of filings, and computation of time?

(a) *How and where to file.* PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with PBGC under this part. *See* § 4000.4 of this chapter for information on where to file.

(b) *Date of filing.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with PBGC.

(c) *Computation of time.* PBGC applies the rules of subpart D of part 4000 of this chapter to compute any time period under this part.

Subpart B—Procedures To Collect Debts Owed to PBGC

§ 4903.5 What notice will PBGC send to a debtor when collecting a debt owed to PBGC?

(a) *Notice requirements.* PBGC will collect debts owed to PBGC. PBGC will promptly send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve a debt owed to PBGC. The notice(s) will be sent to the debtor at the most current address of the debtor in PBGC's records. Generally, before starting the collection actions described in §§ 4903.6 and 4903.10 through 4903.18 of this part, PBGC will send no more than two written notices to the debtor. The notice will explain why the debt is owed to PBGC, the amount of the debt, how a debtor may pay the debt or make alternate repayment arrangements, how a debtor may review non-privileged documents related to the debt, how a debtor may dispute the debt, the collection remedies available to PBGC if the debtor refuses or otherwise fails to pay the debt, and other consequences to the debtor if the debt is not paid. Except as otherwise provided in paragraph (b) of this section, the written notice(s) will explain to the debtor:

(1) The nature and amount of the debt, and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment must be made to avoid such charges, and that such assessments must be made unless excused in accordance with 31 CFR 901.9 (see § 4903.6 of this part);

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (a)(6) of this section;

(4) PBGC's willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to PBGC (*see* § 4903.7 of this part);

(5) The name, address, and telephone number of a contact person or office within PBGC;

(6) PBGC's intention to enforce collection by taking one or more of the following actions if the debtor fails to pay or otherwise resolve the debt:

(i) *Offset.* Offset the debtor's receipt of Federal payments, including income tax refunds, salary, certain benefit payments (such as Social Security), Federal retirement (*i.e.,* CSRS or FERS), vendor, travel reimbursements and advances, and other Federal payments (*see* §§ 4903.11 through 4903.13 of this part);

(ii) *Private collection agency.* Refer the debt to a private collection agency (*see* § 4903.16 of this part);

(iii) *Credit bureau reporting.* Report the debt to a credit bureau (*see* § 4903.15 of this part);

(iv) *Administrative wage garnishment.* Garnish the debtor's wages through administrative wage garnishment (*see* § 4903.14 of this part);

(v) *Litigation.* Whether PBGC will initiate litigation under 29 U.S.C. 1302 to collect the debt or refer the debt to the Department of Justice to initiate litigation to collect the debt (*see* § 4903.17 of this part);

(vi) *Treasury Department's Financial Management Service.* Refer the debt to the Financial Management Service for collection (*see* § 4903.10 of this part);

(7) That debts over 180 days delinquent must be referred to the Financial Management Service for the collection actions described in paragraph (a)(6) of this section (*see* § 4903.10 of this part);

(8) How the debtor may inspect and copy non-privileged records related to the debt;

(9) How the debtor may request a review of PBGC's determination that the debtor owes a debt to PBGC and present evidence that the debt is not delinquent or legally enforceable (*see* §§ 4903.11(c) and 4903.12(c) of this part);

(10) How a debtor who is an individual may request a hearing if PBGC intends to garnish the debtor's private sector (*i.e.,* non-Federal) wages (see § 4903.14(a) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That a request for a hearing, timely filed on or before the 15th business day following the date of the mailing of the notice, will stay the commencement of administrative wage garnishment, but not other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is an individual and a Federal employee subject to Federal salary offset may request a hearing (*see* § 4903.13(e) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That a request for a hearing, timely filed on or before the 15th day following receipt of the notice, will stay the commencement of salary offset, but not other collection procedures;

(iii) The name and address of the office to which the request for a hearing should be sent;

(iv) That PBGC will refer the debt to the debtor's employing agency or to the Financial Management Service to implement salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practicable date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations, or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That unless prohibited by contract or statute, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(viii) That proceedings with respect to such debt are governed by 5 U.S.C. 5514 and 31 U.S.C. 3716.

(12) How the debtor may request a waiver of the debt, if applicable. *See,* for example, § 4903.6 and § 4903.13(f) of this part.

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see http://www.irs.gov*);

(14) How the debtor may exercise other rights and remedies, if any, available to the debtor under statutory or regulatory authority under which the debt arose.

(15) That certain debtors and, if applicable, persons controlled by or controlling such debtors, may be ineligible for Federal Government loans, guaranties and insurance, grants, cooperative agreements or other Federal funds (*see* 28 U.S.C. 3201(e); 31 U.S.C. 3720B, 31 CFR 285.13, and § 4903.18(a) of this part); and

(16) That the debtor should advise PBGC of a bankruptcy proceeding of the debtor or another person liable for the debt being collected.

(b) *Exceptions to notice requirements.* PBGC may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (a)(16) of this section if PBGC, in consultation with its legal counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(c) *Respond to debtors; comply with FCCS.* PBGC should respond promptly to communications from debtors and comply with other FCCS provisions applicable to the administrative collection of debts. *See* 31 CFR part 901.

§ 4903.6 How will PBGC add interest, penalty charges, and administrative costs to a debt owed to PBGC?

(a) *Assessment and notice.* PBGC will assess interest, penalties and administrative costs on PBGC debts in accordance with the provisions of 31 U.S.C. 3717, 31 CFR 901.9 and other applicable requirements. Administrative costs, including the costs of processing and handling a delinquent debt, will be determined by PBGC. PBGC will explain in the notice to the debtor how interest, penalties, costs, and other charges are assessed, unless the requirements are included in a contract or other legally binding agreement.

(b) *Waiver of interest, penalties, and administrative costs.* Unless otherwise required by law, regulation, or contract, PBGC will not charge interest if the amount due on the debt is paid within 30 days of the date from which the interest accrues. *See* 31 U.S.C. 3717(d). To the extent permitted by law, PBGC may waive interest, penalties, and administrative costs, or any portion thereof, in appropriate circumstances consistent with the FCCS.

(c) *Accrual during suspension of debt collection.* In most cases, interest, penalties and administrative costs will continue to accrue during any period when collection has been suspended for any reason (for example, when the debtor has requested a hearing). PBGC may suspend accrual of any or all of these charges in appropriate circumstances consistent with the FCCS.

§ 4903.7 When will PBGC allow a debtor to pay a debt owed to PBGC in installments instead of a lump sum?

If a debtor is financially unable to pay the debt in a lump sum, PBGC may accept payment of a debt in regular installments, in accordance with the provisions of 31 CFR 901.8.

§ 4903.8 When will PBGC compromise a debt owed to PBGC?

If PBGC cannot collect the full amount of a debt owed to PBGC, PBGC may compromise the debt in accordance with the provisions of 31 CFR part 902.

§ 4903.9 When will PBGC suspend or terminate debt collection on a debt owed to PBGC?

If, after pursuing all appropriate means of collection, PBGC determines that a debt owed to PBGC is uncollectible, PBGC may suspend or terminate debt collection activity in accordance with the provisions of 31 CFR part 903. Termination of debt collection activity by PBGC does not discharge the indebtedness.

§ 4903.10 When will PBGC transfer a debt owed to PBGC to the Treasury Department's Financial Management Service for collection?

(a) PBGC will transfer a debt owed to PBGC that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as "cross-servicing." *See* 31 U.S.C. 3711(g) and 31 CFR 285.12. PBGC may transfer debts owed to PBGC that are delinquent 180 days or less to the Financial Management Service in accordance with the procedures described in 31 CFR 285.12. The Financial Management Service takes appropriate action to collect or compromise the transferred PBGC debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt owed to PBGC and the collection action to be taken. See 31 CFR 285.12(b) and 285.12(c)(2). Appropriate action can include, but is not limited to, contact with the debtor, referral of the debt owed to PBGC to the Treasury Offset Program, private collection agencies, or the Department of Justice; reporting of the debt to credit bureaus, and/or administrative wage garnishment.

(b) At least 60 days prior to transferring a debt owed to PBGC to the Financial Management Service, PBGC will send notice to the debtor as required by § 4903.5 of this part. PBGC will certify to the Financial Management Service that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, PBGC will certify its compliance with all applicable due process and other requirements as described in this part and other Federal laws. See 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt collection process, the Financial Management Service uses the Treasury Offset Program to collect debts owed to PBGC by administrative and tax refund offset. *See* 31 CFR 285.12(g). Under the Treasury Offset Program, before a Federal payment is disbursed, the Financial Management Service compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the Financial Management Service (or, in some cases, another Federal disbursing agency) offsets all or a portion of the Federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, but are not limited to, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

§ 4903.11 How will PBGC use administrative offset (offset of non-tax Federal payments) to collect a debt owed to PBGC?

(a) *Centralized administrative offset through the Treasury Offset Program.*

(1) In most cases, the Financial Management Service uses the Treasury Offset Program to collect debts owed to PBGC by the offset of Federal payments. *See* § 4903.10(c) of this part. If not already transferred to the Financial Management Service under § 4903.10 of this part, PBGC will refer debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. *See* 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). PBGC may refer to the Treasury Offset Program for offset any debt owed to PBGC that has been delinquent for 180 days or less.

(2) At least 60 days prior to referring a debt owed to PBGC to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. PBGC will certify to the Financial Management Service, that the debt is valid, delinquent, and legally enforceable, and that there are no legal bars to collection by offset. In addition, PBGC will certify its compliance with the requirements in this part.

(b) *Non-centralized administrative offset for debts owed to PBGC.*

(1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, PBGC may collect past-due, legally enforceable debts owed to PBGC through non-centralized administrative offset. See 31 CFR 901.3(c). In these cases, PBGC may offset a payment internally or make an offset request directly to a Federal payment agency.

(2) At least 30 days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. When referring a debt owed to PBGC for offset under this paragraph (b), PBGC will certify that the debt is valid, delinquent, and legally enforceable, and that there are no legal bars to collection by offset. In addition, PBGC will certify its compliance with these regulations concerning administrative offset. *See* 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in § 4903.5 of this part will explain to the debtor how to request an administrative review of PBGC's determination that the debtor owes a debt to PBGC and how to present evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt owed to PBGC, the debtor may seek a review of the terms of repayment. In most cases, PBGC will provide administrative review based upon the written record, including documentation provided by the debtor. PBGC may provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt owed to PBGC, and PBGC determines that the question of the indebtedness cannot be resolved by review of the documentary evidence. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing. PBGC will carefully document all significant matters discussed at the hearing. PBGC may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), PBGC may offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in § 4903.5 of this part, or completing the procedures described in paragraph (b)(2) and (c) of this section. PBGC will give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

§ 4903.12 How will PBGC use tax refund offset to collect a debt owed to PBGC?

(a) *Tax refund offset.* In most cases, the Financial Management Service uses the Treasury Offset Program to collect debts owed to PBGC by the offset of tax refunds and other Federal payments. *See* § 4903.10(c) of this part. If not already transferred to the Financial Management Service under § 4903.10 of this part, PBGC will refer to the Treasury Offset Program any past-due, legally enforceable debt for collection by tax refund offset. *See* 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice.* At least 60 days prior to referring a debt owed to the Treasury Offset Program, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. PBGC will certify to the Financial Management Service's Treasury Offset Program that the debt is past due and legally enforceable in the amount submitted, and that the PBGC has made reasonable efforts to obtain payment of the debt as described in 31 CFR 285.2(d). In addition, PBGC will certify its compliance with all applicable due process and other requirements described in this part and other Federal laws. *See* 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in § 4903.5 of this part will provide the debtor with at least 60 days prior to the initiation of tax refund offset to request an administrative review as described in § 4903.11(c) of this part. PBGC may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor's dispute.

§ 4903.13 How will PBGC offset a Federal employee's salary to collect a debt owed to PBGC?

(a) *Federal salary offset.*

(1) Salary offset is used to collect debts owed to the United States or PBGC by Federal employees. If a Federal employee owes PBGC a debt, PBGC may offset the employee's Federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than PBGC may collect debt from the salary of a PBGC employee, see §§ 4903.21 and 4903.22, subpart C, of this part.

(2) Nothing in this part requires PBGC to collect a debt in accordance with the provisions of this section if Federal law allows other means to collect. *See,* for example, 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) PBGC may use the administrative wage garnishment procedure described in § 4903.14 of this part to collect from an individual's non-Federal wages a debt owed to PBGC.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in § 4903.10(a) of this part, PBGC will refer debts owed to PBGC to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, PBGC will attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. *See* 5 CFR 550.1108 and 550.1109.

(c) *Non-centralized salary offset for debts owed to PBGC.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, PBGC may collect delinquent debts owed to PBGC through non-centralized salary offset. *See* 5 CFR 550.1109. In these cases, PBGC may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent debt owed to PBGC by a Federal employee. Thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. When referring a debt owed to PBGC for offset, PBGC will certify to the payment agency that the debt is valid, delinquent and legally enforceable in the amount stated, and there are no legal bars to collection by salary offset. In addition, PBGC will certify that all due process and other prerequisites to salary offset have been met. See 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due process and other prerequisites for salary offset.

(d) *When prior notice not required.* PBGC is not required to provide prior notice to an employee when the following adjustments are made by PBGC to a PBGC employee's pay:

(1) Any adjustment to pay arising out of any employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practicable, the individual is provided written notice of the nature and the amount of the adjustment and the point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practicable, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(e) *Administrative review—*

(1) *Request for administrative review.* A Federal employee who has received a notice that his or her debt will be collected by means of salary offset may request administrative review concerning the existence or amount of the debt owed to PBGC. The Federal employee also may request administrative review concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for administrative review in writing to the office designated in the notice described in § 4903.5. *See* § 4903.5(a)(11). The request must be received by the designated office on or before the 15th day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee. *See* 31 CFR 901.3(a)(7).

(2) *Failure to submit timely request for administrative review.* If the employee fails to submit a request for administrative review within the time period described in paragraph (e)(1) of this section, salary offset may be initiated. However, PBGC may accept a late request for administrative review if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Reviewing official.* PBGC must obtain the services of a reviewing official who is not under the supervision or control of the Director of the PBGC. PBGC may enter into interagency support agreements with other agencies to provide reviewing officials.

(4) *Notice of administrative review.* After the employee requests administrative review, the designated reviewing official will inform the employee of the form of the review to be provided. For oral hearings, the

notice will set forth the date, time and location of the hearing. For determinations based on review of written records, the notice will notify the employee of the date by which he or she should submit written arguments to the designated reviewing official. The reviewing official will give the employee reasonable time to submit documentation in support of the employee's position. The reviewing official will schedule a new hearing date if requested by both parties. The reviewing official will give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The reviewing official will conduct an oral hearing if the official determines that the matter cannot be resolved by review of documentary evidence alone. The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the reviewing official, including but not limited to:

(i) Informal conferences (in person or electronically) with the reviewing official, in which the employee and agency representative will be given a reasonable opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee by the reviewing official; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Determination based on review of written record.* If the reviewing official determines that an oral hearing is not necessary, the official will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position. *See* 31 CFR 901.3(a)(7).

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for administrative review, the employee will have waived the right to administrative review, and salary offset may be initiated. Further, the employee will have been deemed to admit the existence and amount of the debt owed to PBGC as described in the notice of intent to offset. If PBGC's representative fails to appear at an oral hearing, the reviewing official will proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* PBGC will have the initial burden to prove the existence and amount of the debt owed to PBGC. Thereafter, if the employee disputes the existence or amount of the debt, the employee must prove by a preponderance of the evidence that no such debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The reviewing official will maintain a summary record of any hearing provided by this part. Witnesses will testify under oath or affirmation in oral hearings. See 31 CFR 901.3(a)(7).

(10) *Date of decision.* The reviewing official will issue a written opinion stating the official's decision, based upon documentary evidence and information developed during the administrative review, as soon as practicable after the review, but not later than 60 days after the date on which the request for review was received by PBGC. If the employee (or the parties jointly) requests a delay in the proceedings, the deadline for the decision may be postponed by the number of days by which the review was postponed. When a decision is not timely rendered, PBGC will waive interest and penalties applied to the debt owed to PBGC for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision will include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt owed to PBGC;

(ii) The reviewing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The reviewing official's decision will be final.

(f) *Waiver not precluded.* Nothing in this part precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 32 U.S.C. 716, or other statutory authority. PBGC may grant such waivers when it would be against equity and good conscience or not in the United States' best interest to collect such debts, in accordance with those authorities, 5 CFR 550.1102(b)(2).

(g) *Salary offset process*—

(1) *Determination of disposable pay.* PBGC will implement salary offset when requested to do so by PBGC, as described in paragraph (c) of this section, or another agency, as described in § 4903.21 of this part. If the debtor is not employed by PBGC, the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

(2) *When salary offset begins.* Deductions will begin within three official pay periods following receipt of the creditor agency's request for offset or after a decision has been issued following a request for a hearing.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, subject to the requirements of 15 U.S.C. 1673, as follows:

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally will be collected in a lump sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount, or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt owed to PBGC.

(h) *Payment agency's responsibilities.*

(1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which PBGC has requested salary offset, the payment agency must certify the total amount of its collection and notify PBGC and the employee of the amounts collected. If the payment agency knows that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt to PBGC, the amount of the debt, and that PBGC has complied with the provisions of this section. PBGC must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, PBGC

may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the debt. Generally, PBGC will collect such monies through the Treasury Offset Program as described in § 4903.10(c) of this part.

(3) When an employee transfers to another agency, PBGC should resume collection with the employee's new payment agency in order to continue salary offset.

§ 4903.14 How will PBGC use administrative wage garnishment to collect a debt owed to PBGC from a debtor's wages?

(a) PBGC is authorized to collect debts owed to PBGC from an individual debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). PBGC may use administrative wage garnishment to collect a delinquent debt unless the debtor is making timely payments under an agreement to pay the debt in installments (*see* § 4903.7 of this part). Thirty (30) days prior to initiating an administrative wage garnishment, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part, including the requirements of § 4903.5(a)(10) of this part. For debts referred to the Financial Management Service under § 4903.10 of this part, PBGC may authorize the Financial Management Service to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in § 4903.5(a)(10) of this part. If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. PBGC will determine whether the matter requires an oral hearing or if a determination based upon review of the written record is sufficient. PBGC will provide the debtor with a reasonable opportunity for an oral hearing when it determines that the issues in dispute cannot be resolved by a review of the documentary evidence. *See* 31 CFR 285.11(f)(1)–(4). Even if a debtor's hearing request is not timely, PBGC may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(b) This section does not apply to Federal salary offset, the process by which PBGC collects debts owed to PBGC from the salaries of Federal employees (*see* § 4903.13 of this part).

§ 4903.15 How will PBGC report debts owed to PBGC to credit bureaus?

PBGC will report delinquent debts owed to PBGC to credit bureaus in accordance with the provisions of 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables." At least 60 days prior to reporting a delinquent debt to a consumer reporting agency, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. PBGC may authorize the Financial Management Service to report to credit bureaus those delinquent debts owed to the PBGC that have been transferred to the Financial Management Service under § 4903.10 of this part.

§ 4903.16 How will PBGC refer debts owed to PBGC to private collection agencies?

PBGC will transfer delinquent debts owed to PBGC to the Financial Management Service to obtain debt collection services provided by private collection agencies. See § 4903.10 of this part.

§ 4903.17 When will PBGC refer debts owed to PBGC to the Department of Justice?

PBGC may initiate litigation pursuant to 29 U.S.C. 1302 with delinquent debts on which aggressive collection activity has been taken in accordance with this part and that should not be compromised, and on which collection activity should not be suspended or terminated. Alternatively, PBGC may refer debts owed to PBGC having a principal balance over $100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a debt or suspension or termination of collection activity. See §§ 4903.8 and 4903.9 of this part; 31 CFR 902.1, 903.1, and part 904. PBGC may authorize the Financial Management Service to refer to the Department of Justice for litigation those delinquent debts that have been transferred to the Financial Management Service under § 4903.10 of this part.

§ 4903.18 Will a debtor who owes a debt to PBGC or another Federal agency, and persons controlled by or controlling such debtors, be ineligible for Federal loan assistance, grants, cooperative agreements, or other sources of Federal funds?

(a) Delinquent debtors are ineligible for and barred from obtaining Federal loans or loan insurance or guaranties. As required by 31 U.S.C. 3720B and 31 CFR 901.6, PBGC will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a debt owed to a Federal agency. PBGC may issue standards under which it may determine that persons controlled by or controlling such delinquent debtors are similarly ineligible in accordance with 31 CFR 285.13(c)(2). This prohibition does not apply to disaster loans. PBGC may extend credit after the delinquency has been resolved. *See* 31 CFR 285.13.

(b) This section does not apply to loans provided to multi-employer pension plans pursuant to 29 U.S.C. 1431, 29 CFR 4261.1 and 4281.47.

(c) A debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive grants, loans or funds directly or indirectly from the United States until the judgment is paid in full or otherwise satisfied. This prohibition does not apply to funds to which the debtor is entitled as beneficiary. PBGC may promulgate regulations to allow for waivers of this ineligibility. *See* 28 U.S.C. 3201(e).

§ 4903.19 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?

(a) *Material change in circumstances.* A debtor who owes a debt to PBGC may, at any time, request a special review by PBGC of the amount of any offset, administrative wage garnishment, or voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (*e.g.,* costs incurred for food, housing, clothing, transportation, and medical care), the debtor must submit a detailed statement and supporting documents for the debtor, his or her spouse, and dependents, indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses;

(7) Exceptional expenses, if any; and

(8) Any additional materials and information that PBGC may request relating to ability or inability to pay the amount(s) currently required.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor must submit an alternative proposed payment schedule and a statement to PBGC, with supporting documents, showing why the current offset, garnishment or repayment schedule imposes an extreme financial hardship on the debtor. PBGC will evaluate the statement and documentation and determine whether the current offset, garnishment, or repayment schedule imposes extreme financial hardship on the debtor. PBGC will notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment, or payment schedule. If the special review results in a revised offset, garnishment, or repayment schedule, PBGC will notify the appropriate Federal agency or other persons about the new terms.

§ 4903.20 Will PBGC issue a refund if money is erroneously collected on a debt?

PBGC will promptly refund to a debtor any amount collected on a debt owed to PBGC when the debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law.

Subpart C—Procedures for Offset of PBGC Payments To Collect Debts Owed to Other Federal Agencies

§ 4903.21 How do other Federal agencies use the offset process to collect debts from payments issued by PBGC?

(a) *Offset of PBGC payments to collect debts owed to other Federal agencies.* (1) In most cases, Federal agencies submit debts to the Treasury Offset Program to collect delinquent debts from payments issued by PBGC and other Federal agencies, a process known as "centralized offset." When centralized offset is not available or appropriate, any Federal agency may ask PBGC (when acting as a "payment agency") to collect a debt owed to such agency by offsetting funds payable to a debtor by PBGC, including salary payments issued to PBGC employees. This section and § 4903.21 of this subpart C apply when a Federal agency asks PBGC to offset a payment issued by PBGC to a person who owes a debt to the United States.

(2) This subpart C does not apply to debts owed to PBGC. *See* §§ 4903.11 through 4903.13 of this part for offset procedures applicable to debts owed to PBGC.

(3) This subpart C does not apply to the collection of non-PBGC debts through tax refund offset. See 31 CFR 285.2 for tax refund offset procedures.

(4) Benefits paid by PBGC generally will not be offset, subject to limited exceptions (*e.g.,* in certain fiduciary breach situations).

(b) *Administrative offset (including salary offset); certification.* PBGC will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the past-due, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due process and other requirements contained in 31 U.S.C. 3716, 5 U.S.C. 5514, and the creditor agency's regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset under this section must be sent to PBGC, ATTN: Chief Financial Officer, 1200 K Street, NW., Washington, DC 20005.

(d) *Incomplete certification.* PBGC will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by PBGC.

(e) *Review.* PBGC is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(f) *When PBGC will not comply with offset request.* PBGC will comply with the offset request of another agency unless PBGC determines, in consultation with that agency, that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, PBGC may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to PBGC.* For purposes of this section, debts owed to PBGC generally take precedence over debts owed to other agencies. PBGC may determine whether to pay debts owed to other agencies before paying a debt owed to PBGC. PBGC will determine the order in which the debts will be collected based on the best interests of the United States.

§ 4903.22 What does PBGC do upon receipt of a request to offset the salary of a PBGC employee to collect a debt owed by the employee to another Federal agency?

(a) *Notice to a PBGC employee.* When PBGC receives proper certification of a debt owed by one of its employees, PBGC will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the date deductions from salary will begin, and the amount of such deductions. PBGC will begin deductions from the employee's pay at the next officially established pay interval.

(b) *Amount of deductions from a PBGC employee's salary.* The amount deducted under § 4903.21(b) of this part will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15 percent of the debtor's disposable pay so long as that amount does not exceed limitations imposed by 15 U.S.C. 1673. Deductions will continue until PBGC knows that the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. *See* § 4903.13(g) (salary offset process).

(c) *When the debtor is no longer employed by PBGC*—(1) *Offset of final and subsequent payments.* If a PBGC employee retires or resigns or if his or her employment ends before collection of the debt is complete, PBGC will continue to offset, under 31 U.S.C. 3716, up to 100 percent of an employee's subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor's final salary payment, lump-sum leave payment, and other payments payable to the debtor by PBGC. *See* 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from PBGC before the debt is paid in full, PBGC will certify to the creditor agency the total amount of its collection. If PBGC knows that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, PBGC will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before

collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 4903.10(c) of this part.

(3) *Notice to the debtor.* PBGC will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency—(1) Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, PBGC will notify the creditor agency and will certify the total amount of its collection on the debt. PBGC will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* PBGC will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* PBGC will provide a hearing official upon the creditor agency's request with respect to a PBGC employee. *See* 5 CFR 550.1107(a).

Issued in Washington, DC, this 1st day of November 2010.

Joshua Gotbaum,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–28020 Filed 11–4–10; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS OSCAR AUSTIN (DDG 79) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective November 5, 2010 and is applicable beginning October 13, 2010.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ted Cook, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone number: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 Code of Federal Regulations (CFR) Part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS OSCAR AUSTIN (DDG 79) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(c), pertaining to the placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended in Table Four, Paragraph 15 by adding the following entry for USS OSCAR AUSTIN (DDG 79) in alphanumerical order by DDG number:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Table Four

* * * * *

15. * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * * * *		
USS OSCAR AUSTIN	DDG 79	1.89 meters.
* * * * * * *		

* * * * *

Approved: October 13, 2010.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: October 28, 2010.

D.J. Werner,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–27927 Filed 11–4–10; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0099; FRL–8849–2]

Flubendiamide; Pesticide Tolerances; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of August 18, 2010, concerning the establishment, reassessment, modification and revoking of tolerances for residues of flubendiamide, in or on multiple food and livestock commodities. This document is being issued to correct typographical errors in the referenced rule, specifically, to revise incorrect tolerance values for the established tolerances for corn, field, grain; corn, field, stover; corn, sweet, stover; and cotton gin byproducts.

DATES: This final rule is effective November 5, 2010.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0099. All documents in the docket are listed in the docket index available in *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Registration Division (7504P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–0029; e-mail address: *rodia.carmen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What does this technical correction do?

Currently, 40 CFR 180.639(a)(1) provides an incorrect tolerance value for the established tolerances for corn, field, grain (0.02 ppm); corn, field, stover (0.15 ppm); corn, sweet, stover (0.25 ppm); and cotton gin byproducts (0.60 ppm). As supported by submitted field trial and processing data, these tolerance values should be revised to 0.03 ppm; 15 ppm; 25 ppm; and 60 ppm, respectively. Therefore, EPA is correcting the entries for corn, field, grain; corn, field, stover; corn, sweet, stover; and cotton gin byproducts in the table in § 180.369(a)(1).

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because this final rule corrects a number of typographical errors and does not otherwise change the original requirements of the final rule. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and Executive Order reviews apply to this action?

This final rule corrects a number of typographical errors and does not otherwise change the original requirements of the final rule. As a typographical correction, this action is not subject to the statutory and Executive Order review requirements. For information about the statutory and Executive Order review requirements as they related to the final rule, see Unit VI. in the **Federal Register** of August 18, 2010 (75 FR 50914) (FRL–8836–2).

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 28, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.639, in the table to paragraph (a)(1), revise the entries for corn, field, grain; corn, field, stover; corn, sweet, stover; and cotton gin byproducts, to read as follows:

§ 180.639 Flubendiamide; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
* * * * *	
Corn, field, grain	0.03
Corn, field, stover	15
Corn, sweet, stover	25
* * * * *	
Cotton gin byproducts	60

Commodity	Parts per million
* * * * *	

[FR Doc. 2010–27998 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 450

[EPA–HQ–OW–2010–0884; FRL–9222–2]

Direct Final Rule Staying Numeric Limitation for the Construction and Development Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to stay the numeric effluent limitation of 280 NTU and associated monitoring requirements for the Construction and Development Point Source Category. This action is necessary so that EPA can reconsider the record basis for calculating the numeric effluent limitation. EPA expects to move expeditiously with its reconsideration, and will remove the stay when such reconsideration is completed.

DATES: This rule is effective on January 4, 2011 without further notice, unless EPA receives adverse comment by December 6, 2010 for 40 CFR 450.22(a) and (b), which are stayed indefinitely. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2010–0884, by one of the following methods:

- *http://www.regulations.gov:* This is EPA's preferred approach, although you may use the alternatives presented below. Follow the on-line instructions for submitting comments.
- *E-mail: OW-Docket@epa.gov.*
- *Mail:* USEPA Docket Center, Environmental Protection Agency, Docket Number EPA–HQ–OW–2010–0884, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* USEPA Docket Center, Public Reading Room, 1301 Constitution Ave., NW., Room 3334, EPA West Building, 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 comments to Docket ID No. EPA–HQ–OW–2010–0884. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the USEPA Docket Center, Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Janet Goodwin, USEPA Office of Water, by phone at (202) 566–1060 or by e-mail at *goodwin.janet@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities	North American industry classification system (NAICS) code
Industry	Construction activities required to obtain NPDES permit coverage and performing the following activities: Construction of buildings, including building, developing and general contracting.	236
	Heavy and civil engineering construction, including land subdivision	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 450.10 (74 FR 62995) and the definition of "storm water discharges associated with industrial activity" and "storm water discharges associated with small construction activity" in existing EPA regulations at 40 CFR 122.26(b)(14)(x)

and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular site, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

On December 1, 2009, EPA published in the **Federal Register** (74 FR 62995) effluent limitations guidelines and new source performance standards (ELGs) for the Construction and Development Point Source category. These ELGs control the discharge of pollutants from construction sites and require construction site owners and operators to implement a range of erosion and sediment control measures and pollution prevention practices to control pollutants in discharges from construction sites. These control measures became effective on February 1, 2010. In addition, the rule subjected discharges from certain larger construction sites to a numeric effluent limitation of 280 NTU starting in August of 2011 (for sites 20 acres or more) and February of 2014 (for sites 10 acres or more). These regulations are located at 40 CFR part 450.

Subsequent to the promulgation of the construction and development ELGs, EPA received two petitions for reconsideration of the rule. These petitions pointed out a potential error in the calculation of the numeric limitation. Based on EPA's examination of the dataset underlying the 280 NTU limit, EPA has concluded that it improperly interpreted the data and, as a result, the calculations in the existing administrative record are no longer adequate to support the 280 NTU effluent limitation. EPA intends to expeditiously conduct a separate rulemaking to correct the numeric effluent limitation. EPA plans to publish a proposed correction rule in December 2010 for public comment, and take final action on the proposal by May 30, 2011 so that the revised limitation will be effective by June 29, 2011. An effective date for any revised limitation of June 29, 2011 is necessary in order for EPA to incorporate the corrected numeric limitation in its next Construction General Permit by June 30, 2011.

In 2010 and 2011, EPA estimates that 16 states will incorporate the new construction and development ELG requirements, including the numeric limitation, in their construction general permits. Since EPA acknowledges an error in calculating the 280 NTU limit, it would be inappropriate for states to incorporate the current numeric limitation in construction and development permits. Consequently, EPA believes a stay of the 280 NTU effluent limitation and associated monitoring requirements is appropriate until EPA can correct its error in calculating the numeric limitation. EPA plans to initiate a limited rulemaking to correct the numeric limitation, and plans to take final action on the proposal by May 30, 2011. This direct final rule stays the numeric limitation in 40 CFR 450.22(a) and (b) and associated monitoring requirements until the new rulemaking is effective. States issuing permits between effective date of the stay and the effective date of the new rule need not incorporate the 280 NTU numeric limitation into their permits.

C. Description of This Action

EPA is staying Section 22(a) and (b) of 40 CFR part 450 until it can complete a new rulemaking to correct the 280 NTU numeric limitation. Otherwise, compliance with the 280 NTU numeric limitation based on an inadequate administrative record would be required. This stay provides certainty to dischargers, which would need to comply with the numeric limitation and associated monitoring requirements, and to permitting agencies, which would need to incorporate the numeric limitation and associated monitoring requirements in construction permits. This is especially critical for the 16 states that are expected to issue new construction general permits in 2010 and 2011. Pursuant to 5 U.S.C. 553(b), EPA has determined for the reasons stated above that good cause exists for issuing this stay without notice and public comment procedures because in this context, for the reasons discussed above, such procedures are unnecessary and not in the public interest. EPA is not staying any other provision of 40 CFR part 450.

D. Statutory and Executive Order Reviews

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175. 65 FR 67249 (November 9, 2000). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. 64 FR 43255 (August 10, 1999). This rule also is not subject to Executive Order 13045, 62 FR 19885 (April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995, 15 U.S.C. 272, do not apply. This rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898, 59 FR 7629 (February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, 61 FR 4729 (February 7, 1996). EPA has complied with Executive Order 12630, 53 FR 8859 (March 15, 1988), by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the December 1, 2009 **Federal Register** notice. 74 FR 62995.

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made a good cause finding to forego public notice and comment procedures. Today's stay eliminates a numeric limitation for which the record is inadequate and any opportunity for confusion. Any additional delay in correcting the calculation error would only increase the potential confusion and could require states to incorporate an incorrect numeric limitation in their construction permits. EPA sets an effective date to make the stay effective 60 days after publication in the **Federal Register**. 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. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 450

Environmental protection, Construction industry, Land development, Erosion, Sediment, Stormwater, Water pollution control.

Dated: November 1, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons set forth in the preamble, EPA is amending 40 CFR part 450 as follows:

PART 450—CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY

■ 1. The authority citation for part 450 is revised to read as follows:

Authority: 33 U.S.C. 101, 301, 304, 306, 308, 401, 402, 501 and 510.

■ 2. Section 450.22(a) and (b) are stayed indefinitely.

[FR Doc. 2010–28033 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB91

Acquisition Regulation: Agency Supplementary Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) on DOE Management and Operating Contracts to make changes to conform to the Federal Acquisition Regulation (FAR), remove out-of-date coverage, and update references. Today's rule does not alter substantive rights or obligations under current law.

DATES: *Effective Date:* December 6, 2010.

FOR FURTHER INFORMATION CONTACT: Barbara Binney at (202) 287–1340 or by e-mail, *barbara.binney@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments and Responses
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 13211
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
L. Approval by the Office of the Secretary of Energy

I. Background

This final rule amends the existing Department of Energy Acquisition Regulation (DEAR) Subchapter I. The purpose of this rule is to update DEAR Subchapter I—Agency Supplementary Regulations, Part 970—DOE Management and Operating Contracts to conform it to the FAR. None of today's changes are substantive or of a nature to cause any significant expense for DOE or its contractors.

II. Comments and Responses

DOE published a notice of proposed rulemaking on June 9, 2010 (75 FR 32719), with a public comment period ending on July 9, 2010. DOE received no comments.

DOE amends the DEAR as follows:

1. Section 970.0100 is amended to add the references for the Code of Federal Regulation (CFR) chapters 1 and 9.

2. Section 970.0103 is revised to remove "DEAR" before 970.0309 and remove "FAR" before 3.9 and add in its place "48 CFR subpart" in paragraph (a)(3).

3. Section 970.0404–2 is amended to update the DOE Order to 475.1, Counterintelligence Program.

4. Section 970.19 is amended to revise the subpart heading and the 970.1907 section heading to conform to the FAR.

5. Section 970.1907–1 is redesignated as 970.1907–4 to conform to the FAR.

6. Part 970 is revised by adding a new subpart "970.25 Foreign Acquisition" and section "970.2570 Contract clauses" which provides instructions on when to insert and how to modify the clauses at FAR 52.225–1, Buy American Act—Supplies, and FAR 52.225–9, Buy American Act—Construction Materials, in management and operating contracts.

7. Section 970.3102–05–6 paragraphs (a)(7)(i) and (ii) are amended to clarify that the contract will set forth the reimbursable costs for compensation for personal services, it removes the reference to the personnel appendix. Paragraph (p)(1) revises the reference to the FAR from the "Federal Acquisition Regulation" to "48 CFR."

8. Subpart 970.34 is amended by redesignating 970.3400 as 970.3405 and 970.3400–1 as 970.3405–2 to conform with the FAR.

9. Subpart 970.37 is revised to add the new section "970.3706 Performance-based acquisition" and "970.3706–1 General" which references 970.1100 for policy and guidance on performance-based contracting for management and operating (M&O) contracts.

10. Section 970.3770–1 is amended by adding that the use of DOE directives is prescribed in 970.0470.

11. Section 970.5204–1 is amended by revising the date of the clause and removing "DOE Order 5670.3, Counterintelligence Program" in paragraph (a) of the clause and adding in its place "DOE Order 475.1, Counterintelligence Program, or its successor".

12. Section 970.5223–3 is amended by revising the date of the provision and adding that DOE may grant an extension to the notification or implementation period if necessary as per 10 CFR 707.5 (g) in paragraph (b). This change will provide the contracting officer the authority to extend the time needed for the contractor to submit the workplace substance abuse program plan.

13. Section 970.5223–4 is amended by revising the date of the clause and revising the clause to permit the contracting officer to agree to different date beyond the 30-day notice by the contractor for the submission of the workplace substance abuse program plan. This change will provide the Contracting Officer the authority to extend the time needed for the Contractor to submit the workplace substance abuse program plan.

14. Section 970.5226–1 is amended by revising the punctuation in the last sentence of the clause.

15. Section 970.5232–3 is amended at paragraph (h)(1) to add "or subcontractor's" after "contractor's" and to add "and to interview any current employee regarding such transactions" after "hereunder." Section 871 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 and section 902 of Title IX of the Recovery Act formalized the current practices permitting access to the Government Accountability Office to records and to interview current employees of contractors and subcontractors administering contracts.

16. Section 970.5235–1 is amended to update the clause to reference the clause 48 CFR 970.5217–1 in paragraph (c) since this clause applies the Work for Others Program. Also, paragraph (d) is amended to add the full title of DOE order 481.1.

17. The rule text is amended as noted in paragraph 11 and in the tables at paragraphs 20 and 21 by removing "FAR" or "DEAR" and adding "48 CFR"; removing "FAR" or "48 CFR"; adding "48 CFR", revising the punctuation; and capitalizing Contractor, Contractor's, and Contracting Officer.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice or rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule updates references in the DEAR that apply to public contracts and does not impose any additional requirements on small businesses. Today's rule does not alter any substantive rights or obligations and, consequently, today's rule will not have a significant cost or administrative impact on contractors, including small entities. On the basis of the foregoing, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens associated with the collection of certain contractor data under the DEAR have been cleared under OMB control number 1910–4100.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, today's rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally

requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rule does not impose any federal mandate on state, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rule will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355, (May 22, 2001), requires Federal agencies to prepare and submit to Office of Information and Regulatory Affairs of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

L. Approval by the Office of the Secretary of Energy

Issuance of today's rule has been approved by the Office of the Secretary.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC.

Patrick M. Ferraro,

Acting Director, Office of Procurement and Assistance Management, Department of Energy.

Joseph F. Waddell,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, the Department of Energy amends Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 1. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

Subpart 970.01—Management and Operating Contract Regulatory System

970.0100 [Amended]

■ 2. Section 970.0100 is amended in the first sentence, by adding, "(Chapter 1 of Title 48 Code of Federal Regulations (CFR))" after "(FAR)" and by adding "(Chapter 9 of Title 48 CFR)" after "DEAR".

970.0103 [Amended]

■ 3. Section 970.0103 is amended by:
■ a. Removing, in introductory paragraph (a) heading, "part" and adding in its place "Part";
■ b. Removing, in paragraph (a)(3), "DEAR"; and
■ c. Removing, in paragraph (a)(3), "FAR 3.9" and adding in its place "48 CFR subpart 3.9".

970.0404–2 [Amended]

■ 4. Section 970.0404–2 is amended in paragraph (b) by removing "5670.3 (as amended)." at the end of the second sentence and adding in its place "475.1, Counterintelligence Program, or its successor."

Subpart 970.19—Small Business Programs

■ 5. Revise subpart 970.19 subpart heading to read as set forth above.
■ 6. Revise 970.1907 section heading to read as set forth below:

970.1907 The Small Business Subcontracting Program.

* * * * *

970.1907–1 [Redesignated as 970.1907–4]

■ 7. Section 970.1907–1 is redesignated as 970.1907–4.
■ 8. Add subpart 970.25, consisting of 970.2570, to read as follows:

Subpart 970.25—Foreign Acquisition

970.2570 Contract clauses.

Contracting officers shall insert the clauses at 48 CFR 52.225–1, Buy American Act—Supplies, and 48 CFR 52.225–9, Buy American Act—Construction Materials, in management and operating contracts. The clause at 48 CFR 52.225–1 shall be modified in paragraph (d) by substituting the word "use" for the word "deliver."

970.2673–1 [Amended]

■ 9. Section 970.2673–1 is amended by:
■ a. Removing the ":" in introductory text and adding in its place a "—";
■ b. Removing the "," in paragraph (a) and adding in its place a ";"; and
■ c. Removing the "," in paragraph (b) and adding in its place a ";".
■ 10. Section 970.3102–05–6 is amended by:
■ a. Revising paragraphs (a)(7)(i) and (a)(7)(ii) to read as set forth below; and
■ b. Removing "Federal Acquisition Regulation" in paragraph (p)(1) and adding in its place "48 CFR".

970.3102–05–6 Compensation for personal services.

(a) * * *

(7)(i) Reimbursable costs for compensation for personal services are to be set forth in the contract. This compensation shall be set forth using the principles and policies of 48 CFR 31.205–6, Compensation, as

supplemented by this section, 970.3102–05–6, and other pertinent parts of the DEAR. Costs that are unallowable under other contract terms shall not be allowable as compensation for personnel services.

(ii) The contract sets forth, in detail, personnel costs and related expenses allowable under the contract and documents personnel policies, practices and plans which have been found acceptable by the contracting officer. The contractor will advise DOE of any proposed changes in any matters covered by these policies, practices, or plans which relate to personnel costs. Types of personnel costs and related expenses addressed in the contract are as follows: Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; welfare benefits and retirement programs; paid time off, and salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees provided, however, that the contracting officer's approval is required in each instance of total compensation to an individual employee above an annual rate as specified in the contract.

* * * * *

970.3102–05–46 [Amended]

■ 11. Section 970.3102–05–46 is amended in paragraph (e)(3) introductory text by adding "48 CFR" before "31.109".

970.3400 [Redesignated as 970.3405]

■ 12a. Redesignate 970.3400 as 970.3405 and 970.3400–1 as 970.3405–2.

970.3400–1 [Redesignated as 970.3405–2]

■ 12b. Redesignate 970.3400–1 as 970.3405–2.

■ 13. Add sections 970.3706 and 970.3706–1 to subpart 970.37 to read as follows:

970.3706 Performance-based acquisition.

970.3706–1 General.

For policy and guidance on performance-based contracting for management and operating (M&O) contracts, see 970.1100.

■ 14. Section 970.3770–1 is revised to read as follows:

970.3770–1 Policy.

Contractors managing the Department of Energy (DOE) facilities shall be required to comply with the DOE Directives applicable to facilities management. The use of the DOE Directives is prescribed in 970.0470.

■ 15. Section 970.5204–1 is amended by:

■ a. Revising the date of the clause to read as set forth below; and

■ b. Removing "DOE Order 5670.3, Counterintelligence Program;" in paragraph (a) of the clause and adding in its place "DOE Order 475.1, Counterintelligence Program, or its successor;".

The revision reads as follows:

970.5204–1 Counterintelligence.

* * * * *

COUNTERINTELLIGENCE (DEC 2010)

* * * * *

■ 16. Section 970.5223–3 is amended by:

■ a. Revising the date of the provision to read as set forth below; and

■ b. Adding a new sentence at the end of paragraph (b) as set forth below.

The revision and addition read as follows:

970.5223–3 Agreement regarding Workplace Substance Abuse Programs at DOE Sites.

* * * * *

AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)

* * * * *

(b) * * * DOE may grant an extension to the notification or implementation period if necessary as per 10 CFR 707.5(g).

* * * * *

■ 17. Section 970.5223–4 is amended by:

■ a. Revising the date of the clause to read as set forth below; and

■ b. Revising paragraph (c)(1).

The revisions read as follows:

970.5223–4 Workplace Substance Abuse Programs at DOE sites.

* * * * *

WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010)

* * * * *

(c) *Subcontracts.* (1) The Contractor agrees to notify the Contracting Officer reasonably in advance of, but not later than 30 days prior to, the award of any subcontract the Contractor believes may be subject to the requirements of 10 CFR part 707, unless the Contracting Officer agrees to a different date.

* * * * *

■ 18. Section 970.5232–3 is amended by:

■ a. Revising the date of the clause to read as set forth below; and

■ b. Adding "or subcontractor's" after "contractor's" and adding "and to interview any current employee regarding such transactions" after "hereunder" in paragraph (h)(1).

The revision reads as follows:

970.5232–3 Accounts, records, and inspection.

* * * * *

ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010)

* * * * *

■ 19. Section 970.5235–1 is amended by:

■ a. Revising the introductory text and the date of the clause to read as set forth below;

■ b. Removing "DOE Order 481.1, Work for Others (Non-Department of Energy Funded Work) (see current version)." in paragraph (c) and adding in its place "the clause 48 CFR 970.5217–1 Work for Others Program."; and

■ c. Adding ", Work for Others (Non-Department of Energy Funded Work), or its successor" after "DOE Order 481.1" in paragraph (d).

The revisions read as follows:

970.5235–1 Federally funded research and development center sponsoring agreement.

As prescribed in 970.3501–4, insert the following clause:

FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER SPONSORING AGREEMENT (DEC 2010)

* * * * *

PART 970—[AMENDED]

■ 20. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
970.1504–1–4(e) introductory text and (e)(2) introductory text	":"	"—"
970.2201–1–1	"48 CFR Subpart"	"48 CFR subpart"
970.2201–1–2(a)(1)(ii)(A)	"A review must:"	"A review must —"
970.2201–1–2(a)(1)(ii)(C)	"including those:"	"including those —"

Section	Remove	Add
970.2201–1–2(a)(1)(iii)	"10 CFR Part 707.4"	"10 CFR 707.4"
970.2201–1–2(a)(1)(iii)	"10 CFR Part 707"	"10 CFR part 707"
970.2201–1–2(a)(1)(v)(A)	"authorization:"	"authorization —"
970.2305–2(b)	"48 CFR 23.5"	"48 CFR subpart 23.5"
970.2306(b)(4)	"48 CFR 970.5223–3"	"970.5223–3"
970.2672–2	"48 CFR"	"subpart"
970.5215–3(b)(4)(iii) in the first sentence	"contracting officer"	"Contracting Officer"
970.3204–1(a)	"48 CFR subpart 932.4"	"subpart 932.4"
970.5222–1 in the last sentence	"contractor"	"Contractor"
970.5223–1(b) in the third sentence	"contractor's"	"Contractor's"
970.5223–1(b)(2)	"(ES&H)"	"ES&H"
970.5226–1	"contracting officer"	"Contracting Officer"
970.5226–1 in the second sentence	"contractor"	"Contractor"
970.5226–1 in the third sentence	"Appendix."	"the Appendix."
970.5232–2(e)(2)(iv)(B) in the last sentence	"contractor"	"Contractor"
970.5232–3(d) in the second sentence	"Clause ___,"	"Clause 970.5204–3,"
970.5232–3(j) in the last sentence	"Penalties for Unallowable costs;" ..	"Penalties for Unallowable Costs;"

■ 21. In the table below, for each section indicated in the left column, remove the word indicated in the right column from where it appears in the section:

Section	Remove
970.2201–1–2(a)(1)(ii)	"48 CFR"
970.2671–2	"48 CFR"
970.2672–3	"48 CFR"
970.2673–2	"48 CFR"
970.5226–1 introductory text	"48 CFR"
970.5226–2 introductory text	"48 CFR"
970.5226–3 introductory text	"48 CFR"
970.5232–5(b) in two places	"FAR"

[FR Doc. 2010–27870 Filed 11–4–10; 8:45 am]

BILLING CODE 6450–01–P

Proposed Rules

Federal Register
Vol. 75, No. 214
Friday, November 5, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 731

RIN 3206–AL90

Suitability

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to assist agencies in carrying out new requirements to reinvestigate individuals in public trust positions under Executive Order 13488, *Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust,* to ensure their continued employment is appropriate. This proposed rule would implement the suitability reinvestigation provisions of E.O. 13488. OPM also proposes to make a technical revision to the authority citation to correct the citation format.

DATES: Comments must be received on or before *December 6, 2010.*

ADDRESSES: You may submit comments, identified by RIN number "3206–AL90," using either of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

All Mail: Tom Wachter, Acting Deputy Associate Director, Partnership & Labor Relations, U.S. Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415–8200.

FOR FURTHER INFORMATION CONTACT: Julie Ohr, U.S. Office of Personnel Management, Partnership & Labor Relations, 1900 E St., NW., Room 7H28, Washington, DC 20415–4000; fax to 202–606–2613; e-mail to *PLR@opm.gov*.

SUPPLEMENTARY INFORMATION:

Reopening of Comment Period for Proposed Rule

This proposed rule was published on November 3, 2009, at 74 FR 56747, with the comment period ending on January 4, 2010. Several comments received from Federal agencies stated that the commenter was unable to provide an informed recommendation related to the frequency of reinvestigations without specific information regarding the scope of such reinvestigation. This notice is intended to provide additional information relative to the scope of reinvestigations for public trust positions in order to allow for further comment as to reinvestigation frequency. In addition, OPM is revising the text of the proposed rule at 5 CFR 731.106(d)(2) to identify separate investigations that satisfy the public trust reinvestigation requirement to resolve an interpretive ambiguity, and is soliciting additional public comment on the revised text. Both the comments received in response to OPM's November 3, 2009, **Federal Register** notice, and the comments received in response to this reopening notice related to the frequency of reinvestigation of public trust positions, will be considered in the development of the final rule. OPM is also using this opportunity to propose a technical revision to the authority citation to correct the citation format.

Background

On January 16, 2009, President George W. Bush signed Executive Order 13488, which provides that individuals in public trust positions shall be subject to reinvestigation under standards determined by the Director of the Office of Personnel Management (OPM) to ensure their continued employment is appropriate. The order provides that the standards issued by OPM shall include the frequency of reinvestigations. E.O. 13488 is distinct from but complements E.O. 13467, concerning alignment, to the extent possible, of security and suitability standards.

Public Trust Positions

Public trust positions are those covered by 5 CFR part 731 which an agency head, under 5 CFR 731.106, has designated at a moderate or high risk level, based on the position's potential for adverse impact on the efficiency or integrity of the service. Such positions may involve policy making, major program responsibility, public safety and health, law enforcement duties, fiduciary responsibilities, or other duties demanding a significant degree of public trust, or access to or operation or control of financial records, with a significant risk for causing damage or realizing personal gain. Designation of public trust positions and their risk level is made by agencies following OPM guidance and taking into account the specific duties of each position.

Frequency of Reinvestigations

While a reinvestigation typically will be more limited than the initial investigation, that reinvestigation must occur frequently if agencies are to carry out the purpose of the Executive order—to ensure that continued employment of persons in public trust positions remains appropriate. Accordingly, the proposed rule would require, at 5 CFR 731.106(d)(1), that a person occupying a public trust position be reinvestigated at least once every 5 years.

Currently, under 5 CFR 731.106(c)(2) and 732.201(a), each position that is designated as a low-, moderate- or high-risk position must also be designated as non-sensitive, noncritical-sensitive, critical-sensitive, or special-sensitive based on the potential that the occupant could materially adversely affect the national security. Although it is possible that the types of investigations performed may change to meet evolving needs, at the writing of this regulatory notice, it is the intent of OPM to conduct reinvestigations for non-sensitive, moderate-risk public trust positions using the NACLC (National Agency Check with Local Agency Check and Credit Check), and non-sensitive, high-risk public trust reinvestigations would be conducted using the PRI (Periodic Reinvestigation). Both of these reinvestigations will be conducted using the Questionnaire for Public Trust Positions (SF–85P) Form. The reinvestigation may be expanded as necessary based upon information discovered during the investigation. Contingent on future investigative and resource capacities, OPM supplementary guidance will adjust investigative frequencies within this 5-year period based on the level of trust (*i.e.,* either moderate or high risk) associated with a person's position. We

are re-opening the comment period to specifically solicit comment on whether a periodic reinvestigation cycle of 5 or fewer years is appropriate, considering the risk posed by employment in public trust positions, and the availability of investigative and adjudicative resources based on the investigative product used to conduct the reinvestigations. We will consider comments on this proposed rule and consult with affected agencies in developing supplemental guidance on investigative frequency.

E.O. 13488 addresses reinvestigations of occupants of all public trust positions, including those also designated as noncritical-sensitive, critical-sensitive, or special-sensitive under 5 CFR part 732. Certain positions are already subject to national security reinvestigation requirements under 5 CFR 732.203 or under E.O. 12968, as amended. Requiring multiple reinvestigations for the same individual at least every 5 years would be costly and inefficient, and would be inconsistent with the policy expressed in E.O. 13467, which calls for suitability and national security investigations to be aligned "using consistent standards to the extent possible" and for "each successively higher level of investigation * * * [to] build upon, but not duplicate, the ones below it."

Accordingly, at 5 CFR 731.106(d)(2), the proposed rule would provide that a national security investigation to determine a person's initial or continued eligibility for access to classified information or to hold a sensitive position also satisfies the 5-year public trust reinvestigation requirement for that person, as long as it is conducted at a level equal to or higher than the level required for his or her public trust reinvestigation. The agency is not required to conduct an additional public trust reinvestigation in such circumstances, and the completed national security investigation restarts the 5-year schedule (or other schedule as future guidance might require) for a new public trust reinvestigation. Likewise, a suitability investigation based on a change in risk level as provided in 5 CFR 731.106(e) is sufficient, if conducted at the appropriate level, to satisfy the public trust reinvestigation requirement.

The proposed rule published on November 3, 2009, stated that an investigation for eligibility for access to classified national security information may be sufficient to meet public trust reinvestigation requirements, but did not state that an investigation for employment in a sensitive national security position may also be sufficient to meet public trust reinvestigation requirements. The text of the proposed rule has been revised to clarify that both types of national security investigations may be sufficient to meet public trust reinvestigation requirements. Further, the November 3, 2009, proposed rule stated that a "reevaluation" may be sufficient to meet public trust reinvestigation requirements, without defining a "reevaluation." The text of the proposed rule has been revised to eliminate this ambiguous term. OPM is soliciting public comment on these revisions to the text of the proposed rule, in addition to soliciting public comment on the appropriate cycle for public trust reinvestigations.

Assessments Resulting From Reinvestigations

The regulation at 5 CFR 731.106(f) would be modified to more clearly reflect the broader authority and obligation of agencies to make decisions following investigations. The current language provides that a completed investigation must result in a "determination" by the agency. As discussed below, an agency's decision on a reinvestigation of an employee in a public trust position will rarely be a *suitability* determination that results in a suitability action under this part. Thus, the potentially misleading word "determination" would be replaced with the word "assessment."

As currently provided at 5 CFR 731.106(f), a person's employment status will determine the applicable agency authority and procedures to be followed in any action taken based on the results of the reinvestigation. In most circumstances, the subject of a reinvestigation will have been employed by his or her agency for more than one year and, under those circumstances, only OPM could make a suitability determination and take a suitability action under very limited circumstances. As provided under 5 CFR 731.105(d), OPM could take a suitability action based on (1) a material, intentional false statement, or deception or fraud in examination or appointment; (2) refusal to furnish testimony, or (3) a statutory or regulatory bar that prevents the lawful employment of the person. However, conduct that surfaces during a reinvestigation (for example, off-duty criminal conduct) could form the basis for an adverse action under 5 CFR part 752.

Consistent with the changes made to 5 CFR 731.106, the reporting requirements under 5 CFR 731.206 would be modified to require agencies to report any decisions and actions taken as a result of a background investigation or reinvestigation. Here, the "level" of investigation is replaced by the "level or nature" of the investigation as a reporting obligation, to be consistent with E.O. 13488. The actual information reported is unchanged. Section 731.206 of title 5, Code of Federal Regulations, also would be clarified to reflect current practice that agencies follow in reporting the completion dates of background investigations. This is important, since the public trust position reinvestigation schedule is tied to the completion date of a relevant investigation.

Technical Amendment

OPM proposes a technical amendment to the Authorities for this part to reflect the President's signing of Executive Order 13488 on January 16, 2009, which authorizes the Director of OPM to issue regulations and guidance implementing the order. In this reopener, OPM also makes a technical revision to the authority citation to correct the citation format.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

E.O. 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

E.O. 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988—Civil Justice Reform

This regulation meets the applicable standard set forth in section 3(a) and (b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions

of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 5 CFR Part 731

Administrative practices and procedures, Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM proposes to amend part 731, title 5, Code of Federal Regulations, as follows:

PART 731—SUITABILITY

1. The authority citation for part 731 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 7301; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218, as amended; E.O. 13467, 3 CFR, 2009 Comp., p. 198; E.O. 13488, 74 FR 4111; 5 CFR, parts 1, 2 and 5.

Subpart A—Scope

2. In § 731.106, revise paragraphs (d) and (f) to read as follows:

§ 731.106 Designation of public trust positions and investigative requirements.

* * * * *

(d) *Reinvestigation requirements.* (1) Agencies must ensure that reinvestigations are conducted and an assessment made regarding continued employment of persons occupying public trust positions at least once every 5 years. The nature of these reinvestigations and any additional requirements concerning their frequency will be established in supplemental guidance issued by OPM.

(2) If, prior to the next required reinvestigation, a separate investigation is conducted to determine a person's eligibility (or continued eligibility) for access to classified information or to hold a sensitive position, or as a result of a change in risk level as provided in § 731.106(e), and that investigation is conducted at an equal or higher level than is required for a public trust reinvestigation, a new public trust reinvestigation is not required. Such a completed investigation restarts the cycle for a public trust reinvestigation for that person.

* * * * *

(f) *Completed investigations.* Any suitability investigation (or reinvestigation) completed by an agency under paragraphs (d) and (e) of this section must result in an assessment by the employing agency of whether the findings of the investigation would justify an action against the employee, under this part or under some other authority, such as 5 CFR part 752. Section 731.103 addresses whether an action is available under this part, and whether the matter must be referred to OPM for debarment consideration.

3. Revise § 731.206 to read as follows:

§ 731.206 Reporting requirements.

Agencies must report to OPM the level or nature, result, and completion date of each background investigation or reinvestigation, each agency decision based on such investigation or reinvestigation, and any personnel action taken based on such investigation or reinvestigation, as required in OPM issuances.

[FR Doc. 2010–28054 Filed 11–4–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 5 and 119

[Docket No. FAA–2009–0671; Notice No. 10–15]

RIN 2120–AJ86

Safety Management Systems for Part 121 Certificate Holders

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to require each certificate holder operating under 14 CFR part 121 to develop and implement a safety management system (SMS) to improve the safety of their aviation related activities. A safety management system is a comprehensive, process-oriented approach to managing safety throughout an organization. An SMS includes an organization-wide safety policy; formal methods for identifying hazards, controlling, and continually assessing risk; and promotion of a safety culture. SMS stresses not only compliance with technical standards but increased emphasis on the overall safety performance of the organization.

DATES: Send your comments on or before February 3, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0671 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.
- *Hand Delivery:* Bring comments to Docket Operations in Room W12–140 of the West Building (Ground Floor) at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott Van Buren, Chief System Engineer for Aviation Safety, Office of Accident Investigation and Prevention (AVP), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 494–8417; *facsimile:* (202) 267–3992; *e-mail: scott.vanburen@faa.gov.* For legal questions, contact Anne Bechdolt, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–3073; *facsimile:* (202) 267–7971; *e-mail: anne.bechdolt@faa.gov.*

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

In addition, the Airline Safety and Federal Aviation Administration Extension Act of 2010 (the Act), Public Law 111–216, sec. 215 (August 1, 2010), requires the FAA to conduct rulemaking to "require all part 121 air carriers to implement a safety management system." The rulemaking must consider, at a minimum, including an aviation safety action program (ASAP), flight operational quality assurance program (FOQA), a line operations safety audit (LOSA), and an advanced qualification program (AQP) as part of the SMS. The FAA must issue a notice of proposed rulemaking within 90 days of the passing of the Act, and a final rule within 24 months of the passing of the Act, requiring all part 121 air carriers to implement a safety management system.

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I. Executive Summary

This proposal would require certificate holders authorized to conduct operations under 14 Code of Federal Regulations (CFR) part 121 to develop and implement a Safety Management System (SMS) of their aviation safety-related activities. An SMS includes an organization-wide safety policy; formal methods for identifying hazards, controlling, and continually assessing risk; and promotion of a safety culture. When systematically applied, an SMS provides a set of decision-making tools that certificate holders can use to improve safety.

The FAA is proposing this rule as part of its efforts to continuously improve safety in air transportation. The FAA proposes to add the SMS rule, a performance-based regulation, to existing regulations and technical operating standards to deal with gaps best addressed through improved management practices. SMS's proactive emphasis on hazard identification and mitigation, and on communication of safety issues, would provide certificate holders robust tools to improve safety.

The International Civil Aviation Organization (ICAO), in its March 2006 amendments to Annex 6 part I,[1] which addresses operation of airplanes in international commercial air transport, establishes a standard for member states to mandate that each of these operators establish an SMS. In addition, the National Transportation Safety Board (NTSB) has recommended the FAA pursue rulemaking to require all 14 CFR part 121 operators to implement an SMS.[2] Congress, in the Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111–216, August 1, 2010), directed the FAA to issue a notice of proposed rulemaking within 90 days of enactment, and a final SMS rule by July 30, 2012. If this proposal is adopted, U.S. aviation safety regulations would be in conformance with ICAO standards, would fully address NTSB recommendations, and would comply with the statutory requirement.

The FAA anticipates a final rule would become effective 60 days after publication of the final rule in the **Federal Register**. The agency proposes to require current certificate holders to submit an SMS implementation plan for approval within six months of that effective date. The FAA solicits comments on the 60-day effective date, as well as the timeframe for submission of an SMS plan. The implementation plan would have to ensure the certificate holder's SMS would be fully operational within three years of the effective date. New applicants for certification to conduct operations under part 121 would be required to demonstrate prior to certification that they have an SMS that meets the requirements set forth in this proposal.

Under this proposal, the FAA would require each air carrier to develop an SMS that includes the four SMS components set forth in Annex 6: Safety Policy, Safety Risk Management, Safety Assurance, and Safety Promotion. To support each component, the FAA proposes a certificate holder implement a number of processes and procedures. Together, the four components and corresponding processes and procedures provide the general framework for an organization-wide safety management approach to air carrier operations.

The FAA projects that the compliance cost supporting each component would come from the initial development and documentation of the SMS, implementation and continuous operating costs to include the modification or purchasing of new equipment/software, additional staff and promotional materials, and training. Because SMS is inherently scalable, costs depend on the size of the carrier and the type of operations that it provides. Further, operators may have existing quality management systems or other voluntary programs, which may lower the estimated compliance costs. These components would also help air carriers effectively integrate formal risk control procedures into normal operational practices thus improving safety for all U.S. part 121 operators. Total benefits are estimated at $1,143.1 million ($500.8 million present value) and total costs are estimated at $710.8 million ($375.5 million present value).

[1] A copy of Annex 6 has been placed in the docket for this rulemaking.

[2] Recommendation A–07–10, dated January 23, 2007. This recommendation was issued in connection with the NTSB's investigation of Pinnacle Airlines flight 3701, which occurred on October 14, 2004.

Total Benefits and Costs per Year for All Part 121 Carriers
(Millions of dollars)

Year	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Benefits	$0.0	$0.0	$0.0	$67.2	$67.2	$67.2	$67.2	$67.2	$67.2	$67.2	$67.2
Present Value	$0.0	$0.0	$0.0	$47.9	$44.8	$41.9	$39.1	$36.6	$34.2	$31.9	$29.9
Costs	$56.3	$56.3	$56.3	$33.2	$30.4	$33.2	$30.4	$33.2	$30.4	$33.2	$30.4
Present Value	$49.2	$45.9	$42.9	$23.7	$20.3	$20.7	$17.7	$18.0	$15.5	$15.8	$13.5
Year	2023	2024	2025	2026	2027	2028	2029	2030	2031	Total	
Benefits	$67.2	$67.2	$67.2	$67.2	$67.2	$67.2	$67.2	$67.2	$67.2	$1,143.1	
Present Value	$27.9	$26.1	$24.4	$22.8	$21.3	$19.9	$18.6	$17.4	$16.2	$500.8	
Costs	$33.2	$30.4	$33.2	$30.4	$33.2	$30.4	$33.2	$30.4	$33.2	$710.8	
Present Value	$13.8	$11.8	$12.0	$10.3	$10.5	$9.0	$9.2	$7.9	$8.0	$375.5	

II. Background

The FAA is committed to continuously improving safety in air transportation. Increased demand for air transportation, the impact of additional air traffic, changes in business models, advances in new technology, new routes, and transition of personnel can heighten the risk in air carrier operations. While the FAA's use of existing regulations and technical operating standards has been effective, these regulations may leave gaps best addressed through improved safety management practices. As the air carrier best understands its own unique operating environment, it is in the best position to identify these gaps and institute the proper controls to reduce or eliminate risk to its operations. The FAA would still set the safety standards, conduct inspections and maintain oversight. However, SMS's proactive emphasis on hazard identification and risk control, as well as communication and training of safety issues, would provide certificate holders conducting operations under 14 CFR part 121 with the necessary tools to improve safety within their organizations. SMS processes will also make the application of regulations more meaningful to achieve greater safety benefit.

Therefore, the FAA, in continuing to develop a comprehensive and integrated framework for safety management, is proposing a standardized set of requirements for the development and implementation of SMS. This proposal includes the four key components of an SMS as set forth in ICAO Annex 6.

A. What is a Safety Management System?

An SMS is an organization-wide approach to managing safety risk and assuring the effectiveness of safety risk controls. It would provide an air carrier with a set of decision-making processes and procedures that it would use to plan, organize, direct, and control its business activities in a manner that enhances safety and ensures compliance with regulatory standards. It includes an organization-wide safety policy; formal methods for identifying hazards, controlling, and continually assessing risk; and promotion of a safety culture. An SMS incorporates these procedures into normal, day-to-day business processes. SMS processes seek to identify potential organizational breakdowns and necessary process improvements allowing management to address a safety issue before a noncompliant or unsafe condition results. These tools are similar to those that management already uses to make operational decisions, such as adding new aircraft to its fleet or adding a new route. Using an SMS, however, is not a substitute for compliance with FAA regulations or FAA oversight activities. Rather, an SMS would, at its foundation, ensure compliance with safety-related statutory and regulatory requirements and allow certificate holders to address hazards unique to their operations.

There are four essential components of an SMS. These are based on the ICAO SMS framework and FAA guidance in Advisory Circular 120–92A, *Safety Management Systems for Aviation Service Providers* (August 12, 2010).[3]

The safety policy is the foundation of the organization's safety management system. It clearly states the organization's safety objectives and sets forth the policies, procedures, and organizational structures necessary to accomplish the safety objectives. The safety policy clearly delineates management and employee responsibilities for safety throughout the organization. It also ensures that management is actively engaged in the oversight of the company's safety performance by requiring regular review of the safety policy by a designated accountable executive.

The second component, safety risk management, requires development of processes and procedures to provide an understanding of the carrier's operational systems to allow individuals to identify hazards associated with those systems. Once hazards are identified, other procedures must be developed under safety risk management to analyze and assess the risk resulting from these hazards, as well as to institute controls to reduce or eliminate the risks from these hazards.

The third component, safety assurance, ensures the performance and effectiveness of safety risk controls established under safety risk management. Safety assurance is also designed to ensure that the organization meets or exceeds its safety objectives through the collection, analysis, and assessment of data regarding the organization's performance.

The fourth component of an SMS is safety promotion. Safety promotion requires a combination of training and communication of safety information to employees to enhance the organization's safety performance. How an organization seeks to comply with this component depends on the size and scope of the organization. It may include formal safety training for employees, a formal means of communicating safety information, and a means for employees to raise safety concerns without fear of retribution.

B. Why is an SMS necessary?

The commercial air carrier accident rate in the United States has decreased substantially over the past 10 years.[4]

[3] Additional information on ICAO's SMS standards and guidance may be found at *http://www.icao.int/anb/safetymanagement.* Copies of the ICAO standards and the ICAO SMS manual have been placed in the docket for this rulemaking.

[4] NTSB Aviation Accident Statistics: *http://www.ntsb.gov/aviation/Table5.htm, http://*

This has been accomplished through a growing body of regulations, FAA oversight activities, and voluntary industry safety initiatives. However, over the past 10 years, the FAA has identified a more recent trend involving hazards that were revealed during incident and accident investigations. Many of these hazards could have been mitigated or eliminated earlier had a structured, organization-wide approach to managing air carrier's operations been in place. For example, FAA's Office of Accident Investigation and Prevention identified 172 accidents involving part 121 operators from fiscal year (FY) 2001 through FY 2010 that could have been mitigated if air carriers had implemented a safety management system to identify hazards in their daily operations and developed methods to control the risk. The following two accidents are representative of the 172 accidents reviewed by the FAA and discussed in the *Initial Regulatory Evaluation.* Summaries of these two accidents are included to illustrate the potential mitigations that could have resulted with SMS.

On January 8, 2003, Air Midwest flight 5481 crashed immediately after lift-off in Charlotte, North Carolina. The aircraft was destroyed by impact and post impact fire, resulting in twenty-one fatalities and one injury to a person on the ground. This accident occurred shortly after outsourced maintenance was completed on the airplane's elevator control system. The accident investigation revealed that the elevator controls were improperly rigged during maintenance. The crew was not aware of this unsafe condition. The following is an example of how maintenance hazards could have been identified and their associated risks mitigated if the carrier had implemented an SMS.

In this instance, the formal safety risk management analysis would have been triggered by the air carrier's plan to have aircraft maintenance performed at uncertificated repair facility using maintenance technicians provided by a third party sub-contractor. First, the air carrier's maintenance management would have conducted a thorough system analysis, reviewing its current maintenance program, including all relevant policies, processes, and procedures. It would have identified the personnel, procedures, equipment, and facilities necessary to perform the work and assessed whether the maintenance facility, its management, and the third party mechanics met those requirements. It also would have identified the personnel necessary to conduct oversight for the air carrier at the maintenance facility. Following the system analysis, the air carrier's maintenance management would have identified the following system hazards: (1) The maintenance facility was not a certificated repair station and therefore lacked the controls associated with regulatory certification; (2) the facility, its management and the actual workforce were provided by separate contractors; (3) the inadequate number of experienced air carrier maintenance representatives and their lack of authority under the contract to oversee the performance of the maintenance. The maintenance management team would have reported these issues to the management representative and the accountable executive.

The air carrier's maintenance management, in assessing the risk of these and other hazards, would have considered the worst credible outcome of the performance of the maintenance at that facility under those conditions. Those risks may have been determined to be unacceptable and appropriate risk controls would have been implemented. Such risk control options may have included contracting with a certificated part 145 repair station, revising the maintenance procedures and associated job aids for its maintenance and inspection programs, having additional experienced maintenance representatives of the air carrier, with appropriate contract authorities, stationed at the repair facility to monitor the performance of maintenance tasks and inspections. Also, through the SMS safety assurance processes, the air carrier would have evaluated the safety performance of its risk controls through its continuous analysis and surveillance system (CASS) to verify that the controls were effective. Errors in specific maintenance tasks or inspections may have been spotted by the on site air carrier maintenance representatives or through a confidential employee reporting system if any of these concerns were raised with regard to the maintenance activities. These reports would have been utilized to steer changes in existing policies or in more effective contracting and execution of maintenance. Using the SMS safety promotion component, the air carrier could have made these critical maintenance issues known to its entire maintenance workforce, including air carrier management. This would have increased awareness of hazards and enhanced the safety of the overall maintenance program for the air carrier.

A second example is Comair flight 5191. On August 27, 2006, at approximately 6 a.m., Comair flight 5191 crashed during takeoff from Blue Grass Airport, Lexington, Kentucky, en route to Atlanta, Georgia. The flightcrew received and acknowledged a clearance from the tower to take off from runway 22 but instead, they positioned the airplane on runway 26 and commenced the takeoff. The airplane ran off the end of the runway and impacted the airport perimeter fence, trees, and terrain. The pilot in command (PIC), flight attendant, and 47 passengers were killed. The second-in-command pilot sustained serious injuries. The airplane was destroyed by impact forces and a post-crash fire. The flightcrew believed that they had taxied the airplane to runway 22 when they had actually taxied onto runway 26 and initiated the takeoff roll. The flightcrew's noncompliance with standard operating procedures, including the PIC's abbreviated taxi briefing, combined with both pilots' non-pertinent conversation most likely created an atmosphere in the cockpit that enabled the crew's errors. The following is an example of how hazards relating to the flight operations of this accident could have been identified and the associated risks mitigated if the carrier had implemented an SMS.

In this instance, the SMS safety assurance component would have triggered a formal safety risk management analysis. Under the SMS safety assurance process, periodic audits of flight crew performance, such as Line Operations Safety Audits (LOSA), may have revealed systemic failures of crew coordination concepts and failures to follow standard procedures. Additionally, reports from a confidential employee reporting system like Aviation Safety Action Program (ASAP) would have indicated that deficiencies in flightcrew performance. LOSA audits or other structured operational checking procedures, combined with reports from a confidential employee reporting system regarding flight crew performance, would have indicated that the existing controls, such as operational procedures and preflight checklists were not effective, or flightcrew training and evaluation programs were ineffective.

Under a formal SMS safety risk management process, the management representative would have ensured that the flight operations management team conducted a system analysis, reviewing its operational control and flight operations procedures, the operating environment (runway conditions, airport configuration), as well as the personnel and equipment required for the safe operation of the airplane. The system analysis would have led to a

www.ntsb.gov/aviation/Table6.htm, and *http://www.ntsb.gov/aviation/Table7.htm.*

discovery of hazards and possible errors that could be made at runway intersections, like the incorrect selection of the appropriate departure runway. The flight operations management team would have reported these issues to the management representative and the accountable executive.

Upon completion of the risk assessment, the flight operations management team could have developed risk controls, such as revising the checklists to require the positive verification of the airplane alignment on the correct runway and additional crew resource management training to enhance the crewmembers' situational awareness. These procedures could be incorporated into the company's flight manuals, checklists, and training curriculum. Once in place, the effectiveness of the risk controls would have been continuously monitored under the safety assurance processes.

From the SMS safety promotion component, the information gained through the safety risk management and safety assurance processes such as the employee reporting system, could be provided back to crews in the form of awareness tools such as company newsletters, bulletins to pilots, and other communications media.

C. Congressional Mandate

In addition to the FAA's accident review indicating a need for SMS, Congress recognized the need for air carriers to implement safety management systems. On August 1, 2010, *The Airline Safety and Federal Aviation Administration Extension Act of 2010* (the Act), Public Law 111–216, was signed. The Act requires the FAA to conduct rulemaking to "require all part 121 air carriers to implement a safety management system." Public Law 111–216, sec. 215.

The Act also requires the FAA to consider mandating as part of the SMS rulemaking, the following voluntary programs: ASAPs, flight operational quality assurance systems (FOQAs), LOSAs, and advanced qualification programs (AQPs). The FAA has reviewed these programs and finds they would be useful to meet the requirements to regularly review the safety performance of the organization (§ 5.25(b)(5)), to monitor the effectiveness of safety risk controls (§ 5.25(c)(2)), and to monitor and measure the organization's safety performance (§ 5.71). However, based on the following, the FAA has determined that it would not be appropriate to require all of these programs for all certificate holders conducting operations under 14 CFR part 121.

Aviation Safety Action Program (ASAP). ASAP is an employee reporting system that certificate holders may use to gather information from employees on safety compliance and performance issues. ASAP programs are intended for air carriers that operate under part 121 and major domestic repair stations certificated under part 145. The goal of ASAP is to enhance aviation safety voluntary reporting of safety issues and events that come to the attention of employees. The program encourages an employee to voluntarily report safety issues even though they may involve a potential violation(s) of Title 14 of the Code of Federal Regulations.

As of September 27, 2010, there are 90 certificate holders conducting operations under part 121. Approximately two-thirds of these certificate holders have implemented some type of ASAP program. While ASAP originally was limited to pilots and flight engineers, some air carriers have expanded the program to include its flight attendants, dispatchers, and mechanics. One carrier has an ASAP for ground service personnel. The program is a valuable way to bring employees into a proactive safety effort and can be a means of building trust throughout the organization. Single ASAP reports can generate safety risk management action if they reveal a hazard of high severity and high likelihood. Further, analysis of the aggregate ASAP data can also reveal trends that lead to safety risk management action. ASAP reports often serve as an indicator that risk controls are effective, or they may reveal that risk controls are not effective. Reports accepted into ASAP are protected from disclosure under the provisions of 14 CFR part 193, *Protection of Voluntarily Submitted Information*.

ASAP programs typically only cover selected employee groups. Even the largest air carriers do not have ASAPs that encompass all of their employees. Typically, each employee group ASAP has an event review committee (ERC) designed to take in data from employees, analyze the data, and develop corrective actions. The ERC consists of members of the air carrier's management team, the FAA's certificate management organization, and if applicable, the employee group's representative. The ERC considers each ASAP report for acceptance or denial, and if accepted, analyzes the report to determine the necessary controls to put into effect. ASAP is a good example of a confidential employee reporting system that an air carrier may develop to comply with the provisions of the proposed rule. Small carriers would likely not require such an expansive and complex system. Rather, a simpler employee reporting system may meet the needs of the smaller carriers. Further, the proposed SMS requirement for a confidential employee reporting system spans all employee groups. Thus, even a medium to large air carrier may be overly burdened by such a requirement if its current ASAPs do not cover all of its employees who perform aviation-safety related activities. In this case, the air carrier could use its existing ASAPs and develop simpler tools or procedures to allow the employees who are not currently covered under its ASAPs to report safety issues or concerns.

If the FAA were to require the use of ASAPs, the information submitted through ASAP would no longer be considered voluntary. As such, the protections under part 193 would no longer apply. One major concern of industry regarding a requirement for SMS is the possible disclosure of critical safety information. Industry is concerned that if information submitted through ASAP or any other employee reporting system is subject to disclosure, this would likely have a negative impact on the willingness of employees to disclose the data. The loss of these protections under 14 CFR part 193, therefore, would likely impede the air carrier's ability to gather this critical information for analysis. Thus, the FAA has determined that ASAP may be one means for compliance with certain provisions of the SMS, but would not be necessary to mandate for all air carriers. FAA seeks comments on how air carriers that are currently voluntarily implementing ASAP programs could integrate these programs into an SMS plan, and the incremental costs and benefits of doing so.

Flight Operational Quality Assurance (FOQA). FOQA provides the air carrier with accurate operational performance information covering all flights by multiple aircraft types such that single events can be analyzed or overall patterns of aircraft performance can be seen and analyzed. FOQA programs provide actual data that can be analyzed in the aggregate to determine trends specific to aircraft types, local flight path locations, and overall flight performance trends for the air carrier industry. FOQA information has proven effective in showing the need for changing air carrier operating procedures for specific aircraft fleets, and for changing air traffic control practices at certain airports with unique traffic pattern limitations. 41 of 90 part 121 carriers have voluntarily implemented FOQA programs, including 22 of 30 part 121 operators

with a fleet of more than 50 airplanes. The 22 includes seven of the top eight largest passenger-carrying airlines, which each operate more than 200 airplanes. To have an FAA approved FOQA program, an air carrier must meet the requirements described in AC 120–82, *Flight Operational Quality Assurance*.[5]

Since 2005, ICAO Annex 6 part I has included a provision that commercial air carriers operating airplanes having a maximum gross takeoff weight in excess of approximately 59,400 lb. "* * * should establish and maintain a flight data analysis programme as part of its safety management system." Flight Data Analysis Program (FDAP) is a general term encompassing a number of means by which routine flight operations data may be acquired, recorded, analyzed, and shared. FOQA is one such program. FOQA requires extensive flight data recording systems which facilitate rapid transfer of recorded data, de-identification of that data, and agreements between pilot organizations and the carriers which define how this information may be used. Further, FOQA requires comprehensive analysis of the information provided by technically competent staff using specialized equipment to derive useful safety enhancement opportunities. Although all operators meet the current regulatory requirements for flight data recording, many of the recorders used do not meet all the FOQA specifications. The part 121 fleet is diverse in terms of size, complexity, and age, as well as the size of the companies that operate them. Many of the older aircraft would require extensive modifications to adapt them to the technical requirements of a FOQA program. The investment and expense of implementing and maintaining such a system exceeds the financial capability of many smaller carriers.

Since the FOQA voluntary program requirements were established, technological advancements in lightweight self-contained flight data monitoring and recording systems have been developed that may provide alternative, cost effective means for accomplishing the same purpose as a FOQA. An air carrier may wish to acquire these tools rather than those necessary for FOQA and develop its own procedures to collect flight operational data for analysis. An air carrier may also choose a combination of tools, such as preflight risk assessment checklists and existing flight data recorders, to collect information on flight operational data. There are a number of ways to collect this information and the FAA does not believe it is appropriate to prescribe the exact method for collection and analysis of this type of data. The air carrier should develop and implement the processes and procedures suitable to the complexity and needs of its organization to identify hazards and assess risk to its operation. In addition, like ASAP, the FAA has determined that it is appropriate to protect certain information collected under FOQA from disclosure. If the FAA were to require FOQA this protection would be lost. Thus, while FOQA is an excellent tool for some air carriers and may be used as a process or procedure in the air carrier's SMS, this proposal would not require it for all certificate holders conducting operations under part 121. FAA seeks comments on how air carriers that are currently voluntarily implementing FOQA programs could integrate these programs into an SMS plan, and the incremental costs and benefits of doing so.

Line Operations Safety Audit (LOSA). The Line Operations Safety Audit (LOSA) is a voluntary safety audit focused on the discovery, mitigation, and management of human error in aviation operations. LOSA audits are mainly conducted for crewmembers and are performed in actual in-flight conditions. Thus, they provide a real-time assessment of system operations. During the flight, trained observers record any potential threats to safety, how a flightcrew handled the hazard and any errors the flightcrew committed in managing a threat. They may also document behaviors known to cause accidents or incidents.

Under LOSA programs, the certificate holder collects the data concerning the flightcrew's performance. While an air carrier may elect to share the results of a LOSA with the FAA, there is no requirement to do so. Data obtained from the LOSA can be used to modify the air carrier's training or other operational programs or procedures and shape basic organizational strategies to prevent accidents and incidents. The certificate holder may use the audit results to create better safety practices by improving operational processes and documentation, such as revising checklists, flight operations manuals, quick reaction handbooks, and developing training curricula for flight, maintenance, and ramp personnel.

In order to implement a LOSA program, significant resources are required. The air carrier would need to develop and produce the program and its associated materials. The following elements are part of LOSA: (1) Training check airmen or other observers on how to conduct the observations and data collection, (2) developing and maintaining schedules for LOSA observations, (3) staff time for observer preflight preparation, (4) in-flight observation, (5) post-flight briefing, (6) data transfer and entry, (7) information management software costs (software and staff time for data entry and database management), and (8) development and administration of data analysis processes. LOSA programs may be very complex and expensive. Air carriers that have not implemented a voluntary LOSA may be using audit tools that are more appropriately scaled to the size of their operation. Because there may be other, more effective means for conducting these audits, the FAA does not believe it is necessary to limit an air carrier to conducting audits and collecting data through a specific program like LOSA. Rather, the FAA has determined that participating in a LOSA program, may be one acceptable means to comply with the requirements of this proposal. FAA seeks comments on how air carriers that are currently voluntarily implementing LOSA programs could integrate these programs into an SMS plan, and the incremental costs and benefits of doing so.

Advanced Qualification Program (AQP). AQP is an alternative method for developing training and testing materials for pilots, flight attendants, and aircraft dispatchers based on instructional systems design, advanced simulation equipment, and comprehensive data analysis to continuously validate curriculums. Although the FAA considers AQP to be an effective voluntary alternative for compliance with minimum training and qualification requirements, the FAA does not believe that it is appropriate to require all air carriers to train under AQP as part of their SMS processes and procedures. The FAA recognizes that AQP may not be appropriate for every certificate holder. The AQP is a voluntary program established to allow a greater degree of regulatory flexibility in the approval of innovative training programs. Based on a documented analysis of operational requirements, a certificate holder under AQP may propose to depart from the traditional practices with respect to what, how, when, and where training and testing is conducted. Detailed AQP documentation requirements, data collection, and analysis provide the FAA and the operator with the tools

[5] The FOQA program is described in AC 120–82, Flight Operational Quality Assurance (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/key/AC%20120-82*).

necessary to adequately monitor and administer an AQP. (*See* 14 CFR Part 121, subpart Y, paragraphs 121.901–121.925).

As mentioned above, AQP may not be appropriate for all certificate holders. Some air carriers may prefer the structured requirements of a traditional training program to the analytically-driven AQP program. Other air carriers that use contract training facilities may not find AQP to be a suitable alternative to traditional training requirements. The FAA also acknowledges that to get the most benefit from AQP, a stable work force and route structure is necessary. Therefore, for those air carriers that have a higher turnover in their pilot ranks or conduct supplemental operations where the routes may vary, AQP may not be appropriate. Thus, this proposal would not require all air carriers to implement AQP as the method for training its flightcrew members, flight attendants, aircraft dispatchers, and other operations personnel. FAA seeks comments on how air carriers that are currently voluntarily implementing AQP programs could integrate these programs into an SMS plan, and the incremental costs and benefits of doing so.

D. International Harmonization

In March 2006, ICAO amended Annex 6 part I—which addresses the operation of airplanes in international commercial air transport. Member states agreed to establish an SMS requirement for air carriers. The SMS, as outlined in this Annex, includes processes to identify safety hazards and ensure the implementation of risk controls and corrective actions necessary to maintain safety performance. The Annex also aims for improvement of the overall safety performance of the organization, with clearly defined lines of safety accountability throughout the operator's organization. Member states agreed to initiate compliance with amendments to Annex 6 part I by January 1, 2009.[6] If adopted, the provisions in this rule would conform to these ICAO agreements.

ICAO provides that each ICAO member state is the judge of whether its national SMS rules provide an acceptable level of safety. The FAA solicits comments on whether the SMS rules proposed in this NPRM could serve as a suitable basis for achieving an international harmonized regime.

[6] On December 15, 2008, the FAA filed a difference to the SMS standard because the agency had not formally initiated rulemaking.

E. National Transportation Safety Board (NTSB) Recommendations

The NTSB first recommended safety management systems in 1997, through recommendations aimed at improving safety in the maritime industry. Since then, a number of NTSB investigations related to other modes of transportation, including aviation, have cited organizational factors contributing to accidents and have recommended SMS as a way to prevent future accidents and improve safety. The NTSB first offered an SMS recommendation for part 121 air carriers (A–07–10) to the FAA after its investigation of the October 14, 2004 accident of Pinnacle Airlines flight 3701.

Pinnacle Airlines flight 3701 was on a repositioning flight between Little Rock National Airport and Minneapolis-St. Paul International Airport when both engines flamed out after a pilot-induced aerodynamic stall at high altitude. The pilots were unable to regain control, and the aircraft crashed in a residential area south of Jefferson City, Missouri. The NTSB's investigation revealed "the accident was the result of poorly performing pilots who intentionally deviated from standard operating procedures and basic airmanship." The NTSB further stated "operators have the responsibility for a flightcrew's cockpit discipline and adherence to standard operating procedures" and offered an SMS as a means to help air carriers ensure safety. The NTSB formally recommended the FAA "require all 14 CFR part 121 operators establish Safety Management System programs." NTSB Safety Recommendation A–07–10 (January 23, 2007). That recommendation recognized that "air carriers need to ensure safety through a formalized system safety process. One such process is a safety management system program, which incorporates proactive safety methods for air carriers to identify hazards, mitigate risk, and monitor the extent that the carriers are meeting their objectives." *Id.* at p. 12. The NTSB recommended the FAA pursue rulemaking to require commercial operators to implement an SMS. In discussing this recommendation, the NTSB noted it would evaluate any rulemaking proposal based on ICAO's minimum requirement: "(a) Identifies safety hazards; (b) ensures that remedial action necessary to maintain an acceptable level of safety is implemented; (c) provides for continuous monitoring and regular assessment of the safety level achieved; and (d) aims to make continuous improvement to the overall level of safety." *Id.* Adoption of this proposal would address this NTSB recommendation.

F. FAA Aviation Safety (AVS) SMS Actions

Guidance Materials. This rulemaking would also codify existing FAA SMS guidance material. In June 2006, FAA Flight Standards published Advisory Circular, AC 120–92, *Introduction to Safety Management Systems for Air Operators* based on the *Joint Planning and Development Office (JPDO) SMS Standard*.[7] The FAA also used this work to develop internal guidance, using SMS principles, and incorporated them in FAA Order 8000.369, *Safety Management System Guidance* and FAA Order VS 8000.367, *Aviation Safety (AVS) Safety Management System Requirements.* AC 120–92 was revised in August 2010 to become AC 120–92A to reflect the ICAO framework. This proposal is based on the guidance material in AC–120–92A and FAA Orders, as well as the ICAO SMS framework and guidance in the ICAO Safety Management Manual.[8] Copies of these documents are available in the docket for this rulemaking.

SMS Pilot Project. To assist operators choosing to implement SMS voluntarily, the FAA initiated an SMS Pilot Project. The program, which currently includes 26 part 121 air carriers of varying sizes and complexities, allows these certificate holders and their FAA oversight organizations to learn the means of applying SMS to their unique management and environmental conditions and to demonstrate their commitment to comply with international standards. The SMS pilot projects have provided experience in implementation and oversight processes. Lessons the FAA has learned from the pilot projects include findings in the areas of management involvement, training requirements, gap analysis and implementation planning, and the development of risk tools.

Advanced Notice of Proposed Rulemaking (ANPRM). In addition to the pilot project, the FAA also issued an ANPRM on July 23, 2009 (74 FR 36414), soliciting comments on the appropriate applicability and scope of a potential SMS rule. The ANPRM requested information from air carriers, operators conducting charters, maintenance repair stations, and design and manufacturing organizations on their experiences with SMS; the costs associated with

[7] *http://www.jpdo.gov/library/InformationPapers/JPDO_SMS_SPC_v1_4.pdf.*

[8] *See* ICAO, *Safety Management Manual,* at 6.5.3 ICAO Doc. 9859–AN/474 (2nd ed. 2009) (*http://www.icao.int/anb/safetymanagement/DOC_9859_FULL_EN.pdf*).

implementing SMS in their organization; and recommendations for documentation, recordkeeping, data collection and sharing, and training requirements necessary for implementation of an SMS. The FAA received 89 comments in response to the ANPRM from a variety of commenters, including air carriers, aircraft design and manufacturing organizations, service facilities, trade associations, and private citizens.

Seven part 121 operators and six trade associations representing the 121 operators or their employees submitted comments in response to the ANPRM. Each of the seven 121 operators said it has an SMS or a system with some SMS components. Six of the seven operators reported positive results after applying SMS to their operations. Operators reported improving their safety performance and regulatory compliance by improving their ability to detect possible nonconformities to policies and regulations before an accident or serious incident occurs. One commenter stated that by implementing SMS the organization has "seen some successes in reducing risk, decreasing operating costs, and managing safety through a structured process."

An SMS requires that organizations identify hazards and address the risk associated with the products or services they provide. It also requires documenting the decisions made to address safety risk. Commenters expressed concern that this information could be misinterpreted or mischaracterized and they stressed the need to protect SMS data.

A majority of the commenters recommended the FAA issue a performance-based regulation, consistent with the ICAO framework, which would allow organizations flexibility in how they meet the standards, and enable them to integrate their existing systems into an SMS rather than requiring a stand-alone system. Commenters also said the requirements should be scalable to accommodate organizations that vary in size, complexity, structure, and focus. Some commenters recognized a need for SMS for part 135 operators and part 145 repair stations, and design and manufacturing organizations based on the ICAO requirements for these sectors of the industry. This rulemaking, however, focuses only on certificate holders conducting operations under part 121.

Aviation Rulemaking Committee (ARC). On February 12, 2009, the FAA chartered the SMS ARC to solicit recommendations from industry experts on the scope of this rulemaking. The ARC is comprised of representatives from air carriers, maintenance organizations, and design and manufacturing organizations and associations. On March 31, 2010, the ARC submitted its report to the FAA with the recommendations summarized in the paragraphs below.

The ARC recommended that the FAA SMS regulations and guidance be closely aligned and consistent with the ICAO SMS framework to allow for ease of acceptance of an organization's SMS by a foreign civil aviation authority. The ARC also recommended that the SMS rule apply to organizations subject to 14 CFR parts 21, 119, 121, 125, 135, 141, 142, and 145 as listed in the ANPRM, as well as 14 CFR part 91, subpart K, to ensure consistency of applicability with ICAO's SMS Framework. Furthermore, it suggested that an SMS regulation should acknowledge and permit incorporation of existing voluntary and regulatory (*e.g.,* CASS) safety management efforts that fit, or that could be adapted to fit, the SMS construct. For air carriers, such programs include aviation safety action programs, flight operational quality assurance programs, line operations safety audits, and quality management systems. To avoid duplicative practices, the ARC stressed the importance of allowing organizations to build upon these existing systems and processes rather than requiring them to build a whole new safety system. For example, rather than mandate a separate manual outlining the air carrier's SMS, the air carrier should have the option of either developing a new manual or including it in the manual required by § 121.133. This flexibility would allow the certificate holder to document the SMS in the way that best fits its operations while still providing the FAA appropriate insight into the organization's SMS for assessment and oversight. In addition, the ARC asserted that SMS should not be an add-on to the organization's operational system but rather part of the operational system.

In acknowledging a potential significant impact of an SMS rule on small businesses, the ARC stressed the importance of creating a regulatory framework that is scalable and flexible to accommodate a broad range of organizations, from small operators and manufacturers to large organizations holding multiple types of FAA certificates or approvals. This would ensure that the level of SMS-required complexity imposed on a small organization would not interfere with the company's ability to pursue its business, or impose a degree of SMS data analysis that would result in insufficient time left to develop, implement and monitor risk mitigation procedures. It also recommended the FAA consider alternative strategies for SMS implementation, such as continuing with the voluntary program for operators that engage in international commercial activity.

The ARC was also concerned with the protection of SMS safety information and proprietary data. Therefore, it noted that there should be protection of safety information and proprietary data from disclosure and use for other purposes. Safety information is vitally important to an SMS. Without the development, documentation, and sharing of safety information SMS benefits will not be fully realized. According to the ARC, protecting safety information from use in litigation (discovery), Freedom of Information Act (FOIA) requests, and FAA enforcement action is necessary to ensure the availability of this information, which is essential to SMS. The ARC recommended either a new regulation or a revision and strengthening of existing part 193, *Protection of Voluntarily Submitted Information,* to include SMS information. Further, the ARC recommended that the FAA establish policy or regulation which provides limits on enforcement action applicable to information that is identified or produced by an SMS.

The ARC recommended that the FAA ensure that sufficient planning, policy and guidance, and workforce training be in place prior to SMS implementation to accommodate efficient, timely, objective and consistent assessment and oversight of SMS. To accomplish this, the ARC also suggested a phased promulgation of extending the applicability of a set of general SMS requirements to different populations. For example, the ARC recommended extending the set of general requirements to part 121 operators first, followed by part 135 operators and part 145 repair stations conducting maintenance for part 121 and part 135 operators, and extending the requirements to regulated entities under part 21 as part of the last phase of implementation. The ARC noted that this phased promulgation would allow earlier deployment of new regulations in the area of greatest operational exposure and greatest implementation experience, while allowing the necessary time for the development of sector-specific guidance and operation of pilot programs for remaining certificate and approval holders. For example, the design and manufacturing community has less experience in applying SMS than many commercial operators that are participating in SMS

pilot projects with AFS. The ARC has recommended that the FAA sponsor an SMS pilot program within the design and manufacturing sector to further develop implementation experience.

In addition to the phased promulgation of the applicability of SMS requirements, the ARC also recommended a phased implementation of SMS requirements within individual companies. For example, the first stage of implementation would require an implementation plan to be completed six months after the effective date of a final rule, with the next level focusing on implementing safety risk management processes. The next level would focus on the proactive and predictive processes in safety assurance.

A copy of the ARC's recommendations is available for review in the docket for this rulemaking.

III. Discussion of the Proposal

A. General Requirements

Applicability. The FAA proposes to add a new part 5 to title 14 of the CFR, creating the general framework for an SMS that a part 121 air carrier may adapt to fit the needs of its operation. The new part 5 is modeled after the International Civil Aviation Organization (ICAO) framework in Annex 6, *Operation of Aircraft,* which was adopted in March 2006 and is designed for broad application. It is also consistent with the ARC's recommendations to use the ICAO framework and develop SMS requirements that are scalable and flexible to accommodate all business models. Therefore, the proposed requirements are meant to be applicable to organizations of various sizes and complexities, as well as adaptable to fit the different types of organizations in the air transportation system and operations within an individual company. The proposed SMS construct is also consistent with AC–120–92A, *Safety Management Systems for Aviation Service Providers,* and FAA Order 8000.367, *Aviation Safety (AVS) Safety Management System (SMS) Requirements.*

Although this proposal extends only to part 121 operators, the FAA has developed these general requirements with the intent that in the future, they could be applied to other FAA-regulated entities, such as part 135 operators, part 145 repair stations, and part 21 aircraft design and manufacturing organizations and approval holders, consistent with ICAO requirements.[9] This proposal also acknowledges the SMS ARC's recommendation for phased promulgation of SMS regulations to apply SMS requirements to certificate holders under different parts of title 14 of the CFR in successive phases. The FAA solicits comments on possible future application of these general requirements.

In addition, it is not the FAA's intent that this rule would result in contractors or subcontractors, or entities not directly regulated by the FAA, being required to develop an SMS. Current processes require air carriers to ensure that the employees or businesses with whom they contract to conduct training or maintenance activities on their behalf are qualified, capable, and have the necessary equipment and facilities to perform the work. This proposal would not expand these existing requirements. However, the FAA seeks specific comment on the potential impact of a trickle down effect of this proposal to these entities.

Scalable and Flexible. The proposed SMS regulation is designed as a performance based regulation. It requires a number of processes (for safety policy, safety risk management, safety assurance, and safety promotion) which are flexible, and can be tailored to provide relevant, yet robust management systems for each carrier. The SMS provides a framework for safety decision making by requiring structured processes for gathering and using information necessary to make sound management decisions. Because the part 121 air carrier population is extremely diverse in complexity related to both aircraft fleet sizes and numbers of employees, this proposal was designed to accommodate a variety of business models and sizes.

The components of SMS are scalable relative to the size and complexity of the operator. For instance, the objective of safety risk management is the same regardless of the size of the carrier. That objective is to understand the operations and the tools and processes used to accomplish the work. While specialists in information technology and statistical analysis may be necessary in large, sophisticated carriers' operations, the safety risk management steps could be accomplished by the management and employees of even the smallest organization. For smaller operators, this process need not employ sophisticated techniques or be overly detailed. For example, a whiteboard, pencil, and paper, may be all that are needed to consider, analyze, and record the characteristics of the systems. Likewise, recording and tracking the results of the safety risk management process need not be extensive or overly sophisticated. They may be captured with paper records or simple electronic files using common word processing or spreadsheet applications.

The safety assurance processes can also be scaled to the size and complexity of the operator. Its purpose is to provide key managers with only the information that they need to assure that the risk controls they have implemented remain valid and their processes are on track. An organization would determine what audit tools are needed to acquire only the information that it needs to maintain compliance with CFRs and company policies and procedures, *e.g.,* airplane inspection intervals, open Minimum Equipment List (MEL) items, pilot training, and checking intervals, and dates and other key information. Internal evaluation and management review processes are used to evaluate the performance of major systems (i.e., flight operations, training, maintenance, inspection, and engineering, etc.). All part 121 carriers have a Continuing Analysis and Surveillance system (CASS) required by 14 CFR 121.373. Most companies have Internal Evaluation Programs based on guidance in AC 120–59A, *Air Carrier Internal Evaluation Programs,* and other audit structures. These existing programs would likely satisfy the safety assurance requirements in this proposal. In very small companies, these may be performed personally by senior managers, specialist personnel, the Director of Safety, or the Chief Inspector required by 14 CFR 119.65. Analysis of audits, evaluations, employee reports, and internal investigations may be as simple as reading narratives, simple trend analysis of problems, and discussion among key management personnel.

The safety management system may be adapted and scalable based on the complexity of the air carrier's operations. For example, some air carriers may have multiple certificates, authorizing them to conduct flight operations and also perform aircraft maintenance for other organizations. These air carriers may only want to implement one SMS that encompasses all of these aviation-related safety activities, and some may want to expand SMS to encompass all activities of the business. As another example, some certificate holders only have a few aircraft and service a limited area. These certificate holders may choose to

[9] Amendment 33 to Annex 6 part 1 addresses part 121, 135, and 145 operations. It has a compliance date of November 18, 2010 and was announced in State Letter AN 11/1.3.19–06/34 24 (March 2006). Amendment 101 to Annex 8 addresses Design and Manufacturing. It has a compliance date of November 14, 2013 and was announced in State Letter AN 3/5.6–09/21 (April 3, 2009).

implement a smaller, simpler SMS consistent with requirements, but sized and designed for their operation. The FAA invites comments on how air carriers may approach the design and implementation of their SMS.

The previous discussion indicates that certificate holders could comply with the proposed SMS requirements through a variety of means. The FAA intends these proposed requirements to be scalable and flexible to the size and complexity of the certificate holder's organization. In addition, the FAA also recognizes that certificate holders may already have systems and processes in place that meet the proposed SMS requirements. The FAA believes these systems and processes could easily be incorporated into an SMS and does not intend to create duplicative burdens. The FAA requests comments specifically identifying how the FAA could clarify or improve the incorporation of existing systems and processes into an SMS to improve the efficiency, scalability, and flexibility of this proposal.

Compliance with other Regulatory and Statutory Requirements. The SMS requirements, as described in this section, would not be considered a substitute for compliance with existing technical and performance standards. Technical and performance standards would still be considered the baseline for safety performance. These general requirements for SMS would require air carriers to be able to demonstrate their capability to assess and control risk in their highly variable individual operational environments. While several air carriers currently may be in the process of implementing, or have implemented an SMS in accordance with FAA guidance material, these air carriers would need to ensure their system meets the regulatory requirements set forth in this proposal, and follow the same process for acceptance as an air carrier who is implementing SMS for the first time. The SMS may be adapted and scaled based on the complexity of the airline operations. If the FAA agrees that all regulatory requirements are met, the implementation plan will be approved. This includes all air carriers participating in the FAA's SMS Pilot Project.

Under new § 5.1, the FAA would require each air carrier to develop an SMS to include the four SMS components: Safety policy, safety risk management, safety assurance, and safety promotion. To support each component, the FAA proposes a certificate holder implement a number of processes contained in the proposed subparts for each component. Together, the four components and their underlying elements and processes provide the general framework for an organization-wide safety management approach to air carrier operations. To the extent possible, air carriers may leverage existing voluntary and required programs by integrating these activities and existing information collection streams into their SMS system and plans.

Protection of Data. The ARC, as well as several commenters to the ANPRM, raised concerns regarding the protection of data submitted through the SMS. The ARC recommended the FAA revise current requirements under 14 CFR part 193, *Protection of Voluntarily Submitted Information,* to protect any SMS data from disclosure. In this proposal, the FAA would not require the submission of any SMS data. Rather, the certificate holder must make its documentation available for inspection to determine whether the certificate holder has implemented and is maintaining an SMS that meets the requirements of part 5. Existing protections for voluntary programs such as Aviation Safety Action Program (ASAP) and Flight Operational Quality Assurance (FOQA) data would still apply as the FAA is not mandating these programs. However, at this time, the FAA would not extend the protections of part 193 beyond those afforded to current voluntary programs. The FAA invites comment on the protection of safety data and on potential information architectures which could allow carriers to collect information while reducing disclosure concerns.

Implementation and Compliance. Under this proposal, current certificate holders, within six months of the effective date of the final rule, would be required under § 119.8 to submit an implementation plan for approval that ensures the certificate holder's SMS would be fully operational within three years of the effective date of the final rule. Under the implementation plan, the certificate holder may decide to gradually phase-in the requirements of this rule over the three-year period consistent with the current process in the FAA SMS Pilot Project. A copy of this implementation process is provided in the draft advisory circular that is available for review in the docket for this rulemaking. An air carrier is not required to follow this format for implementation, but rather should develop a plan for implementation that meets the needs of its organization.

Many air carriers may already be in the process of developing an SMS in accordance with existing guidance material or otherwise have some elements of SMS in existence. In developing the implementation plan, air carriers should review existing programs to identify elements already in place that comply with provisions of part 5 and plan for implementation. Experience in the SMS Pilot Projects has found that this process is necessary to identify gaps in processes and management controls, documentation that is not up to date or is incomplete, and vague interfaces between processes or departments. The implementation planning and SMS documentation have helped to bring improvements in these areas. Thus, as proposed, the implementation plan should cover all the proposed part 5 requirements across all of the aviation safety-related operational processes of the company.

This plan would be submitted to the air carrier's certificate-holding district office, and approval of the plan would be coordinated with the SMS Program Office within the Flight Standards Service, Certification & Surveillance Division (AFS–900). In addition, anyone who submits a certification application under § 119.35 to conduct operations under part 121 would be required to demonstrate that it has incorporated an SMS that meets the requirements of part 5.

Although the implementation plan must be approved, the FAA has proposed, under § 5.3, that the certificate holder's SMS would have to be accepted by the FAA. Given the dynamic nature of an air carrier's operating environment, the air carrier needs to be able to continuously improve its SMS, rather than wait for approval of the proposed change before taking necessary action. Acceptance of the SMS would allow the organization to proceed with implementation of necessary changes while the FAA reviews SMS documentation to determine whether the air carrier has met the requirements of this rule. Upon review, if the FAA determines that changes must be made to the SMS, the air carrier would be responsible for making those changes. This process for acceptance would allow the air carrier the flexibility necessary to continuously monitor and adapt its SMS to address emerging safety concerns in its operating environment.

B. Safety Policy

Subpart B sets forth the requirements for the certificate holder's safety policy, the foundation of the SMS. All organizations must define policies, procedures, and organizational structures to accomplish their safety objectives and goals. It is important to

have a documented safety policy to assure all employees of the organization of management's commitment to achieving the organization's safety objectives. A documented safety policy also ensures that all employees are aware of their own role in maintaining the safety objectives of the company. Thus, proposed § 5.21 would require a documented safety policy statement that establishes the organization's safety objectives, provides for a safety reporting policy, defines unacceptable behavior and conditions for disciplinary action, and establishes standard operating procedures for transitioning from normal to emergency operations.

A key aspect of the documented safety policy is the confidential safety reporting policy requirement proposed in § 5.21(a)(4). This requirement is distinguishable from the disciplinary action policy requirement proposed in § 5.21(a)(5) in that the safety reporting policy must allow employees to report unsafe working conditions or equipment for correction without fear of reprisal by either management or labor groups within the organization. As discussed earlier, many air carriers may already meet part of this safety reporting policy requirement by having an ASAP in place for selected employee groups. ASAP, as described in AC 120–66B, *Aviation Safety Action Program,* (November 15, 2002), allows certain safety issues to be addressed through corrective action rather than through disciplinary or enforcement action. Under ASAP, corrective action may be taken for inadvertent regulatory violations that do not appear to involve an intentional disregard for safety and events that do not appear to involve criminal activity, substance or controlled substance abuse, or intentional falsification. A corrective action is developed by the air carrier which may include training or education on an issue or changes to operational procedures to prevent a future occurrence of the same safety problem. These same concepts, inherent in ASAP, may be relevant for consideration by an air carrier who has not implemented an ASAP in developing a safety reporting policy pursuant to proposed § 5.21. As discussed previously, the FAA would not mandate that each air carrier implement an ASAP because the complexity of ASAP may not fit all air carriers or their FAA oversight organizations. However, if an air carrier has an ASAP in place or wishes to develop an ASAP, the FAA would view this program as one means of compliance with the proposed safety reporting policy requirement for the employee group(s) covered by the ASAP program(s).

Just as the safety reporting policy must describe those types of events that can be reported without fear of reprisal, the disciplinary policy proposed under § 5.21(a)(5) would require the air carrier to define unacceptable behaviors and conditions for disciplinary action. Some examples to consider, which are currently included in ASAP programs as described in AC–120–66B, include an intentional disregard for safety, suspected criminal activity, and substance abuse, as well as those instances when employees fail to complete a corrective action developed by the air carrier to address a safety hazard.

Consistent with the ICAO framework, the FAA is proposing, as part of the documented safety policy, to include emergency response planning. Emergency response planning provides the basis for a systematic approach to managing the organization's operations in the aftermath of a significant unplanned event or during an ongoing emergency situation. The overall objective is the safe continuation of operations and the return to normal operations as soon as possible. It is an important element of an SMS because in the transition from normal to emergency operations and back again, additional risk may be introduced and the organization should be monitoring and taking action to mitigate those risks. An effective emergency response also provides an opportunity to develop and apply learned safety lessons.

The type of commitment required by the safety policy mandates the active engagement of all employees in the safety performance of the organization and, in particular, specific safety responsibilities of management officials. Direct, personal involvement on the part of all levels of management is a bedrock principle of any management system. However, experience in the SMS Pilot Project has indicated that this is not universally and commonly understood. To ensure this type of engagement, § 5.23 would require the air carrier to clearly define all employees' responsibilities for the safety performance of the organization, from line staff to executive management. Clearly delineating safety responsibilities throughout the organization is a foundational characteristic of any management system. It also allows for greater communication and integration of practices and procedures employed throughout the organization, resulting in effective management of the air carrier's operations.

To ensure that executive management is involved in the oversight of the organization's safety performance, § 5.25 would require the certificate holder to designate a single accountable executive who has the final authority over operations and is ultimately responsible for the safety performance of the air carrier. The accountable executive would need to be able to organize, direct, and control the organization's activities, as well as allocate resources to make safety controls effective. The accountable executive would be required to develop the documented safety policy proposed under § 5.21, communicate the policy throughout the organization, and regularly review the safety policy and safety performance of the organization. The accountable executive would review safety information to assess the overall performance of the organization and make necessary changes.

To assist in the collection and analysis of the data, the accountable executive also would be required to designate a management representative to monitor the performance of the SMS, facilitate hazard identification and safety risk analysis, and report regularly to the accountable executive on the safety performance of the organization. The FAA does not believe these requirements would necessarily result in part 121 air carriers hiring new personnel to serve these functions. The FAA recognizes that many of the daily oversight activities that are proposed for the management representative are currently being performed by the required management personnel under 14 CFR 119.65. Any one of these individuals could be designated to serve in this role.

C. Safety Risk Management

Safety risk management is a core component in an air carrier's SMS. A comprehensive SMS using safety risk management would provide management tools for identifying hazards and assessing risk, as well as developing risk controls to reduce or eliminate risk associated with the hazards. As proposed in § 5.5, a hazard would be considered a condition that can lead to injury, illness or death to people; damage to or loss of a system, equipment, or property; or damage to the environment. The intent of this subpart is for the certificate holder to focus on the areas of greatest risk from a safety perspective, taking into account system complexity and scope of the operations to develop and implement appropriate risk controls. While each

certificate holder's safety risk management processes may be unique to its organizational structure and operating environment, the FAA would require it to incorporate safety risk management steps as described in §§ 5.53 and 5.55. These steps provide for system analysis, identifying hazards associated with the system, analyzing the risk associated with the hazards, assessing risk associated with the hazards, and controlling the risks of identified hazards when necessary. These steps are based on the safety risk management processes in the ICAO framework, as well as AC 120–92A, *Safety Management Systems for Aviation Service Providers,* and FAA Orders 8000.367, *Aviation Safety (AVS) Safety Management System Requirements* and 8000.369, *Safety Management System Guidance.*

Proposed § 5.51 establishes when an air carrier would need to apply safety risk management processes and procedures to systems to assess the hazards and risk associated with the systems. An air carrier may learn of a hazard from a variety of sources, such as voluntary reporting systems, industry alerts from the FAA or manufacturers, or from internal assessments and audits. The system in which the hazard lies may be a small scale system that is easily defined, such as the development of maintenance (M) and operational (O) items for consideration to add an individual aircraft system to a Minimum Equipment List (MEL), or it may be a system large in scope that may have multiple hazards, like the addition of a new fleet of aircraft. Whenever a new system is implemented (*e.g.,* new crew scheduling software), or an existing system is revised (*e.g.,* a change to a training program), or new operational procedures are developed (*e.g.,* changes in cockpit checklists or maintenance work procedures), safety risk management would be applied to ensure that hazards are identified and proper controls are put in place to mitigate the risk associated with them. Safety risk management would also be applied to analyze new hazards or ineffective risk controls that are identified under the safety assurance processes in subpart D of the new part 5.

It is not the intent of this proposed rule to require the application of safety risk management processes and procedures to activities that are not related to aviation operations. As an example, safety risk management would not be necessary when changing accounting practices or administrative computer software. Similarly, the FAA does not intend for an air carrier to apply safety risk management processes retroactively to established systems and processes. However, carriers may need to use the safety risk management process to review processes for which problems have been found in the past. For example, an air carrier would initiate safety risk management after learning that deicing operations at a particular airport are not effective. In that case, the air carrier would use safety risk management to analyze the deicing operation. First, it would review the deicing system to understand how it functions, to include the personnel responsible for deicing, the air carrier's guidance, processes, and training regarding deicing, as well as the deicing equipment that is used. Once the air carrier has an understanding of the system, the air carrier should be able to identify hazards and assess the risk associated with those hazards and make the necessary changes to the deicing system to control those risks. As a result of safety risk management, the air carrier may determine that controls such as implementing additional training, requiring inspection of the equipment, or revising operating procedures would be needed to control the risk in the deicing operation. Contrast this simple system with an air carrier that is changing its business model from conducting domestic operations in medium class turbo-prop aircraft to conducting international flights in turbojet aircraft. In this case, the systems involved are more numerous and more complex. The air carrier would apply safety risk management by defining the systems involved (*i.e.,* flight operations, operational control and dispatch, maintenance, ground operations and servicing) and would review items such as the operating requirements for the aircraft as defined in title 14 of the CFR, the crewmember qualification and training requirements for the new aircraft, the operating limitations of the aircraft, and the proposed route structure for the international flights. While the existing regulations that govern these kinds of operations would serve as the primary risk controls for the proposed operations, the air carrier would use safety risk management to establish any additional risk controls to mitigate risks identified as a result of defining and analyzing the system and to design systems that incorporate the regulations in a way that best achieves their intent in terms of risk reduction.

The first step of safety risk management is analyzing the system. Once an air carrier determines that the processes of safety risk management have been triggered under proposed § 5.51, it would conduct a system analysis, as required by § 5.53. The system analysis, also referred to as the system description in the ICAO Safety Management Manual, serves as the initial source for hazard identification when new systems are designed, when systems are revised, or when operational procedures are developed. The system analysis processes must ensure that information regarding the function and purpose of the system, the system's operating environment, and the personnel, equipment and facilities that the system requires for operation, is analyzed so that hazards may be appropriately identified. While the system analysis should be documented, no particular format is required. The system analysis could provide the basis for the development of the operator's manual system required by § 121.133, as well as checklists and other job aids, organizational charts, and personnel position descriptions. A typical functional breakdown of operational and support processes for air operators might include:

- Flight operations;
- Dispatch/flight following;
- Maintenance and inspection;
- Cabin safety;
- Ground handling and servicing;
- Cargo handling; and
- Training.

Long and excessively detailed system analyses are not necessary, provided they are sufficiently detailed to perform hazard and risk analyses.

The second step of safety risk management, set forth in § 5.53(b), would allow a certificate holder to identify hazards in a systematic way based on the system analyses conducted in the first step of safety risk management. While identification of every possible hazard would be unlikely, aviation service providers would be expected to exercise due diligence in identifying significant and reasonably foreseeable hazards related to their operations. A certificate holder should implement hazard identification processes relative to the complexity of its management structure and operations. The system analysis should be used to determine if there is a good integration of equipment, facilities, personnel, procedures, supervision, training, and the operational environment and if there are any characteristics of those system components or other conditions that could compromise safety. Any such conditions would meet the definition of "hazards."

The third step of safety risk management would require the analysis

of risk to determine the severity and likelihood associated with the hazards identified in step two of safety risk management. A common tool used in this analysis for risk decision making and acceptance is a risk matrix similar to those in the ICAO Safety Management Manual (SMM),[10] and in Appendix 3 of AC 120–92A (August 12, 2010). A certificate holder may design a matrix similar to these to categorize the potential severity of the worst credible projected outcome (consequence) of an event related to the hazard. For example, a tower or terrain in the takeoff path of an airport presents a hazard to departing aircraft. The worst credible event related to these obstacles would be for an aircraft to collide with it, resulting in loss of the aircraft and loss of life. Risk matrices typically use levels such as: Catastrophic (meaning outcome results in multiple fatalities and destroyed equipment), hazardous (would result in serious injury or death, major equipment damage), major (would result in injury, serious incident), minor (would result in minor incident, use of emergency procedures), and negligible (little consequence). Once the severity of the potential event has been determined, the certificate holder would then determine the likelihood of the event, for example, to determine whether the event is likely to occur frequently, occasionally, remotely, or is improbable or extremely improbable. Based on these categories, a likelihood and severity of the occurrence is selected for each hazard. This is just one method for analyzing hazards. Certificate holders should develop processes that reflect the complexity of their operations.

The fourth step of safety risk management, risk assessment, first requires the certificate holder to determine acceptability of safety risk. The starting foundation for each determination of acceptable safety risk would be the corresponding regulatory requirements and technical or performance standards. As indicated in § 5.23, the certificate holder would be required to identify the levels of management that are authorized to accept risk. The certificate holder may opt to use a risk matrix similar to that in Appendix 3 of AC 120–92A. A risk matrix graphically depicts the various levels of severity and likelihood as they relate to levels of risk (acceptable, acceptable with controls, or unacceptable). When the likelihood and severity of a potential outcome are plotted on the risk matrix, the certificate holder can see whether the hazard's safety risk is acceptable to the organization. Generally, as the likelihood and severity increase, the risk increases. For example, an outcome with an assessed likelihood of frequent and severity of catastrophic would be classified as an unacceptable risk in the matrix. The certificate holder would use this information to determine whether it may accept the risk, accept the risk provided risk controls are instituted, or whether the risk is too great and must be avoided.

The final step of safety risk management would require the certificate holder to develop processes and procedures for the development and implementation of risk controls. The development of risk controls is dependent upon the risk assessment conducted under step four of safety risk management. Risk controls may be additional or changed procedures, new supervisory controls, addition of organizational hardware, or software aids, changes to training, additional, or modified equipment, changes to staffing arrangements, or any of a number of other system changes. After these controls are developed but before the system is placed into operation, an assessment must be made of whether the controls are likely to be effective. This is also necessary to avoid introducing new hazards to the system. When the controls are acceptable, the system is placed into operation. The controls would then be continuously monitored under the processes and procedures developed under subpart D, Safety Assurance, to ensure they remain effective.

D. Safety Assurance

An organization needs to ensure that risk controls put into place under safety risk management continue to be effective in maintaining risk within the acceptable levels and that the organization's safety performance is meeting or exceeding its safety objectives. This is accomplished in the safety assurance component of SMS. Safety assurance has three purposes: (1) To confirm that risk controls established during safety risk management are effective; (2) to determine what new risk controls should be developed if new hazards or changes in risk levels are revealed, and (3) to take steps to assure the effectiveness of existing risk controls (*e.g.,* completion of required training by employees, increased supervisory emphasis). To accomplish this, safety assurance has three elements: (1) Safety performance monitoring and measurement (§ 5.71); (2) safety performance assessment (§ 5.73); and (3) continuous improvement (§ 5.75).

The first tool, safety performance monitoring and measuring, would require the development and maintenance of processes or systems that monitor system operations and collect data on the performance of the organization. There are already many sources, processes and systems in place in air carrier operations that collect this type of data. Some of these sources are based on current regulatory requirements and programs that have been voluntarily implemented. The following are just a few examples of existing processes and systems that would satisfy the requirements of safety assurance.

- Continuing Analysis and Surveillance System (CASS) (§ 121.373). CASS is a currently required system that is used to assure the performance and effectiveness of maintenance and inspection programs, to identify deficiencies, and to determine and implement appropriate action. A typical CASS includes internal auditing of the maintenance and inspection programs, analysis of the resulting data, and development of corrective actions to those programs. This system would be an appropriate process required under subpart D and would be accepted as one means of complying with the provisions of proposed § 5.71(a)(1), (2), (3), (5), and (7).
- Line Operations Safety Audit (LOSA): LOSA, as described previously, is a voluntary program that could provide partial compliance with the internal auditing requirements of the systems.
- Flight Operational Quality Assurance (FOQA): FOQA, as discussed previously, could provide information useful to monitor flight operations and maintenance programs. FOQA could provide data useful to compliance with the monitoring and measurement provisions of the proposed rule.
- Internal Evaluation Program (IEP): IEP is a comprehensive program for evaluating an air carrier's operational systems as well as its assurance programs. It builds on the auditing programs of the internal audit function and provides management with an additional level of assurance that is independent of the operational sub-organizations' audits and reviews. IEPs are required of carriers who contract with the Department of Defense but are not currently required by the FAA. However, many of the auditing and evaluation safety assurance processes of the proposed rule can be addressed by

[10] *See* ICAO, *Safety Management Manual,* at 6.5.3 ICAO Doc. 9859–AN/474 (2nd ed. 2009). (*http://www.icao.int/anb/safetymanagement/DOC_9859_FULL_EN.pdf*).

established IEP processes at the carriers who have implemented them.

○ Aviation Safety Action Program (ASAP): ASAPs, as discussed previously, could be used to meet the employee reporting requirements of the proposed rule for those employee groups covered by the ASAP.

○ Voluntary Disclosure Reporting Program (VDRP): VDRP is an FAA program designed for certificate holders to promptly report regulatory violations and show that corrective actions were taken to address the violations. As used in safety assurance, the certificate holder could track the reports submitted through VDRP, analyze the reports to identify compliance trends, and develop and report corrective actions.

In addition to these tools that could be used in safety performance monitoring and measurement, external audits conducted by outside organizations such as the FAA, the Department of Defense, code-share partners, industry organizations, or other third parties selected by the operator provide an excellent source of information regarding the safety performance of the organization. FAA oversight processes provide an external source of safety assurance of the carrier's operational processes and their SMS. Current practices of the Air Transportation Oversight System (ATOS) are designed to evaluate the design of air carrier processes and programs prior to certification, approval, or acceptance. Once systems or programs are in place, FAA inspectors conduct assessments of the programs' performance based upon FAA's assessment of risk as well as randomly sampled inspection activities. Information from these inspections could be used by air carriers to provide independent assessments of their processes and information on areas needing improvement. The air carrier's processes (as described in proposed §§ 5.71, 5.73, and 5.75) would be used to process FAA inspection data, as well as other external audit data. These processes can also be used to demonstrate the carrier's actions in correcting problems that are subjects of self disclosures or other regulatory issues.

If an organization uses an external audit as described above, the organization should use the audit data to augment the data that the organization gained with its own tools. The proposed SMS requirements do not require, however, that operators, especially small scale operators, hire external auditors to evaluate the safety performance of their organization. This is just one option that an air carrier of any size may choose to employ to evaluate its safety performance.

Safety assurance processes would also include investigations as noted under § 5.71(a)(5). Investigations are a reactive tool aimed at specific problems or occurrences in an organization and are a good source of performance data. In an SMS, the objective of investigating is to identify systemic safety deficiencies rather than to assign blame. A company's safety performance is enhanced by removing systemic deficiencies rather than by disciplining individuals who may only have made an error. Errors are not intentional actions and they are common; however, they can have negative outcomes. In an SMS, the point is to prevent the errors from happening or arrange company processes so that mistakes do not have unfortunate effects. Investigations should be done with the understanding of the difference between making an error, committing purposeful harm, or displaying a lack of competence or qualification.

Employee reporting systems provide another excellent source of information regarding the performance of the organization. ASAP is just one example of an employee reporting system that provides specific types of employees to report safety issues or concerns.

Once the air carrier collects the data through the processes under proposed § 5.71(a), it must have processes in place to analyze the data to determine the overall safety performance of the organization. This step is used to transform raw data into usable information that can support informed decision making.

The next step in safety assurance, the safety performance assessment under proposed § 5.73, analyzes the data collected against the safety objectives established by the air carrier in its safety policy. This function includes reviews by the accountable executive, who would review the information and analysis on a regular basis to ensure the organization's compliance with applicable regulatory requirements and safety controls established by the air carrier, to evaluate the performance of the SMS and the effectiveness of the safety controls, to identify changes in the operational environments, and to identify potential new hazards or safety issues. If the assessment reveals new hazards or safety issues, the certificate holder must initiate the processes under safety risk management to evaluate and, if necessary, control the risk to its operation.

The last component of safety assurance is continuous improvement under proposed § 5.75. This step is designed to ensure that the air carrier is correcting substandard safety performance identified during the safety performance assessment to continuously improve the organization's safety performance. The analysis and assessment functions of safety assurance are essential in alerting the organization to significant changes in the operating environment, possibly indicating a need for system change to maintain effective risk controls. The certificate holder should use safety and quality practices, audit and evaluation results, analysis of data, corrective actions, and management reviews developed under this subpart. For example, the certificate holder would take steps to correct noncompliance with existing regulatory requirements or safety controls initiated by the certificate holder.

E. Safety Promotion

An organizational safety effort cannot succeed purely by mandate or strict implementation of policy. The organizational culture and individual attitudes set the tone for the organization's safety performance. An organization's culture consists of the values, beliefs, mission, goals, and sense of responsibility held by the organization's members. The culture ties together the organization's policies, procedures, and processes and provides a sense of purpose to safety efforts. The fourth component of SMS, safety promotion, seeks to enhance the safety culture in an organization through increased employee communication and training.

The safety promotion component requires organizations to ensure employees throughout the organization are trained and competent to perform their safety-related job functions. This training may vary somewhat depending on where in the organization an employee works. Additionally, it is important for all employees to know how to report safety concerns and understand that it is their responsibility to do so. It is not the intent of this rule to establish mandatory training hours or a prescriptive training program. Rather, the training required under proposed § 5.91 may be incorporated into the air carrier's existing training programs, or may be provided separately, as changes are made to the operating system for which the individual is responsible. Training may range from formal classroom training to simple notice alerts when changes are made to update a system. For these reasons the FAA has determined that it is appropriate for the air carrier to develop training that meets the needs of the organization, including

the content, methods of delivery, and frequency of training.

In addition to training, communication of critical safety information is essential to building a positive safety culture. The organization must put in place processes that allow for open communication among employees and the organization's management. The organization must make every effort to communicate its goals and objectives, as well as the current status of its activities and significant events. Likewise, the organization must supply a means of communication that fosters an environment of collaboration, trust, and respect. Thus, proposed § 5.93 would require the certificate holder to develop and maintain a means for communicating safety information.

F. SMS Documentation and Recordkeeping

Documentation of SMS requirements, processes and procedures, and outputs is necessary in order for certificate holders to conduct a meaningful analysis under safety risk management, to review safety assurance activities, and for the FAA to review for compliance during inspections. Documentation and recordkeeping also ensure that safety-related decisions are consistent with safety policies and goals and provide historical information that can be used to make future safety-related decisions.

The FAA, therefore, is proposing a set of documentation and recordkeeping requirements under subpart F of part 5. As proposed in § 5.91, the air carrier would be required to document its safety policy and SMS processes and procedures. The safety policy requirements are described in more detail in proposed § 5.21. Documentation of the certificate holder's SMS processes and procedures include the steps involved, methods to be used and associated criteria, objectives, expected outputs, and outcomes necessary to meet the regulatory requirements. For instance, proposed § 5.71(a)(3) requires internal audits. Proposed § 5.95(b) requires that the audit processes and procedures be documented. This would also include the criteria, scope, and frequency of the audits.

As proposed in § 5.97, the air carrier would maintain records of the outputs (risk assessments, implemented risk controls) of safety risk management and safety assurance processes. Outputs of safety risk management processes would be retained for as long as they remain relevant to the operation. For risk assessments, this may mean for as long as the air carrier engages in that activity. For risk controls, it may mean for as long as the risk control remains in effect. These records can be kept either electronically or in paper format. In addition, the certificate holder would be required to retain outputs of safety assurance processes for a minimum of five years, and training and communication records for a minimum of 24 months. The timelines associated with the retention of these documents ensure that they are kept for a time period that provides the air carrier with sufficient historical data to conduct the required analyses and assessments. The retention requirements are consistent with other retention requirements in part 121. Furthermore, these are minimum retention requirements. A certificate holder may retain its documents for longer time periods if necessary.

IV. Regulatory Notices and Analyses

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following proposed new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA will be submitting these proposed information collection amendments to OMB for its review and approval before the information collection related provisions go into effect. FAA specifically requests comments regarding the cost and staff hours necessary for information collection and record keeping required under proposed part 5.

Summary: The new 14 CFR part 5 would require certificate holders authorized to conduct operations under part 121 to develop and implement a Safety Management System (SMS) for all of their aviation safety-related activities. An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing, and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies. When systematically applied in an SMS, these activities provide a set of decision-making tools that certificate holders can use to improve safety.

Use: Each certificate holder operating under a part 121 certificate would develop its SMS based on its own unique operating environment. The FAA expects an SMS comprised of four key components: Safety Policy, Safety Risk Management, Safety Assurance, and Safety Promotion. Collection and analysis of safety data is an essential part of an SMS. In addition, a primary component of an SMS is the publication of safety policy, which establishes the foundation for the SMS. Two other essential components of SMS are safety risk management and safety assurance. The certificate holder is required to maintain records of the outputs of these processes. Safety promotion is the other component of SMS. Within it, the certificate holder is required to maintain training records and records of communications used to promote safety. However, it is important to note that some part 121 certificate holders already have and maintain some of these documents and records as a result of other voluntary or required programs. Finally, because of the complexity involved in the development and implementation of an SMS, a phased approach to implementation within the certificate holder's organization will be used. Part of the initial phase is the development of an implementation plan, which will guide the certificate holder's implementation, as well as provide the basis for the FAA's oversight during the development and implementation phases. The implementation plan is the only new document or data the certificate holder will submit to the FAA due to the new rule.

Respondents: 90.

Frequency: Initial and Annual Burden (ongoing collection and record keeping)

Sec. 119.8/5.95 Implementation Plan/ SMS Documentation

The FAA estimates that there are approximately 90 operators who would be respondents that would be in compliance with these proposed requirements. All certificate holders are required to develop and submit an implementation plan to establish and document a safety policy that outlines the policy and objectives of the company. Although much of the information would depend on a carrier's specific operation and size, all carriers would need to document the following: implementation plan, commitment to

safety management and objectives, responsibilities of an accountable executive and management representatives, and a coordinated emergency response plan. Costs for SMS documentation come from both the necessary man hours to research and document the safety policy, processes, and procedures, as well as the actual documentation. Carriers also reported recurring costs for updates to the document. The FAA assumes that the majority of document updates are minor at minimal.

Implementation Plan and SMS Documentation (Initial Hourly Burden):

2 full time employees per carrier; 3000 hours per year.

90 certificated carriers × 3000 hours annually = 270,000 hours annually.

270,000 hours annually * 3 years = 810,000 total hours.

$38,880,000 Total Initial Labor Costs for 3 years.

+ 25,733,400 Material Costs of Documentation for 3 years.

$64,613,400 Total Estimated Initial Cost Burden for 3 years.

Estimated Recurring Annual Cost for SMS Documentation:

- 2 full time employees per carrier; 350 hours per year.
- 90 certificated carriers * 350 hours = 31,000 hours annually.

$1,125,000 Total Labor Cost per Year.

+$252,000 Material Costs of Documentation per Year.

$1,377,000 Total Estimated Annual Recurring SMS Documentation.

Sec. 5.97 SMS records

This proposed rule would require carriers to record output from their safety risk management (SRM) process, safety assurance (SA) process, safety communications, and SMS training. All of these records depend on a carrier's operations. The FAA does not specify how, or in what media, documents and records must be maintained relative to the requirements in this proposed rule. However, it encourages certificates holders to use existing mechanisms and systems to minimize the burden. The FAA also believes that there would be minimal additional costs for the maintenance of training records since part 121 certificate holders already maintain training records.

Estimated Implementation Costs:

- 2 full time employees per carrier; 2000 hours per year.
- 90 certificated carriers * 2000 hours = 180,000 hours annually.
- 180,000 hours annually * 3 years = 540,000 total hours.

$25,920,000 Total Labor Cost for 3 Years.

+ $26,356,200 Equipment/Software Implementation Costs for 3 Years.

$52,276,200 Total Estimated Implementation Cost Burden for 3 Years.

Estimated Annual Operating Costs:

- 2 full time employees per carrier; 3500 hours per year.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information collection requirements (including recordkeeping, record retention, and auditing) are 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;

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

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement by February 3, 2011, and should direct them to the address listed in the **ADDRESSES** section at the beginning of this preamble. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20053.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified the following differences with these proposed regulations. Amendment 30 to Annex 6 part I Section 3.2 Safety Management, Paragraph 3.3.6 effective 1 January, 2009 requires that a Flight Data Analysis Program be in the SMS standard. If this proposal is adopted, the FAA intends to file a difference with ICAO.

ICAO Annex 6 part I includes a provision that part 121 air carriers operating airplanes having a maximum gross takeoff weight in excess of 27,000 kg (approximately 59,400 lb). "* * * shall establish and maintain a flight data analysis programme as part of its safety management system." Flight Data Analysis Program (FDAP) is a general term encompassing a number of means by which routine flight operations data may be acquired, recorded, analyzed, and shared. Flight Operational Quality Assurance (FOQA) is one such program. FOQA is a formal voluntary program which has been implemented by 41 certificate holders conducting operations under part 121. FOQA specifications include installation of extensive flight data recording systems which facilitate rapid transfer of recorded data, de-identification of that data, and agreements between pilot organizations and the carriers which define how this information may be used.

The part 121 fleet is diverse in terms of size, complexity, and age, as well as the size of the companies that operate them. Many of the older aircraft would require extensive modifications to adapt them to the technical requirements of a FOQA program. The investment and expense of implementing and maintaining such a system exceeds the financial capability of many smaller carriers. There are a number of ways to meet the requirements of an FDAP. Therefore, the FAA will not require FOQA in this rule. This issue is discussed further in the Congressional Mandate section of this NPRM.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. Readers seeking greater detail should read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule has benefits that justify its costs, is not

an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would have a significant economic impact on a substantial number of small entities; and (5) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

Who is Potentially Affected by this Rule?

All Part 121 Operators

Assumptions

- All costs and benefits are presented in 2010 dollars.
- All costs and benefits are estimated over a 20-year period from 2012 through 2031.
- Benefits of SMS implementation would begin to accrue in 2015.
- Costs to airlines and air carriers would begin to accrue in 2012.
- The present value discount rate of 7 percent

The estimated cost of this proposed rule is $710.8 million ($375.5 million in present value terms). The estimated potential benefits from avoided casualties, aircraft damage and accident investigation costs are $1,143.1 million ($500.8 million in present value terms).

Benefits of This Rule

The benefits of this proposed rule consist of the value of averted casualties, aircraft damage, and accident investigation costs by identifying safety issues and spotting trends before they result in a near-miss, incident, or accident. Although, an SMS would help carriers detect problems early, the FAA also recognizes that both the severity of the problem and possible mitigations impact the rate at which future accidents would be prevented. Over the 20-year period of analysis, the FAA estimates potential benefits of $1,143.1 million ($500.8 million in present value terms).

Costs of This Rule

Each air carrier would be required to develop an SMS that includes the four SMS components: Safety Policy, Safety Risk Management, Safety Assurance, and Safety Promotion. To support each component, the FAA projects that the compliance cost of this proposed rule would come from the initial development and documentation of their SMS, implementation and continuous operating costs to include the modification or purchasing of new equipment/software, additional staff and promotional materials, and training. Costs range depending on the size of the carrier and the type of operations that they provide. Further, operators have existing quality management systems which may lower the estimated compliance costs. In total this proposed rule is estimated to cost carriers $710.8 million dollars over 20 years ($375.5 million present value).

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

Each initial regulatory flexibility analysis required under this section shall contain—

1. A description of the reasons why action by the agency is being considered:

The objective of SMS is to proactively manage safety, to identify potential hazards, to determine risk, and to implement measures that mitigate the risk. The FAA envisions operators being able to use all of the components of SMS to enhance a carrier's ability to identify safety issues and spot trends before they result in a near-miss, incident, or accident. For this reason, the FAA seeks to require carriers to develop and implement an SMS. Lastly, the proposed rule meets a congressional mandate.

2. A succinct statement of the objectives of and legal basis for, the proposed rule:

The authority for this rulemaking is derived from Title 49 of the United States Code in addition to the Airline Safety and Federal Aviation Administration Extension Act of 2010 (the Act), Public Law 111–216, § 215 (August 1, 2010). The Act requires the FAA to conduct rulemaking "requiring all part 121 air carriers to implement a safety management system."

3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply:

Under NAICS codes 481111 and 481112, for scheduled air transportation, small entities would be all part 121 carriers with less than 1,500 employees. The FAA estimates that there are approximately 90 part 121 operators and 64 of these operators meet the definition of a small entity; therefore the FAA believes that there are a substantial number of small entities impacted by this rule.

4. A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:

An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies. Each air carrier would be required to develop an SMS that includes the four SMS components: Safety Policy, Safety Risk Management, Safety Assurance, and Safety Promotion. To support each component, the FAA projects that the compliance cost of this proposed rule would come from the initial development and documentation of their SMS, implementation and continuous operating costs to include the modification or purchasing of new equipment/software, additional staff and promotional materials, and training. Costs range depending on the size of the carrier and the type of operations that they provide. The FAA estimates that for a small carrier, with less than 9 aircraft, compliance would cost $253,500 per year for the first three years and then roughly $233,000 per year for subsequent years. For medium sized carriers, that have 10 to 49 aircraft, but still have less than 1,500 employees the compliance cost would be $342,450 per carrier per year for the first 3 years and then $222,500 every years after. Although, the compliance costs are more than 3% of a small to medium carriers operating costs, there is a lot of variability surrounding these estimates. Carriers could spend more or less given

the flexibility of this proposed rule, and the FAA believes that carriers would choose an option where they can maximize their benefits and minimize their costs. The FAA has determined that this proposed rule has a significant economic impact on small carriers.

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule:

The FAA is not aware of any Federal rules that would duplicate, overlap or conflict with this proposed rule.

Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such 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 such small entities.

This proposed rule is congressionally mandated leaving little room for alternatives in terms of adopting a safety management system. All Part 121 operators would be required to establish an SMS with no exemptions for small entities. However, to accommodate small businesses the FAA intends to make the implementation of SMS flexible and scalable. Carriers can adapt SMS to their existing programs therein reducing the cost. There are already many sources, processes and systems in place in air carrier operations that collect this type of data that could be utilized to meet this requirement for an SMS. As described throughout this document, Flight Operational Quality Assurance (FOQA) and Aviation Safety Action Program (ASAP) are good examples of a source that is already in place for a large number of carriers. Following congressional direction the FAA is not considering other alternatives and requests comments on potential alternatives that would minimize the impact on small businesses.

The FAA believes that this proposed rule would have a significant impact on a substantial number of small entities for the following reasons: We estimate that 64 operators are small entities and the compliance costs could be higher than three percent of their operating costs. Even though the proposed rule responds to the PL 111–216 Congressional requirement, we structured the requirement such that small entities could meet the requirements with lower costs than a larger firm.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph Chapter 3, paragraph 312d and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited:

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. FAA also intends to propose separate SMS rulemakings in other sectors of the aviation industry. When the FAA does propose any such rulemaking, the FAA will take into account the unique qualities of the industry to which they will apply, and will use lessons learned from this rulemaking, to include: Scalability, flow-through, flexibility, performance standards, and status of existing SMS programs. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in

the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

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

2. Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects

14 CFR Part 5

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

The Proposed Amendment

For the reasons stated in the preamble, the Federal Aviation Administration proposes to amend 14 CFR Chapter I as follows:

1. The heading for subchapter A is revised to read as follows:

Subchapter A—Definitions and General Requirements

2. Add part 5 to read as follows:

PART 5—SAFETY MANAGEMENT SYSTEMS

Subpart A—General

Sec.
5.1 Applicability.
5.3 General requirements.
5.5 Definitions.

Subpart B—Safety Policy

5.21 Safety policy.
5.23 Safety accountability and authority.
5.25 Designation and responsibilities of required safety management personnel.
5.27 Coordination of emergency response planning.

Subpart C—Safety Risk Management

5.51 Applicability.
5.53 System analysis and hazard identification.
5.55 Safety risk assessment and control.

Subpart D—Safety Assurance

5.71 Safety performance monitoring and measurement.
5.73 Safety performance assessment.
5.75 Continuous improvement.

Subpart E—Safety Promotion

5.91 Competencies and training.
5.93 Safety communication.

Subpart F—SMS Documentation and Recordkeeping

5.95 SMS documentation.
5.97 SMS records.

Authority: Public Law 111–216, sec. 215 (Aug. 1, 2010); 49 U.S.C. 106(g), 40101, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

Subpart A—General

§ 5.1 Applicability.

(a) A certificate holder under part 119 of this chapter authorized to conduct operations in accordance with the requirements of part 121 of this chapter must have a Safety Management System that meets the requirements of this part and is acceptable to the Administrator by [date 3 years after the effective date of final rule].

(b) A certificate holder must submit an implementation plan to the FAA Administrator for approval no later than [date 6 months after the effective date of the final rule].

(c) The implementation plan may include any of the certificate holder's existing programs, policies, or procedures that it intends to use to meet the requirements of this part, including components of an existing SMS.

§ 5.3 General requirements.

(a) Any certificate holder required to have a Safety Management System under this part must submit the Safety Management System to the Administrator for acceptance. The Safety Management System must include at least the following components:

(1) Safety policy in accordance with the requirements of subpart B of this part;

(2) Safety risk management in accordance with the requirements of subpart C of this part;

(3) Safety assurance in accordance with the requirements of subpart D of this part; and

(4) Safety promotion in accordance with the requirements of subpart E of this part.

(b) The Safety Management System must be maintained in accordance with the recordkeeping requirements in subpart F of this part.

(c) The Safety Management System must ensure compliance with the relevant regulatory standards in chapter I of Title 14 of the Code of Federal Regulations.

§ 5.5 Definitions.

Hazard means a condition that can lead to injury, illness or death to people; damage to or loss of a system, equipment, or property; or damage to the environment.

Risk means the composite of predicted severity and likelihood of the potential effect of a hazard.

Risk control means a means to reduce or eliminate the effects of hazards.

Safety assurance means processes within the SMS that function systematically to ensure the performance and effectiveness of safety risk controls and that the organization meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Management System (SMS) means the formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of safety risk controls. It includes systematic procedures, practices, and policies for the management of safety risk.

Safety objective means a measurable goal or desirable outcome related to safety.

Safety performance means realized or actual safety accomplishment relative to the organization's safety objectives.

Safety policy means the certificate holder's documented commitment to safety, which defines its safety objectives and the accountabilities and responsibilities of its employees in regards to safety.

Safety promotion means a combination of training and communication of safety information to support the implementation and operation of an SMS in an organization.

Safety Risk Management means a process within the SMS composed of describing the system, identifying the hazards, and analyzing, assessing and controlling risk.

Subpart B—Safety Policy

§ 5.21 Safety policy.

(a) The certificate holder must have a safety policy that includes at least the following:

(1) The safety objectives of the certificate holder.

(2) A commitment of the certificate holder to fulfill the organization's safety objectives.

(3) A clear statement about the provision of the necessary resources for the implementation of the SMS.

(4) A safety reporting policy that defines requirements for employee reporting of safety hazards or issues.

(5) A policy that defines unacceptable behavior and conditions for disciplinary action.

(6) An emergency response plan that provides for the safe transition from normal to emergency operations in accordance with the requirements of § 5.27.

(b) The safety policy must be in accordance with all applicable regulatory requirements in Chapter I of Title 14 of the Code of Federal Regulations and must reflect the certificate holder's commitment to safety.

(c) The safety policy must be signed by the accountable executive described in § 5.25.

(d) The safety policy must be documented and communicated throughout the certificate holder organization.

(e) The safety policy must be regularly reviewed by the accountable executive to ensure it remains relevant and appropriate to the certificate holder.

§ 5.23 Safety accountability and authority.

(a) The certificate holder must define accountability for safety within the organization's safety policy for the following individuals:

(1) Accountable executive, as described in § 5.25.

(2) All members of management in regard to developing, implementing, and maintaining SMS processes within their area of responsibility, including, but not limited to:

(i) Hazard identification and safety risk assessment.

(ii) Assuring the effectiveness of safety risk controls.

(iii) Promoting safety as required in subpart E of this part.

(iv) Advising the accountable executive on the performance of the SMS and on any need for improvement.

(3) Employees relative to the certificate holder's safety performance.

(b) The certificate holder must identify the levels of management with the authority to make decisions regarding safety risk acceptance.

§ 5.25 Designation and responsibilities of required safety management personnel.

(a) *Designation of the accountable executive.* The certificate holder must identify an accountable executive who, irrespective of other functions, satisfies the following:

(1) Is the final authority over operations authorized to be conducted under the certificate holder's certificate(s).

(2) Controls the financial resources required for the operations to be conducted under the certificate holder's certificate(s).

(3) Controls the human resources required for the operations authorized to be conducted under the certificate holder's certificate(s).

(4) Retains ultimate responsibility for the safety performance of the operations conducted under the certificate holder's certificate.

(b) *Responsibilities of the accountable executive.* The accountable executive must accomplish the following:

(1) Ensure that the SMS is properly implemented and performing in all areas of the certificate holder's organization.

(2) Develop and sign the safety policy of the certificate holder.

(3) Communicate the safety policy throughout the certificate holder's organization.

(4) Regularly review the certificate holder's safety policy to ensure it remains relevant and appropriate to the certificate holder.

(5) Regularly review the safety performance of the certificate holder's organization and direct actions necessary to address substandard safety performance in accordance with § 5.75.

(c) *Designation of a management representative.* The accountable executive must designate a management representative who, on behalf of the accountable executive, must be responsible for the following:

(1) Facilitating hazard identification and safety risk analysis.

(2) Monitoring the effectiveness of safety risk controls.

(3) Ensuring safety promotion throughout the certificate holder's organization as required in subpart E of this part.

(4) Regularly reporting to the accountable executive on the performance of the SMS and on any need for improvement.

§ 5.27 Coordination of emergency response planning.

Where emergency response procedures are necessary, the accountable executive and management representative must develop, as part of the safety policy of the certificate holder, an emergency response plan that addresses at least the following:

(a) Delegation of emergency authority throughout the certificate holder's organization;

(b) Assignment of employee responsibilities during the emergency; and

(c) Coordination of the certificate holder's emergency response plans with the emergency response plans of other organizations it must interface with during the provision of its services.

Subpart C—Safety Risk Management

§ 5.51 Applicability.

A certificate holder must apply safety risk management to a system under any of the following conditions:

(a) Implementation of new systems.

(b) Revision of existing systems.

(c) Development of operational procedures.

(d) Identification of hazards or ineffective risk controls through the safety assurance processes in subpart D of this part.

§ 5.53 System analysis and hazard identification.

(a) When applying safety risk management, the certificate holder must have a process to describe and analyze the system for use in identifying hazards under paragraph (c) of this section, and developing and implementing risk controls related to the system under § 5.55(c).

(b) In conducting the system analysis, the following information must be considered:

(1) Function and purpose of the system.

(2) The system's operating environment.

(3) An outline of the system's processes and procedures.

(4) The personnel, equipment, and facilities necessary for operation of the system.

(c) The certificate holder must develop and maintain processes to identify hazards within the context of the system analysis.

§ 5.55 Safety risk assessment and control.

(a) The certificate holder must develop and maintain processes to analyze safety risk associated with the hazards identified in § 5.53(c).

(b) The certificate holder must define a process for conducting risk assessment that allows for the determination of acceptable safety risk. Acceptable safety risk must, at a minimum, comply with the applicable regulatory requirements set forth in Chapter I of title 14 of the Code of Federal Regulations.

(c) The certificate holder must develop and maintain processes to develop safety risk controls that are necessary as a result of the safety risk assessment process under paragraph (b) of this section.

(1) The certificate holder must evaluate whether the risk will be acceptable with the proposed safety risk control applied, before the safety risk control is implemented.

(2) The safety risk controls must, at a minimum, comply with the applicable regulatory requirements set forth in Chapter I of title 14 of the Code of Federal Regulations.

Subpart D—Safety Assurance

§ 5.71 Safety performance monitoring and measurement.

(a) The certificate holder must develop and maintain processes and systems to acquire data with respect to its operations, products, and services to monitor the safety performance of the organization. These processes and systems must include, at a minimum, processes, and systems for the following:

(1) Continuous monitoring of operational processes.

(2) Periodic monitoring of the operational environment to detect changes.

(3) Auditing of operational processes and systems.

(4) Evaluations of the SMS and operational processes and systems.

(5) Investigations of incidents and accidents.

(6) Investigations of reports regarding potential non-compliance with regulatory standards or other safety risk controls established by the certificate holder through the safety risk management process established in subpart B of this part.

(7) A confidential employee reporting system in which employees can report, including, but not limited to: Hazards, issues, concerns, occurrences, incidents, as well as propose solutions and safety improvements.

(b) The certificate holder must develop and maintain processes that analyze the data acquired through the processes and systems identified under paragraph (a) of this section and any other relevant data with respect to its operations, products, and services.

§ 5.73 Safety performance assessment.

(a) The certificate holder must conduct assessments of its safety performance against its safety objectives, which include reviews by the accountable executive, to:

(1) Ensure the certificate holder's compliance with the applicable regulatory requirements in Chapter I of title 14 of the Code of Federal Regulations and additional safety risk controls established by the certificate holder.

(2) Evaluate the performance of the SMS.

(3) Evaluate the effectiveness of the safety risk controls established under § 5.55(c) and identify any ineffective controls.

(4) Identify changes in the operational environment that may introduce new hazards.

(5) Identify potential new hazards or safety issues and concerns.

(b) Upon completion of the assessment, if ineffective controls, new hazards, or potential hazards are identified under paragraph (a)(2) through (a)(4) of this section, the certificate holder must use the safety risk management process described in subpart C of this part.

§ 5.75 Continuous improvement.

The certificate holder must establish and implement processes to correct substandard safety performance identified in the assessments conducted under § 5.73.

Subpart E—Safety Promotion

§ 5.91 Competencies and training.

The certificate holder must provide training to each individual identified in § 5.23 to ensure the individuals attain and maintain the qualifications necessary to perform their duties relevant to the operation and performance of the SMS.

§ 5.93 Safety communication.

(a) The certificate holder must develop and maintain means for communicating safety information that, at a minimum:

(b) Ensures that all personnel are aware of the SMS.

(c) Conveys safety critical information.

(d) Explains why particular safety actions are taken.

(e) Explains why safety procedures are introduced or changed.

Subpart F—SMS Documentation and Recordkeeping

§ 5.95 SMS documentation.

The certificate holder must develop and maintain SMS documentation that describes the certificate holder's:

(a) Safety policy.

(b) SMS processes and procedures.

§ 5.97 SMS records.

(a) The certificate holder must maintain records of outputs of safety risk management processes as described in subpart C of this part. Such records must be retained for as long as the control remains relevant to the operation.

(b) The certificate holder must maintain records of outputs of safety assurance processes as described in subpart D of this part. Such records must be retained for a minimum of 5 years.

(c) The certificate holder must maintain a record of all training provided under § 5.91 for each individual. Such records must be retained for a minimum of 24 consecutive calendar months after completion of the training.

(d) The certificate holder must retain records of all communications provided under § 5.93 for a minimum of 24 consecutive calendar months.

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

3. The authority citation for part 119 is revised to read as follows:

Authority: Public Law 111–216, sec. 215 (August 1, 2010); 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

4. Add § 119.8 to read as follows:

§ 119.8 Safety Management Systems.

(a) Certificate holders authorized to conduct operations under part 121 of this chapter must have a safety management system that meets the requirements of part 5 of this chapter and is acceptable to the Administrator by [date 3 years after effective date of final rule].

(b) Certificate holders required to have an SMS under this section must submit an SMS implementation plan in a form and manner prescribed by the Administrator to the certificate-holding district office for approval by [date 6 months after effective date of final rule].

(c) A person applying to the Administrator for an air carrier certificate or operating certificate to conduct operations under part 121 of

this chapter after [effective date of final rule] must demonstrate, as part of the application process under § 119.35, that it has an SMS that meets the standards set forth in part 5 of this chapter and is acceptable to the Administrator.

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

Margaret Gilligan,

Associate Administrator, Office of Aviation Safety.

[FR Doc. 2010–28050 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1043; Directorate Identifier 2010–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model MD–90–30 airplanes. This proposed AD would require installing new fire handle shutoff system wiring. This proposed AD was prompted by a possible latent failure in the fire handle shutoff relay circuit due to a lack of separation between engine wires. We are proposing this AD to minimize the possibility of a multiple engine shutdown due to single fire handle activation.

DATES: We must receive comments on this proposed AD by December 20, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: William S. Bond, Aerospace Engineer, Los Angeles ACO—Propulsion Branch, ANM–140L, FAA Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, CA 90712; telephone: (562) 627–5253; fax: (562) 627–5210; e-mail: *william.bond@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1043; Directorate Identifier 2010–NM–200–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received a report from Boeing identifying a potential unsafe condition. The engine fire shutoff handles on the MD–90 airplanes are designed to shutoff fuel at both the wing spar's mechanical fuel fire shutoff valve and the electrical solenoid controlled engine fuel shutoff valve in the engine Hydromechanical Unit (HMU). Due to the lack of separation between engine wires, a latent failure in the fire handle fuel shutoff relay circuit has the potential of causing a dual engine shutdown in the event any single engine fuel fire shutoff handle is activated. Separating the fire handle shutoff system wiring will minimize the possibility of multiple engine shutdown due to a single event. This condition, if not corrected, has the potential of causing a dual engine shutdown in the event of any single engine fuel fire shutoff handle activation.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin MD90–74A002, dated August 17, 2010. The service information describes procedures for installing new fire handle shutoff system wiring.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD will affect 25 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Wiring change	8 work-hour × $85 per hour = $680	$489	$1,169	$29,225

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

McDonnell Douglas Corporation: Docket No. FAA–2010–1043; Directorate Identifier 2010–NM–200–AD.

Comments Due Date

(a) We must receive comments by December 20, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Corporation Model MD–90–30 airplanes, certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 74: Ignition system.

Unsafe Condition

(e) This AD was prompted by a possible latent failure in the fire handle shutoff relay circuit due to a lack of separation between engine wires. We are proposing this AD to minimize the possibility of a multiple engine shutdown due to single fire handle activation.

Compliance

(f) Comply with this AD within the compliance times specified, unless already done.

Wire Installation

(g) Within 4,200 flight hours after the effective date of this AD, install new fire handle shutoff system wiring, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–74A002, dated August 17, 2010.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(i) For more information about this AD, contact William S. Bond, Aerospace Engineer, Los Angeles ACO—Airframe Branch, ANM–140L, FAA Los Angeles Aircraft Certification Office, 3960 Paramount Blvd, Lakewood, CA 90712–4137; telephone: (562) 627–5253; fax: (562) 627–5210; e-mail: *william.bond@faa.gov.*

(j) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on October 21, 2010.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28080 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1044; Directorate Identifier 2010–NM–033–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F; Model MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. The existing AD currently requires an inspection to determine if a certain fuel pump housing electrical connector is installed. The existing AD also requires a revision to the FAA-approved airplane flight manual (AFM) to advise the flightcrew of the appropriate procedures for disabling certain fuel pump electrical circuits following failure of a fuel pump housing electrical connector if applicable. The existing AD also requires the deactivation of certain fuel tanks or fuel pumps and the installation of placards if applicable. The existing AD allows the optional replacement of the fuel pump housing electrical connectors with new, improved parts, which would

terminate the AFM revisions, deactivation of certain fuel tanks and fuel pumps, and placard installation. This proposed AD would instead require replacing the fuel pump housing electrical connector assembly with a new part and doing repetitive inspections for continuity, resistance, and insulation resistance, and doing corrective actions if necessary. This proposed AD results from reports of failures of a certain fuel pump housing electrical connector. We are proposing this AD to detect and correct insulation resistance degradation and arcing in the potted backside of the electrical connector assembly of the fuel boost/transfer pump housing, which could compromise its performance and cause an ignition source in the fuel tank, resulting in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by December 20, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1044; Directorate Identifier 2010–NM–033–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

On July 13, 2007, we issued AD 2007–15–05, Amendment 39–15134 (72 FR 40216, July 24, 2007), for all Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes. That AD requires an inspection to determine if a certain fuel pump housing electrical connector is installed, and a revision to the FAA-approved airplane flight manual (AFM) to advise the flightcrew of the appropriate procedures for disabling certain fuel pump electrical circuits following failure of a fuel pump housing electrical connector if applicable. That AD also requires the deactivation of certain fuel tanks or fuel pumps and the installation of placards if applicable. That AD allows the optional replacement of the fuel pump housing electrical connectors with new, improved parts, which would terminate the AFM revisions, deactivation of certain fuel tanks and fuel pumps, and placard installation. That AD resulted from a report of two failures of the fuel pump housing electrical connector. We issued that AD to prevent continued arcing following a short circuit of the fuel pump housing electrical connector, which could damage the conduit that protects the power lead inside the fuel tank; this condition could create an ignition source inside the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2007–15–05, operators have reported failures of fuel pump housing electrical connector assemblies having part number (P/N) 60–84355–1. The installation of P/N 60–84355–1 was required in AD 2007–15–05, but due to reported failures of that part, it needs to be replaced with a new fuel pump housing electrical connector assembly having part number (P/N) 60–84351. Inspecting the fuel boost/transfer pump housing electrical connector assembly and fuel boost/transfer pump, and replacing any fuel pump electrical connector assembly having P/N 60–84355–1 with one having P/N 60–84351, as required based on inspection results, will minimize the possibility of a potential ignition source in the fuel tanks and potential fuel tank explosion. If not corrected, insulation resistance degradation and arcing in the potted backside of the electrical connector assembly of the fuel boost/transfer pump housing could compromise the performance of the electrical connector assembly of the fuel boost/transfer pump housing and result in a failure that could introduce an ignition source into the fuel tank and cause a fuel tank explosion. The requirements of AD 2007–15–05 do not adequately address the identified unsafe condition.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD11–28A143, dated December 2, 2009; and Boeing Alert Service Bulletin DC10–28A261, dated December 1, 2009. The service bulletins describe procedures for replacing the fuel pump housing electrical connector assembly having P/N 60–84355–1 with new or serviceable fuel pump housing electrical connector assembly having P/N 60–84351; and doing repetitive inspections for continuity, resistance, and insulation resistance; and doing corrective actions if necessary. Corrective actions include replacing the fuel boost/transfer pump and replacing

any fuel pump electrical connector assembly having P/N 60–84355–1 with one having P/N 60–84351.

Explanation of Change to This Proposed AD

We have removed the "Service Bulletin Reference" paragraph from this proposed AD. That paragraph was identified as paragraph (f) in the existing AD. Instead, we have provided the full service bulletin citations throughout this proposed AD. We have re-identified the paragraphs accordingly.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2007–15–05. This proposed AD would instead require accomplishing the actions described previously in accordance with Boeing Alert Service Bulletin MD11–28A143, dated December 2, 2009; and Boeing Alert Service Bulletin DC10–28A261, dated December 1, 2009.

Costs of Compliance

There are about 281 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection ..	Between 20 and 36 per inspection cycle.	$85	$0	Between $1,700 and $3,060 per inspection cycle.	281	Between $477,700 and $859,860 per inspection cycle.
Replacement.	Up to 44	85	Up to $4,478	Up to $8,218	281	Up to $2,309,258.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–15134 (72 FR 40216, July 24, 2007) and adding the following new AD:

McDonnell Douglas Corporation: Docket No. FAA–2010–1044; Directorate Identifier 2010–NM–033–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by December 20, 2010.

Affected ADs

(b) This AD supersedes AD 2007–15–05, Amendment 39–15134.

Applicability

(c) This AD applies to all McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from reports of failures of the fuel pump housing electrical connector. The Federal Aviation Administration is issuing this AD to detect and correct insulation resistance degradation and arcing in the potted backside of the electrical connector assembly of the fuel boost/transfer pump housing, which could compromise its performance and cause an ignition source in the fuel tank, resulting in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Inspection and Change

(g) Within 10 months after the effective date of this AD, do the actions in paragraph (g)(1) or (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A261, dated December 1, 2009; or Boeing Alert Service Bulletin MD11–28A143, dated December 2, 2009; as applicable.

(1) Replace the fuel pump electrical connector assembly having part number (P/N) 60–84355–1 with new P/N 60–84351; or

(2) Do the actions required by paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Using a digital multi-meter, do a continuity, resistance, and insulation resistance inspection from the terminal strip through the fuel boost/transfer pump; and all applicable corrective actions specified in the service bulletin. Do all applicable corrective actions before further flight.

(ii) Except as required by paragraph (i) of this AD, within 12 months after accomplishing the inspection required by paragraph (g)(2)(i) of this AD: Replace the fuel pump electrical connector assembly having part number (P/N) 60–84355–1 with a new fuel pump electrical connector assembly having P/N 60–84351.

(h) Before further flight after installing the new fuel pump electrical connector assembly, insert the applicable Interim Operating Procedure regarding abnormal operations for failure of the fuel pump housing electrical connector into the Procedures section of the applicable airplane flight manual, in accordance with the applicable bulletin identified in Table 1 of this AD.

TABLE 1—BULLETINS

Bulletin—	Dated—	To the—
Boeing DC–10 Operations Bulletin 2–001B	January 25, 2010	Boeing DC–10 Flight Crew Operating Manual (FCOM).
Boeing MD–10 FCOM Advisory Bulletin 2–01B	January 25, 2010	Boeing MD–10 FCOM.
Boeing MD–11 FCOM Advisory Bulletin 2–05C	January 25, 2010	Boeing MD–11 FCOM.

Repetitive Inspections

(i) Within 18 months after replacing the fuel pump electrical connector assembly as required by paragraph (g) of this AD, do a continuity, resistance, and insulation resistance inspection from the terminal strip through the fuel boost/transfer pump, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A261, dated December 1, 2009; or Boeing Alert Service Bulletin MD11–28A143, dated December 2, 2009; as applicable. Do all applicable corrective actions before further flight in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A261, dated December 1, 2009; or Boeing Alert Service Bulletin MD11–28A143, dated December 2, 2009; as applicable. Repeat the inspections thereafter at intervals not to exceed 18 months.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Philip Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5263; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on October 21, 2010.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–28092 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 65

[Docket No.: FAA–2010–1060]

Policy Clarifying Definition of "Actively Engaged" for Purposes of Inspector Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Policy.

SUMMARY: This action proposes to clarify the term "actively engaged" for the purposes of application for and renewal of an inspection authorization. This proposal would amend the Flight Standards Management System Order 8900.1.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: You may send comments identified by docket number FAA–2010–1060 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send Comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Ed Hall, Aircraft Maintenance General Aviation Branch, AFS–350, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (804) 222–7494 ext. 240; e-mail: *ed.hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to submit written comments, data, or views concerning this proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposal. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments and any late-filed comments if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of comments received.

Availability of This Proposed Policy

You can get an electronic copy using the Internet by—

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

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking,

ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this proposal.

Background

Section 65.91(c) of Title 14 of the Code of Federal Regulations sets forth the eligibility requirements for obtaining an inspection authorization (IA). Among other requirements not related to this proposal, an applicant must "have been actively engaged, for at least the two-year period before the date he applies, in maintaining aircraft certificated and maintained in accordance with [FAA regulations]." Section 65.93(a) sets forth the eligibility requirements for renewing an IA and incorporates the requirements for obtaining one under § 65.91(c)(1)–(4). Accordingly, an individual must be actively engaged, for at least the prior two-year period, in maintaining aircraft to be eligible to either obtain or renew an IA.

The FAA provides guidance concerning the issuance of IAs in the Flight Standards Information Management System (FSIMS), FAA Order 8900.1, Volume 5, Chapter 5, Sections 7 and 8. These sections assist aviation safety inspectors (ASIs) in evaluating an initial application for an IA or an application for renewing an IA as well as allow a prospective applicant to determine his or her eligibility. IAs are issued for two years and expire on March 31 of odd-numbered years. March 31, 2011, is the next expiration date.

The definition of the term "actively engaged" has caused confusion among ASIs and aircraft maintenance personnel. The term is not defined in 14 CFR, and its definition in agency guidance materials has varied over time. Prior to 1988, the FAA considered persons exercising their mechanic certificate when employed full-time in aircraft maintenance to be actively engaged, and those employed on a part-time basis were individually evaluated by an FAA inspector. In 1988, the FAA issued new guidance tightening the definition of actively engaged to include only those individuals employed full time in inspecting, supervising, overhauling, repairing, preserving, or replacing parts on certificated aircraft. In April 2010, the FAA retracted the 1988 policy, largely because it had been applied inconsistently, and began the process of clarifying actively engaged through agency guidance. This proposal is the result of that process.

Generally, amendments to the FSIMS are made directly by the FAA's Flight Standards Service. However, because of the widespread confusion and inconsistent interpretation of actively engaged, the FAA is publishing this proposed FSIMS amendment and inviting public comment on it.

Discussion of the Proposal

It is a longstanding FAA requirement that an applicant for an IA or for renewal of an IA be actively engaged (*i.e.,* an active, working airframe and powerplant (A&P) mechanic exercising the privileges of the mechanic certificate). An applicant can demonstrate that he or she is an active, working A&P mechanic in a number of ways.

An applicant who is employed full-time in inspecting, overhauling, repairing, preserving, or replacing parts on aircraft consistently has been considered actively engaged. An applicant who is employed part-time in those maintenance activities may be actively engaged. An applicant who participates in (regardless of employment status) those maintenance activities part time or occasionally may be actively engaged.

Whether that part-time or occasional employment or participation constitutes actively engaged depends on the circumstances. For that reason, those determinations must be made by the ASI reviewing the application. To make the determination, the ASI should consider the type of maintenance activity performed, considering any special expertise required, and the quantity of maintenance activity. In some cases, such as a mechanic performing maintenance in geographical area that has limited access to some special expertise or a retired mechanic who occasionally performs maintenance as needed, the type of maintenance activity may be the determining factor even when its quantity is relatively insignificant. Because the ASI's determination is unique to each applicant, the ASI would use documentation or other evidence provided by the applicant detailing the maintenance activity. Accordingly, the FAA proposes to define in FAA Order 8900.1 the factors an ASI should consider when reviewing an application for an IA or for renewal of an IA.

Additionally, FAA Order 8900.1 restricts the types of maintenance that ASIs can perform because of ethical concerns. The FAA does not intend for ASIs to lose their IAs because of these limitations. Accordingly, the FAA proposes a carve-out for ASIs who also hold an IA.

The FAA intends this policy statement to clarify rather than change the definition of "actively engaged" and provide clear guidance to ASIs that can be applied consistently. The FAA intends for this clarification to be in effect for the next IA renewal cycle in March 2011.

Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend FAA Order 8900.1, Volume 5, Chapter 5 as follows:

1. Amend Section 7, Paragraph 5–1279 by adding a Note after subparagraph A to read: 5–1279 ELIGIBILITY. The ASI must establish the applicant's eligibility before allowing the applicant to test. None of the requirements of Title 14 of the Code of Federal Regulations (14 CFR) part 65, § 65.91 can be waived by the ASI.

A. The applicant must hold a current mechanic's certificate, with both airframe and powerplant ratings, that has been in effect for at least 3 years. The applicant must have been actively engaged in maintaining certificated aircraft for at least the 2-year period before applying.

Note: Actively engaged means exercising the privileges of an airframe and powerplant mechanic certificate in the maintenance of civil aircraft. Applicants who are employed full-time in inspecting, overhauling, repairing, preserving, or replacing parts on aircraft are considered to be actively engaged. Applicants who are employed or participate in inspecting, overhauling, repairing, preserving, or replacing parts on aircraft on a part-time or occasional basis will be evaluated by the ASI to determine whether the applicant is actively engaged. The ASI will evaluate the scope of part-time or occasional activity based on the type of maintenance activity, including any special expertise required, and the quantity of maintenance activity performed. To evaluate the scope of the part-time or occasional maintenance activity, the ASI will use evidence or documentation provided by the applicant showing inspection, overhauling, repairing, preserving, or replacing parts on aircraft.

B. There must be a fixed base of operation at which the applicant can be located in person or by telephone. This base need not be the place where the applicant will exercise the inspection authority.

C. The applicant must have available the equipment, facilities, and inspection data necessary to conduct proper inspection of airframes, powerplants, propellers, or any related part or appliance. This data must be current.

D. The applicant must pass the IA knowledge test, testing the ability to inspect according to safety standards for approval for return to service of an aircraft, related part, or appliance after major repairs or major alterations, and

annual or progressive inspections performed under part 43. There is no practical test required for an IA.

Note: The ASI should see paragraph 5–1285 for instructions on determining an applicant's eligibility.

2. Amend Section 8, Paragraph 5–1309 by adding a Note after subparagraph (A)(1) to read: 5–1309 RENEWAL OF INSPECTION AUTHORIZATION.

A. Application Requirements. Application for renewal may be required to comply with the following:

(1) Show evidence the applicant still meets the requirements of § 65.91(c)(1) through (4).

Note: Refer to Paragraph 5–1279(A)–(C) of this document for information on meeting § 65.91(c)(1) through (4) requirements. Because volume 1, chapter 3, section 2 of this Order limits the type of maintenance that ASIs can perform, an ASI may renew an IA regardless of volume of maintenance work performed.

(2) Complete Federal Aviation Administration (FAA) Form 8610–1, Mechanic's Application for Inspection Authorization, in duplicate.

(3) Show evidence the applicant meets the requirements of § 65.93(a) for both the first and second year in the form of an activity sheet or log, training certificates, and/or oral test results, as applicable.

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

John McGraw,

Deputy Director, Flight Standards Service.

[FR Doc. 2010–27834 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0552; FRL–9221–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 2002 Base Year Emission Inventory, Reasonable Further Progress Plan, Contingency Measures, Reasonably Available Control Measures, and Transportation Conformity Budgets for the Pennsylvania Portion of the Philadelphia-Wilmington-Atlantic City 1997 8-Hour Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Pennsylvania State Implementation Plan (SIP) to meet the 2002 base year emissions inventory, the reasonable further progress (RFP) plan, RFP contingency measure, and reasonably available control measure (RACM) requirements of the Clean Air Act (CAA) for the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE moderate 1997 8-hour ozone nonattainment area. EPA is also proposing to approve the 2008 transportation conformity motor vehicle emissions budgets (MVEBs) associated with the reasonable further progress portion of these revisions. EPA is proposing to approve the SIP revisions because they satisfy the emission inventory, RFP, RACM, RFP contingency measures, and transportation conformity requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the SIP revision, pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: Written comments must be received on or before December 6, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0552 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: pino.maria@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0552, Maria Pino, Acting Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0552. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian K. Rehn, (215) 814–2176, or by e-mail at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we," "us," or "our" is used, we mean EPA.

The following is provided to aid in locating information in this document.

I. What action is EPA taking?
II. What is the background of this action?
III. What is EPA's evaluation of the revision?
IV. Statutory and Executive Order Reviews

I. What action is EPA taking?

EPA is proposing to approve a revision, and two subsequent clarification SIP revisions, to the Pennsylvania SIP. This SIP revision was

originally submitted by the Pennsylvania Department of Environmental Protection (PA DEP) on August 29, 2007, and was formally amended by Pennsylvania on December 10, 2009 and again on April 12, 2010. The August 2007 SIP contains an ozone attainment demonstration for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City nonattainment area (NAA); the related 2009 projected emissions inventory for the attainment demonstration; a base year emissions inventory for the year 2002; and a 15 percent reasonable further progress plan and associated 2008 projected emission inventory; contingency measures, which serve to achieve additional reductions in the event reasonable further progress is not achieved by 2008; an analysis of RACM; and 2008 MVEB associated with reasonable further progress. EPA proposed separate rulemaking action on the ozone demonstration portion of the August 2007 SIP revision in a notice published in the May 8, 2009 **Federal Register** (88 FR 21604).

EPA is proposing to approve portions of that August 2007 SIP revision (as amended in December 2009 and April 2010). The SIP elements upon which EPA is herein proposing to approve include: The 2002 base year emissions inventory, the 15 percent RFP plan and associated projected 2008 emission inventories, the contingency measures for failure to meet 2008 RFP, the RACM analysis, and the RFP 2008 MVEBs. The RFP plan demonstrates that emissions will be reduced 15 percent for the period of 2002 through 2008. The 2008 MVEB for volatile organic compound (VOC) is 61.09 tons per day (tpd) and the 2008 MVEB for nitrogen oxides (NO_X) is 108.78 tpd. EPA is proposing to approve the SIP revision because it satisfies RFP, contingency measure, RACM, RFP transportation conformity, and emissions inventory requirements for areas classified as moderate nonattainment for the 1997 8-hour ozone NAAQS and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the SIP revision pursuant to section 110 and part D of the CAA and EPA's regulations.

II. What is the background for this action?

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Philadelphia-Wilmington-Atlantic City, PA-DE-NJ-MD moderate NAA. This nonattainment area includes Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties in Pennsylvania, as well as counties in New Jersey and Delaware. EPA has taken separate action on separate plans submitted by neighboring states on portions of this nonattainment area that lie in those neighboring states.

These designations triggered the CAA's section 110(a)(1) requirement that states must submit attainment demonstrations for their nonattainment areas to EPA by no later than three years after the promulgation of a NAAQS. Accordingly, EPA's Phase 1 8-hour ozone implementation rule (Phase 1 rule), published on April 30, 2004 (69 FR 23951), specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007.

Pursuant to the Phase 1 rule, an area was classified under subpart 2 of the CAA based on its 8-hour design value if that area had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). Based on this criterion, the Philadelphia-Wilmington-Atlantic City ozone NAA was classified under subpart 2 as a moderate nonattainment area.

On November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727), EPA published the final Phase 2 Rule for implementation of the 8-hour standard (Phase 2 rule). The Phase 2 rule addressed the RFP control and planning obligations as they apply to areas designated nonattainment for the 1997 8-hour ozone NAAQS.

Among other things, the Phase 1 and 2 rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. The rules further require that modeling and attainment demonstrations, RFP plans, RACM, projection year emission inventories, motor vehicle emissions budgets, and contingency measures were all due by June 15, 2007 (40 CFR 51.908(a), (c)).

Section 182(b)(1) of the CAA and EPA's 1997 8-hour ozone implementation rule (40 CFR 51.910) require each 8-hour ozone nonattainment area designated moderate and above to submit an emissions inventory and RFP plan, for review and approval into its SIP, that describes how the area will achieve actual emissions reductions of VOC and NO_X from a baseline emissions inventory.

III. What is EPA's evaluation of the revision?

EPA's analysis and findings are discussed in this proposed rulemaking and a more detailed discussion is contained in the Technical Support Document (TSD) for this Proposal, which is available on line at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2010–0552.

On August 29, 2007, Pennsylvania submitted a comprehensive plan for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City nonattainment area to address the CAA's 8-hour ozone attainment requirements. This SIP submittal included an attainment demonstration plan, a plan demonstrating 15 percent RFP for the period from 2002–2008, a RACM analysis, contingency measures for RFP and attainment, on-road VOC and NO_X MVEBs, and the 2002 base year emissions inventory. On December 10, 2009, Pennsylvania submitted a revision to amend the August 2007 SIP to make minor corrections to the 2002 stationary point source and area source emissions inventories, and to reflect those changes in its 2002–2008 RFP demonstration. On April 12, 2010, Pennsylvania submitted another SIP revision to amend the August 2007 SIP revision to revise its point source emissions inventory to substitute a revised appendix entitled, "Appendix B–2: Stationary Point Source Emissions Annual Emissions."

These SIP revisions were subject to notice and comment by the public, and the Commonwealth of Pennsylvania addressed the comments received on the proposed SIP revisions. All sections of these SIP submittals are discussed in this rulemaking. However, EPA earlier proposed separate rulemaking upon the attainment demonstration plan portion of the August 29, 2007 SIP revision plan, in a May 8, 2009 **Federal Register** notice, and the attainment demonstration portion of the August 2007 SIP revision is therefore not part of this action. The attainment demonstration plan and related

attainment contingency measures, 2009 or later projected emission inventory, and 2009 MVEB sections of Pennsylvania's August 2007 SIP submittal will be discussed in a separate rulemaking.

A. Base Year Emissions Inventory

An emissions inventory is a comprehensive, accurate, current inventory of actual emissions from all sources and is required by section 172(c)(3) of the CAA. For ozone nonattainment areas, the emissions inventory needs to contain VOC and NO_X emissions because these pollutants are precursors to ozone formation. EPA recommended 2002 as the base year emissions inventory, and is therefore the starting point for calculating RFP. Pennsylvania submitted its 2002 base year emissions inventory on August 29, 2007, and later submitted formal SIP revisions to amend its stationary point source and area source emissions inventories on December 10, 2009 and April 12, 2010. A summary of the 2002 base year VOC and NO_X emissions inventories is for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City nonattainment area is included in Table 1, below.

TABLE 1—PENNSYLVANIA PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY NONATTAINMENT AREA 2002 BASE YEAR VOC & NO_X EMISSIONS IN TONS PER DAY

[tpd]

Emission source category	VOC	NO_X
Point	22.21	59.63
Stationary Area	149.84	14.64
Non-Road Mobile	79.06	70.95
Highway Mobile	98.76	184.66
Total	349.87	329.88

B. Adjusted Base Year Inventory and 2008 RFP Target Levels

The process for determining the emissions baseline from which the RFP reductions are calculated is described in section 182(b)(1) of the CAA and 40 CFR 51.910. This baseline value is the 2002 adjusted base year inventory. Sections 182(b)(1)(B) and (D) require the exclusion from the base year inventory of emissions benefits resulting from the Federal Motor Vehicle Control Program (FMVCP) regulations promulgated by January 1, 1990, and the Reid Vapor Pressure (RVP) regulations promulgated June 11, 1990 (55 FR 23666). The FMVCP and RVP emissions reductions are determined by the State using EPA's highway mobile source emissions modeling software, MOBILE6. The FMVCP and RVP emission reductions are then removed from the base year inventory by the State, resulting in an adjusted base year inventory. The emission reductions needed to satisfy the RFP requirement are then calculated from the adjusted base year inventory. These reductions are then subtracted from the adjusted base year inventory to establish the emissions target for the RFP milestone year (2008).

For moderate areas like the Philadelphia nonattainment area, the CAA specifies a 15 percent reduction in ozone precursor emissions over an initial six-year period. In the Phase 2 Rule, EPA interpreted this requirement for areas that were also designated nonattainment and classified as moderate or higher for the 1-hour ozone standard. In the Phase 2 Rule, EPA provided that an area classified as moderate or higher that has the same boundaries as an area, or is entirely composed of several areas or portions of areas, for which EPA fully approved a 15 percent plan for the 1-hour NAAQS, is considered to have met the requirements of section 182(b)(1) of the CAA for the 8-hour NAAQS. In this situation, a moderate nonattainment area is subject to RFP under section 172(c)(2) of the CAA and shall submit, no later than 3 years after designation for the 8-hour NAAQS, a SIP revision that meets the requirements of 40 CFR 51.910(b)(2). The RFP SIP revision must provide for a 15 percent emission reduction (either NO_X and/or VOC) accounting for any growth that occurs during the six-year period following the baseline emissions inventory year, that is, 2002–2008.

Pennsylvania's portion of the Philadelphia ozone nonattainment area under the 1-hour ozone standard had the same boundary as the Commonwealth's portion of that nonattainment area under the 1997 8-hour ozone standard. The Philadelphia nonattainment area under the 1-hour ozone standard was classified as severe. EPA approved Pennsylvania's fifteen percent RFP plan for the Commonwealth's portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area on August 24, 2001 (66 FR 44547). Therefore, according to the Phase 2 Rule, the RFP plan for the Philadelphia nonattainment area may use either NO_X or VOC emissions reductions (or both) to achieve the 15 percent emission reduction requirement.

According to section 182(b)(1)(D) of the CAA, emission reductions that resulted from the FMVCP and RVP rules promulgated prior to 1990 are not creditable for achieving RFP emission reductions. Therefore, the 2002 base year inventory is adjusted by subtracting the VOC and NO_X emission reductions that are expected to occur between 2002 and the future milestone years due to the FMVCP and RVP rules.

Pennsylvania sets out its calculations for the adjusted base year inventory and 2008 RFP target levels in Section IV.D of the August 2007 Philadelphia 8-hour ozone plan, as amended by Pennsylvania on December 10, 2009.

Step 1. Calculate the 2002 anthropogenic base year inventory for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City nonattainment area. This is found in Table 4–3 of Pennsylvania's 8-hour ozone plan for the Philadelphia nonattainment area, and shown in Table 2, below.

TABLE 2—PENNSYLVANIA PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY NONATTAINMENT AREA 2002 ANTHROPOGENIC BASE YEAR INVENTORY (OZONE SEASON TPD)

Source category	VOC	NO_X
Point	22.21	59.63
Area	149.84	14.64
Non-Road Mobile	79.06	70.95
Highway Mobile	98.76	184.66
Total (excluding biogenics)	349.87	329.88

Step 2. Pennsylvania calculated the non-creditable emission reductions between 2002 and 2008 by modeling its 2002 and 2008 motor vehicle emissions with all post-1990 CAA measures switched off, and then calculating the difference. See, Tables 4–4 and 4–5 of Pennsylvania's Philadelphia nonattainment area RFP plan (as amended in December 2009), and Table 3, below.

TABLE 3—PENNSYLVANIA PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY NONATTAINMENT AREA NON-CREDITABLE EMISSION REDUCTIONS (OZONE SEASON TPD)

Source category	VOC	NO_X
(i) 2002 On-Road	421.44	370.02
(ii) 2008 On-Road	408.72	354.44
Non-creditable Reductions (i)–(ii)	12.72	15.58

Step 3. Pennsylvania's calculations of its portion of the Philadelphia nonattainment area 2002 VOC and NO_X inventories adjusted relative to 2008 and VOC and NO_X target levels for 2008 are found in Table 4–6 through 4–8 of the Philadelphia nonattainment area RFP plan (as amended in December 2009) and are summarized in Table 4, below.

TABLE 4—PENNSYLVANIA PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY NONATTAINMENT AREA 2008 RFP TARGET LEVEL CALCULATIONS (OZONE SEASON TPD)

	Description	Formula	VOC	NO_X
A	2002 Rate of Progress Base Year Inventory		349.87	329.88
B	FMVCP/RVP Reductions Between 2002 and 2008		12.72	15.58
C	2002 Adjusted Base Year Inventory Relative to 2008	A–B	337.15	314.30
D	RFP Ratio		0.075	0.075
E	Emissions Reductions Required Between 2002 and 2008	C * D	25.29	23.57
F	Target Level for 2008	C–E	311.86	290.73

C. Projected Inventories and Determination of RFP

Pennsylvania describes its methods used for developing its 2008 projected VOC and NO_X inventories in it a document in its August 29, 2007 SIP revision. On December 10, 2009, Pennsylvania submitted two SIP revisions to amend the August 2007 SIP revision. The first made minor corrections to the stationary, area, and nonroad emissions categories of the 2002 base year emissions inventory originally set forth in the August 2007 SIP. The second of the two December 10, 2009 SIP revisions amended the RFP demonstration presented in the August 2007 SIP revision to make use of the amended 2002 base year emissions inventory. EPA reviewed the procedures Pennsylvania used to develop its projected inventories and found them to be reasonable.

Projected controlled 2008 emissions for Pennsylvania's portion of the Philadelphia nonattainment area are summarized in Table 4–7 of Pennsylvania's December 2009 revised RFP plan for the Philadelphia nonattainment area. The data from Table 4–7 is presented below, in Table 5, below.

TABLE 5—PENNSYLVANIA PORTION OF THE PHILADELPHIA NONATTAINMENT AREA 2008 PROJECTED CONTROLLED VOC AND NO_X EMISSIONS (TPD)

Emission source category	VOC emissions (tpd)	NO_X emissions (tpd)
Point	21.56	57.13
Area	143.23	15.50
Non-road Mobile	62.84	62.67
Highway Mobile	61.09	108.78

TABLE 5—PENNSYLVANIA PORTION OF THE PHILADELPHIA NONATTAINMENT AREA 2008 PROJECTED CONTROLLED VOC AND NO_X EMISSIONS (TPD)—Continued

Emission source category	VOC emissions (tpd)	NO_X emissions (tpd)
Total	288.72	244.08

To determine if 2008 RFP is met in the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City nonattainment area, the total projected controlled emissions must be compared to the target levels calculated in the previous section of this document. As shown below in Table 6, the total VOC and NO_X emission projections meet the 2008 emission targets. Therefore, the 2008 RFP in Pennsylvania's portion of the Philadelphia-Wilmington-Atlantic City nonattainment area is demonstrated.

TABLE 6—DETERMINATION OF WHETHER RFP IS MET IN 2008 IN THE PENNSYLVANIA PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY NONATTAINMENT AREA

Description	VOC emissions (tpd)	NO_X emissions (tpd)
A Target Level for 2008	311.86	290.73
B 2008 Projected Controlled Emissions (including non-creditable FMVCP)	288.72	244.08
C 2008 Projected Controlled Emissions (excluding reductions from non-creditable FMVCP)	301.44	259.66
Is RFP met? [i.e., 2008 Projected Emissions (C) < 2008 Target Level (A)]	Yes	Yes

D. Control Measures and Emission Reductions for RFP

The control measures upon which Pennsylvania relies upon for credit to demonstrate RFP requirement for the Commonwealth's portion of the Philadelphia-Wilmington-Atlantic City nonattainment area are described in Section V of the Commonwealth's August 2007 8-hour ozone attainment plan and emissions inventory SIP for the Philadelphia nonattainment area. To demonstrate RFP for the Philadelphia nonattainment area, Pennsylvania used a combination of (1) stationary point, (2) stationary area, (3) highway mobile, and (4) non-road mobile source control measures.

The stationary point source measures Pennsylvania relied upon to demonstrate RFP by 2008 include: Interstate transport pollution reductions from the NO_X SIP Call Rule; NO_X emission limits on NO_X sources, including small sources of NO_X, cement kilns, and large stationary combustion engines; and Federal standards for hazardous air pollutants. Pennsylvania estimates that these measures provided reductions of 0.65 tpd of VOC and 2.50 tpd of NO_X by 2008 for the Commonwealth's portion of the nonattainment area.

The stationary area source measures upon which Pennsylvania relied to demonstrate 2008 RFP in the Commonwealth's portion of the Philadelphia nonattainment area include: Portable fuel container regulation to address permeation and evaporation of VOCs; a consumer products formulation rule; and a rule governing the formulation of architectural and industrial maintenance coatings. In total, Pennsylvania estimates these measures reduced 6.61 tpd of VOCs, but increased NO_X by 0.86 tpd.

Highway mobile (or on-road mobile) measures upon which Pennsylvania relied to demonstrate 2008 RFP in the Commonwealth's portion of the Philadelphia nonattainment area include: The Federal Motor Vehicle Control Program; the Pennsylvania Clean Vehicle Program for passenger cars and light-duty trucks; the Federal Heavy Duty Diesel Control Program; Pennsylvania's adoption of California's Heavy-Duty Emissions Control Program; the Vehicle Inspection and Maintenance Program; the Federal Low Sulfur Gasoline Rule; the Stage II Gasoline Vapor Recovery rule; and the Federal reformulated gasoline rule. In total, Pennsylvania estimates that these highway mobile source measures reduced VOCs by 37.67 tpd and NO_X by 75.88 tpd. However, 12.72 tpd of VOCs and 15.58 tpd of NO_X from these measures can not be credited towards demonstrating RFP, and therefore may not be credited against the RFP target. This is because the CAA specifies that measures that were already required to be in place prior to the RFP demonstration period under the previous pre-1990 CAA (*e.g.,* FMVCP and Federal fuel volatility standards) can not be used to demonstrate RFP goals under the present statute.

The non-road mobile source measures upon which Pennsylvania relied upon to demonstrate 2008 RFP in the Philadelphia nonattainment area include: non-road small gasoline engines; non-road diesel engines (Tier I and Tier II); marine engine standards for spark-ignition engines; emission standards for large spark-ignition engines; the use of Federal reformulated gasoline in non-road motor vehicles and equipment; and Tier 2 railroad engine standards. Pennsylvania calculated the non-road mobile 2008 emission reductions to be 16.22 tpd VOC and 8.28 tpd NO_X.

In the TSD prepared by EPA in support of this action, EPA evaluates each of these measures and the Commonwealth's estimate of 2008 emissions for each measure. For details, please refer to EPA's TSD for this action.

Table 7 summarizes the emission reductions that Pennsylvania claimed in its RFP Plan for the Philadelphia nonattainment area, as amended in December 2009. The total 2008 projected emission reductions are sufficient to demonstrate reasonable further progress, including the use of substituted NO_X reductions for VOC reductions to meet the 15% target reduction. Therefore, the emission reductions Pennsylvania claims for its portion of the Philadelphia-Wilmington-Atlantic City nonattainment area RFP plan are approvable.

TABLE 7—CONTROL MEASURES AND 2008 EMISSION REDUCTIONS IN THE PENNSYLVANIA PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY NONATTAINMENT AREA 8-HOUR RFP PLAN

Control strategies	VOC (tpd)	NO_X (tpd)
Stationary Point Sources	0.65	2.50
NO_X SIP Call.		
Smaller Sources of NO_X.		
Hazardous Air Pollutant Regulations.		
Stationary Area Sources	6.61	−0.86
Portable Fuel Containers.		
Consumer Products.		
AIM Coatings.		
Highway Sources (includes non creditable reductions from pre-1990 FMVCP between 2002–08)	[1] 37.67	[2] 75.88
Federal Motor Vehicle Control Programs.		
Pennsylvania Clean Vehicles Program.		
Heavy duty diesel control Programs.		
Inspection/Maintenance Program.		
Low Sulfur Gasoline.		
Other Motor Vehicle Programs.		
Non-road Sources	16.22	8.28
Federal Nonroad Regulations including Fuel Standards.		
Total Expected Emission Reductions (2002–2008) (including non-creditable reductions)	61.15	85.80

[1] 12.72 non-creditable.
[2] 15.58 non-creditable.

E. Contingency Measures

Section 172(c)(9) of the CAA requires a state with a moderate or above ozone nonattainment area to include sufficient additional contingency measures in its RFP plan in case the Philadelphia nonattainment area fails to meet RFP requirements. The same provision of the CAA also requires that the contingency measures must be fully adopted control measures or rules. Upon failure to meet an RFP milestone requirement, the state must be able to implement the contingency measures without any further rulemaking activities. Upon implementation of such measures, additional emission reductions of at least 3 percent of the adjusted 2002 baseline emissions must be achieved. For more information on contingency measures, see the April 16, 1992 General Preamble (57 FR 13512) and the November 29, 2005 Phase 2 8-hour ozone implementation rule (70 FR 71612).

To meet the requirements for contingency emission reductions, EPA allows for the use of early implementation of control measures as contingency measures. EPA also allows the substitution of NO_X emission reductions for VOC emission reductions in the contingency plans (by any combination of NO_X and VOC, as long as the 3 percent reduction is achieved and 0.3 percent of the total is attributable to VOCs).

The RFP contingency requirement may be met by including in the RFP plan a demonstration of 18 percent VOC & NO_X RFP. The additional 3 percent reduction above the 15 percent requirement must be attributed to specific measures. Pennsylvania elected to use early emission reductions from the Federal Tier 2 motor vehicle program towards meeting the contingency measure requirement.

Pennsylvania discusses its Philadelphia nonattainment area contingency measures for failure to meet RFP in Section 4 of the December 2009 Correction to the RFP SIP. The results are presented in Table 8, below.

TABLE 8—PENNSYLVANIA PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY NONATTAINMENT AREA 2008 RFP CONTINGENCY MEASURE TARGET LEVEL CALCULATIONS

Description	Formula	VOC (tpd)	NO_X (tpd)
A 2002 Rate-Of Progress Base Year Inventory		349.87	329.88
B Non-creditable FMVCP/RVP Reductions Between 2002 And 2008		12.72	15.58
C 2002 Adjusted Base Year Inventory Relative To 2008	A − B	337.15	314.3
D RFP Ratio (Target Percent Reduction for RFP)		7.5	7.5
E RFP Emissions Reductions Required Between 2002 & 2008 for RFP	C * (1 − (D/100))	25.29	23.57
F Contingency Percentage		3.00	0
G Contingency Emission Reduction Requirements	C * F	10.11	0
H Contingency Measure Target Level for 2008	C − E − G	301.76	314.30
I 2008 Projected Emissions (including growth and controls and non-creditable FMVCP).		288.72	244.08
J 2008 Project Emissions Excluding Reductions from non-creditable FMVCP		301.44	259.66

To determine if Pennsylvania meets the three percent contingency measure requirement for the Pennsylvania portion of the Philadelphia nonattainment area, the total projected controlled emissions (including growth, but excluding reductions from the non-creditable pre-1990 FMVCP) must be compared to the contingency measure target levels calculated above. Pennsylvania has not indicated whether it intends to obtain the necessary early

reduction contingency measures entirely from VOCs, from NO_X, or from both. Since the Commonwealth's 2008 projected VOC inventory is much closer to its contingency measure target level, we assumed that the contingency measure target is based entirely upon contingency percentage reduction of 3 percent coming from VOCs, with no NO_X substitution. Table 9 shows that Pennsylvania would meet the contingency measure target if this assumption is made. Assuming the maximum amount of NO_X substitution allowable under EPA relevant guidance of 2.7 percent, an entirely NO_X-substituted contingency plan by Pennsylvania would also demonstrate that the contingency measure requirement is met. Therefore, Pennsylvania has sufficient early contingency measures in place to meet the contingency measure requirement for the Philadelphia nonattainment area, for purposes of demonstrating RFP.

TABLE 9—EVALUATION OF THE PENNSYLVANIA PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY NONATTAINMENT AREA 2008 RFP CONTINGENCY MEASURE REQUIREMENT

Description	VOC (tpd)	NO_X (tpd)
A Total 2008 Projected Controlled Emissions	301.44	259.66
B Contingency Measure Target Level for 2008 (if assumed to be entirely VOC-based)	301.76	314.30
Contingency measure requirement met if A < B	Yes	Yes

F. RACM Analysis

Pursuant to section 172(c)(1) of the CAA, states are required to implement all RACM as expeditiously as practicable for each nonattainment area. Specifically, section 172(c)(1) states the following: "In general—Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards." Furthermore, in EPA's Phase 2 Rule, EPA describes how states must include a RACM analysis with their attainment demonstration (70 FR 71659). The purpose of the RACM analysis is to determine whether or not control measures exist that are technically reasonable and that provide emission reductions that would advance the attainment date for nonattainment areas. Control measures that would advance the attainment date are considered RACM and must be included in the SIP. RACM are necessary to ensure that the attainment date is achieved "as expeditious as practicable." RACM is defined by the EPA as any potential control measure for application to point, area, on-road and non-road emission source categories that meets the following criteria:

- The control measure is technologically feasible;
- The control measure is economically feasible;
- The control measure does not cause "substantial widespread and long-term adverse impacts;"
- The control measure is not "absurd, unenforceable, or impracticable;" and
- The control measure can advance the attainment date by at least one year.

Pennsylvania addresses the RACM requirement is Section V.B of the Philadelphia 8-hour ozone attainment demonstration SIP submitted to EPA in August 2007. In order to meet the CAA requirement for RACM, Pennsylvania must demonstrate that it has adopted all RACM necessary to move the Philadelphia nonattainment area toward attainment as expeditiously as practicable. Since this multi-state nonattainment area is classified as moderate ozone nonattainment under the 1997 8-hour ozone NAAQS, the entire area was required to demonstrate attainment by the 2009 ozone season. Therefore, Pennsylvania considered measures that would potentially advance the attainment date for its portion of this multi-state nonattainment area and that would provide for attainment by the ozone season preceding the attainment deadline.

Pennsylvania worked with the Ozone Transport Commission (OTC) member states to evaluate potential RACM measures for use in Pennsylvania. In 2006, the OTC staff and member states formed several workgroups to identify and evaluate candidate control measures. Initially, the workgroups compiled and reviewed a list of approximately 1,000 candidate control measures. These control measures were identified through published sources such as the EPA's Control Technique Guidelines, the State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control (STAPPA/ALAPCO) "Menu of Options" documents, the AirControlNET database, emission control initiatives in member states as well as other states including California, state/regional consultations, and stakeholder input. The OTC's workgroups then narrowed their review to a preliminary list of thirty candidate control measures to be considered for more detailed analysis. These measures were selected to focus on the pollutants and source categories that are thought to be the most effective in reducing ozone air quality levels in the Northeastern and Mid-Atlantic States.

Pennsylvania considered these measures, in conjunction with regional modeling that indicated that 20 to 40 tons per day of VOC or NO_X would be necessary to advance the attainment date by one year. In evaluating the measures potentially available, Pennsylvania determined that no measure or group of measures would individually or collectively achieve the necessary level of emission reductions to advance the attainment date. Further, many of these measures could not be adopted and implemented in time to serve as RACM measures to meet attainment goals. Pennsylvania believes, on the basis of their analysis, that there are no further RACM measures that are appropriate for this SIP.

Pennsylvania lists its most recently adopted measures, in conjunction with the most recently adopted federal measures in Section V.B of its August 2007 SIP revision. Pennsylvania's list of recently adopted state measures includes:

- Small Source NO_X Provisions (Chapter 129, Sections 201–205).
- Portable Fuel Containers Rule (Chapter 130, Sections 101–108).
- Consumer Products Rule (Chapter 129, Section 63).
- Architectural and Industrial Maintenance Coatings Rule (Chapter 130, Sections 601–611).
- Degreasing Operations Rule (Chapter 129, Section 63).

- NO_X SIP Call (Internal Combustion Engines provisions) (Chapter 145, Sections 111–113).
- NO_X SIP Call (Portland Cement Kiln provisions) (Chapter 145, Sections 141–144).
- RACT for the 8-Hour Ozone NAAQS (2006 EPA SIP Revision).
- Enhanced Vehicle I/M Program (67 *Pa Code* Chapter 177).
- Pennsylvania Clean Vehicle Program (Chapter 126, Subchapter D).
- Pennsylvania Heavy-Duty Diesel Emission Control Program (Chapter 126, Subchapter E).

EPA concurs with PA DEP's conclusion that there are no RACM measures that would have advanced the moderate area attainment date of 2010 for the Philadelphia nonattainment area. Therefore, PA DEP's RACM analysis in its Philadelphia 8-hour ozone plan is approvable.

G. Transportation Conformity Budgets

Transportation conformity is required by CAA section 176(c). EPA's conformity rule requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedure for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. States must establish VOC and NO_X MVEBs for each of the milestone years up to the attainment year and submit the mobile budgets to EPA for approval. Upon adequacy determination or approval by EPA, states must conduct transportation conformity analysis for their Transportation Improvement Programs and long range transportation plans to ensure highway vehicle emissions will not exceed relevant MVEBs.

Pennsylvania discusses transportation conformity in Section V.E of the August 2007 Philadelphia 8-hour ozone plan, and the same MVEBs are restated in the December 2009 RFP revision SIP. PA DEP, in consultation with the Delaware Regional Planning Commission (DVRPC), the designated metropolitan planning organization for the Philadelphia nonattainment area, established MVEBs for 2008. The 2008 mobile emissions inventory was calculated using EPA's MOBILE6.2 and the Highway Performance Monitoring System model. Pennsylvania further describes its methodology for calculating its mobile emission budgets in Appendix E of the August 2007 Philadelphia 8-hour ozone plan.

The MVEB for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City 8-hour ozone nonattainment area for the 2008 RFP is based on projected 2008 mobile source emissions, accounting for all mobile control measures, inclusive of growth. The MVEBs for the 2008 RFP are shown in Table 10, below.

TABLE 10—PENNSYLVANIA PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY NONATTAINMENT AREA 2008 RFP MVEB

	VOC	NO_X
Kilograms/day	55,421	98,686
Tons/day	61.09	108.78

For budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). In a December 19, 2008 **Federal Register** notice, EPA notified the public that EPA found that the 2008 RFP MVEBs in the plan for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City 8-hour ozone plan are adequate for transportation conformity purposes. (73 FR 77682).

In addition to the budgets being adequate for transportation conformity purposes, EPA found the procedures Pennsylvania used to develop the MVEBs to be reasonable. The budgets are identical to the projected 2008 on-road mobile source emission inventories. Because the 2008 RFP MVEBs are adequate for transportation conformity purposes and the methods that PA DEP used to develop them are correct, the 2008 RFP budgets are approvable.

V. What are EPA's conclusions?

EPA's review of the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; Pennsylvania's RACM analysis; and 2008 transportation conformity budgets contained in Pennsylvania's August 29, 2007 SIP revision (as amended December 10, 2009 and on April 12, 2010) for its portion of the Philadelphia nonattainment area fully addressed the CAA's requirements. Therefore, EPA is proposing approval of specific elements of Pennsylvania's August 2007 8-hour ozone plan and RFP plan for the Philadelphia nonattainment area (as amended in December 2009 and April 2010). EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

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

In addition, this proposed rule pertaining to the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City nonattainment area 2002 base year emissions inventory; 2008 ozone projected emission inventory; 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: October 28, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–28001 Filed 11–4–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0811–201051; FRL–9222–9]

Approval and Promulgation of Implementation Plans; Mississippi: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a portion of a draft revision to the Mississippi State Implementation Plan (SIP), submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), to EPA on September 14, 2010, for parallel processing. The proposed SIP revision modifies Mississippi's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. Specifically, the proposed SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Mississippi's PSD permitting requirements for their greenhouse gas (GHG) emissions. Mississippi's September 14, 2010, SIP revision is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels provided under the Clean Air Act (CAA or Act), which would overwhelm Mississippi's permitting resources. EPA is proposing approval of Mississippi's September 14, 2010, SIP revision relating to PSD requirements for GHG-emitting sources because the Agency has made the preliminary determination that this SIP revision is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0811 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0811, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2010–0811." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Mississippi SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW.,

Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; e-mail address: *bradley.twunjala@epa.gov.* For information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562–9185; e-mail address: *abrams.heather@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing in today's notice?

On September 14, 2010, MDEQ submitted a draft revision to EPA for approval into the Mississippi SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Mississippi's PSD permitting requirements for GHG emissions. Final approval of Mississippi's September 14, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010), ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is proposing to approve this revision into the Mississippi SIP.

Because this draft SIP revision is not yet state-effective, Mississippi requested that EPA "parallel process" the SIP revision. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and the Federal actions in parallel.

After Mississippi submits the formal state-effective SIP revision request (including a response to all public comments raised during the state's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the SIP revision after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if the changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

Mississippi's September 14, 2010, SIP revision also incorporates two administrative changes to their PSD regulations (Air Pollution Control, Section 5 (APC–S–5)—*Regulations for the Prevention of Significant Deterioration*). These changes relate to Mississippi's pre-existing exclusion of certain provisions of the Federal PSD regulations from its SIP, specifically, provisions pertaining to the "reasonable possibility" standard,[1] "clean units," and "pollution control projects" (PCPs).[2] In today's action, EPA is proposing to approve these administrative changes into the Mississippi SIP.

In addition to changes to address the Tailoring Rule and the aforementioned administrative changes mentioned above, Mississippi's September 14, 2010, SIP revision also includes: (1) provisions to exclude facilities that produce ethanol through a natural fermentation process (hereafter referred to as the "Ethanol Rule") from the definition of "chemical process plants" in the major New Source Review (NSR) source permitting program; and (2) revision to incorporate by reference changes pursuant to EPA's Fugitive Emissions Rule (73 FR 77882, December 19, 2008).[3] In today's proposed rulemaking, EPA is not proposing to take action on Mississippi's changes to their PSD regulations to exclude facilities from the definition of "chemical process plants" in the major NSR permitting program, nor is EPA proposing to take action on Mississippi's changes to incorporate the provisions of the Fugitive Emission Rule.

II. What is the background for the action proposed by EPA in today's notice?

Today's proposed action on the Mississippi SIP relates to EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," Final Rule (the Tailoring Rule). 75 FR 31514. In the Tailoring Rule, EPA established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. These applicability thresholds were designed to ensure that smaller GHG sources will not be subject to GHG permitting requirements. While Mississippi already has authority to issue PSD permits governing GHGs when PSD requirements begin applying to GHGs on January 2, 2011, Mississippi needs to amend its SIP to incorporate the Tailoring Rule's applicability thresholds. Today's notice announces EPA's proposed approval of a revision to Mississippi's SIP that would put these applicability thresholds in place.[4]

A. What are GHGs and their sources?

A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is

[1] On July 10, 2006 (71 FR 38773), EPA approved Mississippi's incorporation by reference of the 2002 NSR Reform Rules into the Mississippi SIP. The SIP-approved rule identifies certain provisions of the Federal rules that are not incorporated by reference. Among the excluded provisions are those set forth at 40 CFR 52.21(r)(6) pertaining to the "reasonable possibility" standard, which establishes criteria for when recordkeeping and reporting are required for a modification that does not trigger major NSR. In defining that exclusion, Mississippi's rule quoted the relevant language from the Federal PSD regulations. Subsequently, on December 21, 2007 (73 FR 72607), EPA amended the reasonable possibility standard in response to a decision by the U.S. Court of Appeals for the DC Circuit. *See New York* v. *EPA,* 413 F.3d 3 (DC Cir. 2005). While Mississippi will continue to exclude the reasonable possibility provision from its PSD regulations, it is revising the exclusion to reflect the revised reasonable possibility language at 40 CFR 52.21(r)(6) as promulgated on December 21, 2007.

[2] The Mississippi PSD regulations approved by EPA on July 10, 2006 (71 FR 38773) specifically excluded from incorporation by reference the Federal regulatory provisions pertaining to "clean units" and PCPs. Subsequently, the DC Circuit vacated the Federal clean unit and PCP provisions. *See New York* v. *EPA,* 413 F.3d at 3. Mississippi's September 14, 2010, proposed SIP revision removes the reference to these vacated Federal regulations from its list of excluded Federal provisions.

[3] On March 31, 2010, EPA stayed the Fugitive Emissions Rule (73 FR 77882) for 18 months to October 3, 2011, to allow the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. Therefore, the 40 CFR part 51 and part 52 administrative regulations that were amended by the Fugitive Emissions Rule are stayed through October 3, 2011.

[4] On September 2, 2010, EPA proposed a "SIP Call" that would require those states with SIPs that do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. 75 FR 53892. In a companion rulemaking, EPA proposed a Federal implementation plan (FIP) that would apply in any state that is unable to submit the required SIP revision by its deadline. 75 FR 53883 (September 2, 2010). Because Mississippi's SIP already authorizes Mississippi to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, Mississippi is not subject to the proposed SIP Call or FIP.

included in EPA's technical support document for EPA's GHG endangerment finding final rule (Document ID No. EPA–HQ–OAR–2009–0472–11292 at *http://www.regulations.gov*). The endangerment finding rulemaking is discussed later in this rulemaking. A summary of the nature and sources of GHGs is provided below.

GHGs trap the Earth's heat that would otherwise escape from the atmosphere into space and form the greenhouse effect that helps keep the Earth warm enough for life. GHGs are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment.

Some GHGs, such as carbon dioxide (CO_2), are emitted to the atmosphere through natural processes as well as human activities. Other gases, such as fluorinated gases, are created and emitted solely through human activities. The well-mixed GHGs of concern directly emitted by human activities include CO_2, methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6), hereafter referred to collectively as "the six well-mixed GHG," or, simply, GHGs. Together these six well-mixed GHGs constitute the "air pollutant" upon which the GHG thresholds in EPA's Tailoring Rule are based. These six gases remain in the atmosphere for decades to centuries where they become well-mixed globally in the atmosphere. When they are emitted more quickly than natural processes can remove them from the atmosphere, their concentrations increase, thus increasing the greenhouse effect.

In the U.S., the combustion of fossil fuels (*e.g.,* coal, oil, gas) is the largest source of CO_2 emissions and accounts for 80 percent of the total GHG emissions by mass. Anthropogenic CO_2 emissions released from a variety of sources, including through the use of fossil fuel combustion and cement production from geologically stored carbon (*e.g.,* coal, oil, and natural gas) that is hundreds of millions of years old, as well as anthropogenic CO_2 emissions from land-use changes such as deforestation, perturb the atmospheric concentration of CO_2, and the distribution of carbon within different reservoirs readjusts. More than half of the energy-related emissions come from large stationary sources such as power plants, while about a third come from transportation. Of the six well-mixed GHGs, four (CO_2, CH_4, N_2O, and HFCs) are emitted by motor vehicles. In the U.S., industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of GHGs.

Different GHGs have different heat-trapping capacities. The concept of Global Warming Potential (GWP) was developed to compare the heat-trapping capacity and atmospheric lifetime of one GHG to another. The definition of a GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to that of one unit mass of CO_2 over a specified time period. When quantities of the different GHGs are multiplied by their GWPs, the different GHGs can be summed and compared on a carbon dioxide equivalent (CO_2e) basis. For example, CH_4 has a GWP of 21, meaning each ton of CH_4 emissions would have 21 times as much impact on global warming over a 100-year time horizon as 1 ton of CO_2 emissions. Thus, on the basis of heat-trapping capability, 1 ton of CH_4 would equal 21 tons of CO_2e. The GWPs of the non-CO_2 GHG range from 21 (for CH_4) up to 23,900 (for SF_6). Aggregating all GHG on a CO_2e basis at the source level allows a facility to evaluate its total GHG emissions contribution based on a single metric.

B. What are the general requirements of the PSD program?

1. Overview of the PSD Program

The PSD program is a preconstruction review and permitting program applicable to new major stationary sources and major modifications at existing stationary sources. The PSD program applies in areas that are designated "attainment" or "unclassifiable" for a national ambient air quality standard (NAAQS). The PSD program is contained in part C of title I of the CAA. The "nonattainment NSR" program applies in areas not in attainment of a NAAQS or in the Ozone Transport Region, and it is implemented under the requirements of part D of title I of the CAA. Collectively, EPA commonly refers to these two programs as the major NSR program. The governing EPA rules are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendices S and W. There is no NAAQS for CO_2 or any of the other well-mixed GHGs, nor has EPA proposed any such NAAQS; therefore, unless and until EPA takes further such action, the nonattainment NSR program does not apply to GHGs.

The applicability of PSD to a particular source must be determined in advance of construction or modification and is pollutant-specific. The primary criterion in determining PSD applicability is whether the proposed project is sufficiently large (in terms of its emissions) to be a major stationary source or modification, both of which are described below. EPA has implemented these requirements in its regulations, which use somewhat different terminology than the CAA does, for determining PSD applicability.

a. Major Stationary Sources

Under PSD, a "major stationary source" is any source belonging to a specified list of 28 source categories that emits or has the potential to emit 100 tpy or more of any air pollutant subject to regulation under the CAA, or any other source type that emits or has the potential to emit such pollutants in amounts equal to or greater than 250 tpy. *See, e.g.,* 40 CFR 52.21(b)(1). We refer to these levels as the 100/250-tpy thresholds. A new source with a potential to emit (PTE) at or above the applicable "major stationary source threshold" is subject to major NSR. These limits originate from section 169 of the CAA, which applies PSD to any "major emitting facility" and defines the term to include any source that emits or has a PTE of 100 or 250 tpy, depending on the source category. Note that the major source definition incorporates the phrase "subject to regulation," which, as described later, will begin to include GHGs on January 2, 2011, under our interpretation of that phrase as discussed in the recent memorandum entitled, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program." 75 FR 17004 (April 2, 2010).

b. Major Modifications

PSD also applies to existing sources that undertake a "major modification," which occurs when: (1) There is a physical change in, or change in the method of operation of, a "major stationary source;" (2) the change results in a "significant" emissions increase of a pollutant subject to regulation (equal to or above the significance level that EPA has set for the pollutant in 40 CFR 52.21(b)(23)); and (3) there is a "significant net emissions increase" of a pollutant subject to regulation that is equal to or above the significance level (defined in 40 CFR 52.21(b)(23)). Significance levels, which EPA has promulgated for criteria pollutants and certain other pollutants, represent a de minimis contribution to air quality problems. When EPA has not set a significance level for a regulated NSR

pollutant, PSD applies to an increase of the pollutant in any amount (that is, in effect, the significance level is treated as zero).

2. General Requirements for PSD

This section provides a very brief summary of the main requirements of the PSD program. One principal requirement is that a new major source or major modification must apply best available control technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost effectiveness of the control and energy and environmental impacts. EPA has developed a "top-down" approach for BACT review, which involves a decision process that includes identification of all available control technologies, elimination of technically infeasible options, ranking of remaining options by control and cost effectiveness, and then selection of BACT. Under PSD, once a source is determined to be major for any regulated NSR pollutant, a BACT review is performed for each attainment pollutant that exceeds its PSD significance level as part of new construction or for modification projects at the source, where there is a significant increase and a significant net emissions increase of such pollutant.[5]

In addition to performing BACT, the source must analyze impacts on ambient air quality to assure that sources do not cause or contribute to violation of any NAAQS or PSD increments and must analyze impacts on soil, vegetation, and visibility. In addition, sources or modifications that would impact Class I areas (*e.g.,* national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas. Under PSD, if a source's proposed project impacts a Class I area, the Federal Land Manager is notified and is responsible for evaluating a source's projected impact on the AQRVs and recommending either approval or disapproval of the source's permit application based on anticipated impacts. There are currently no NAAQS or PSD increments established for GHGs, and therefore these PSD requirements would not apply for GHGs, even when PSD is triggered for GHGs. However, if PSD is triggered for a GHG-emitting source, all regulated NSR pollutants that the new source emits in significant amounts would be subject to PSD requirements. Therefore, if a facility triggers NSR for non-GHG pollutants for which there are established NAAQS or increments, the air quality, additional impacts, and Class I requirements would apply to those pollutants.

Pursuant to existing PSD requirements, the permitting authority must provide notice of its preliminary decision on a source's application for a PSD permit and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to comments, the permitting authority must issue a final determination on the construction permit. Usually NSR permits are issued by a State or local air pollution control agency that has its own authority to issue PSD permits under a permit program that has been approved by EPA for inclusion in its SIP. In some areas, EPA has delegated its authority to issue PSD permits under Federal regulations to the State or local agency. In other areas, EPA issues the permits under its own authority.

C. What are the CAA requirements to include the PSD program in the SIP?

The CAA contemplates that the PSD program be implemented in the first instance by the states and requires that states include PSD requirements in their SIPs. CAA section 110(a)(2)(C) requires that—

> Each implementation plan * * * shall * * * include a program to provide for * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part[] C * * * of this subchapter.

CAA section 110(a)(2)(J) requires that—

> Each implementation plan * * * shall * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that—

> [E]ach applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality in each region * * * designated * * * as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provisions as well as other provisions such as the BACT provision under CAA Section 165(a)(4), mandate that SIPs include PSD programs that are applicable to, among other things, any air pollutant that is subject to regulation. As discussed below, this includes GHGs on and after January 2, 2011.[6]

A number of states do not have PSD programs approved into their SIPs. In those states, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the state as EPA's delegatee acts as the permitting authority. However, most states have PSD programs that have been approved into their SIPs, and these states implement their PSD programs and act as the permitting authority. Mississippi has a SIP-approved PSD program.

D. What actions has EPA taken concerning PSD requirements for GHG-emitting sources?

1. What are the Endangerment Finding, the Light Duty Vehicle Rule, and the Johnson Memo Reconsideration?

By notice dated December 15, 2009, and pursuant to CAA section 202(a), EPA issued two findings regarding GHGs that are commonly referred to as the "Endangerment Finding" and the "Cause or Contribute Finding." "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," 74 FR 66496. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted GHGs—CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6—may reasonably be anticipated to endanger public health and welfare. In the Cause or Contribute Finding, the Administrator "defin[ed] the air pollutant as the aggregate group of the same six * * * greenhouse gases," 74 FR at 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA published what is commonly referred to as the "Light-Duty Vehicle Rule" (LDVR), which for the first time established Federal controls on GHGs emitted from light-duty vehicles. "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324. In its applicability provisions,

[5] EPA notes that the PSD program has historically operated in this fashion for all pollutants—when new sources or modifications are "major," PSD applies to all pollutants that are emitted in significant quantities from the source or project. This rule does not alter that for sources or modifications that are major due to their GHG emissions.

[6] In the Tailoring Rule, EPA noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants, and not GHG, and EPA responded that the PSD provisions apply to all pollutants subject to regulation, including GHG. *See* 75 FR at 31560–62. EPA maintains its position that the PSD provisions apply to all pollutants subject to regulation, and the Agency incorporates by reference the discussion of this issue in the Tailoring Rule.

the LDVR specifies that it "contains standards and other regulations applicable to the emission * * * of six greenhouse gases," including CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. 75 FR at 25686 (40 CFR 86.1818–12(a)).

On December 18, 2008, EPA issued a memorandum, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (known as the "Johnson Memo" or the "PSD Interpretive Memo," and referred to in this preamble as the "Interpretive Memo"), that set forth EPA's interpretation regarding which EPA and state actions, with respect to a previously unregulated pollutant, cause that pollutant to become "subject to regulation" under the Act. Whether a pollutant is "subject to regulation" is important for the purposes of determining whether it is covered under the Federal PSD permitting program. The Interpretive Memo established that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant (referred to as the "actual control interpretation"). On February 17, 2009, EPA granted a petition for reconsideration on the Interpretive Memo and announced its intent to conduct a rulemaking to allow for public comment on the issues raised in the memorandum and on related issues. EPA also clarified that the Interpretive Memo would remain in effect pending reconsideration.

On April 2, 2010, EPA published a notice conveying its decision to continue applying (with one limited refinement) the Interpretive Memo's interpretation of "subject to regulation." "Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs," 75 FR 17004. EPA concluded that the "actual control interpretation" is the most appropriate interpretation to apply given the policy implications. However, EPA refined the Agency's interpretation in one respect: EPA established that PSD permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). In addition, based on the anticipated promulgation of the LDVR, EPA stated that the GHG requirements of the vehicle rule would take effect on January 2, 2011, because that is the earliest date that a 2012 model year vehicle may be introduced into commerce. In other words, the compliance obligation under the LDVR does not occur until a manufacturer may introduce into commerce vehicles that are required to comply with GHG standards, which will begin with model year 2012 and will not occur before January 2, 2011.

2. What is EPA's tailoring rule?

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, the Tailoring Rule, for the purpose of relieving overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources, the Tailoring Rule, 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program [7] of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters. Additionally, EPA committed to certain follow-up actions regarding future steps beyond the first two, discussed in more detail later in this notice.

For the first step of the Tailoring Rule, which will begin on January 2, 2011, PSD requirements will apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA will not require sources or modifications to evaluate whether they are subject to PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most notably, the BACT requirement, will apply to projects that increase net GHG emissions by at least 75,000 tpy CO_2e, but only if the project also significantly increases emissions of at least one non-GHG pollutant.

The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources that emit, or have the potential to emit, at least 100,000 tpy CO_2e will become subject to the PSD requirements. In addition, sources that emit or have the potential to emit at least 100,000 tpy CO_2e and that undertake a modification that increases net GHG emissions by at least 75,000 tpy CO_2e will also be subject to PSD requirements. For both steps, EPA notes that if sources or modifications exceed these CO_2e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

EPA believes that the costs to the sources and the administrative burdens to the permitting authorities of PSD permitting will be manageable at the levels in these initial two steps and that it would be administratively infeasible to subject additional sources to PSD requirements at those times. However, EPA also intends to issue a supplemental notice of proposed rulemaking in 2011, in which the Agency will propose or solicit comment on a third step of the phase-in that would include more sources, beginning on July 1, 2013. In the Tailoring Rule, EPA established an enforceable commitment that the Agency will complete this rulemaking by July 1, 2012, which will allow for 1 year's notice before Step 3 would take effect.

In addition, EPA committed to explore streamlining techniques that may well make the permitting programs much more efficient to administer for GHG, and that therefore may allow their expansion to smaller sources. EPA expects that the initial streamlining techniques will take several years to develop and implement.

In the Tailoring Rule, EPA also included a provision, that no source with emissions below 50,000 tpy CO_2e, and no modification resulting in net GHG increases of less than 50,000 tpy CO_2e, will be subject to PSD permitting before at least 6 years (i.e., April 30, 2016). This is because EPA has concluded that at the present time, the administrative burdens that would accompany permitting sources below this level would be so great that even with the streamlining actions that EPA may be able to develop and implement in the next several years, and even with the increases in permitting resources that EPA can reasonably expect the permitting authorities to acquire, it would be impossible to administer the permit programs for these sources until at least 2016.

As EPA explained in the Tailoring Rule, the threshold limitations are necessary because without them, PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year beginning on January 2, 2011. This is the date when EPA's recently promulgated LDVR takes effect, imposing control requirements for the first time on CO_2 and other GHGs. If this January 2, 2011, date were to pass without the Tailoring Rule being in

[7] The Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today's action does not affect Mississippi's title V program.

effect, PSD requirements would apply to GHG emissions at the 100/250 tpy applicability levels provided under a literal reading of the CAA as of that date. From that point forward, a source owner proposing to construct any new major source that emits at or higher than the applicability levels (and which therefore may be referred to as a "major" source) or modify any existing major source in a way that would increase GHG emissions would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin.

Under these circumstances, many small sources would be burdened by the costs of the individualized PSD control technology requirements and permit applications that the PSD provisions, absent streamlining, require. Additionally, state and local permitting authorities would be burdened by the extraordinary number of these permit applications, which are orders of magnitude greater than the current inventory of permits and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result since the permitting authorities would likely be able to issue only a tiny fraction of the permits requested.

The Tailoring Rule's thresholds are based on CO_2e for the aggregate sum of six GHGs that constitute the pollutant that will be subject to regulation, which we refer to as GHG.[8] These gases are: CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. Thus, in EPA's Tailoring Rule, EPA provided that PSD applicability is based on the quantity that results when the mass emissions of each of these gases is multiplied by the GWP of that gas, and then summed for all six gases. However, EPA further provided that in order for a source's GHG emissions to trigger PSD requirements, the quantity of the GHG emissions must equal or exceed both the applicability thresholds established in the Tailoring Rule on a CO_2e basis and the statutory thresholds of 100 or 250 tpy on a mass basis.[9] Similarly, in order for a source to be subject to the PSD modification requirements, the source's net GHG emissions increase must exceed the applicable significance level on a CO_2e basis and must also result in a net mass increase of the constituent gases combined.

In the Tailoring Rule, EPA adopted regulatory language codifying the phase-in approach. As explained in that rulemaking, many state, local and tribal area programs will likely be able to immediately implement the approach without rule or statutory changes by, for example, interpreting the term "subject to regulation" that is part of the applicability provisions for PSD permitting. EPA has requested permitting authorities to confirm that they will follow this implementation approach for their programs, and if they cannot, then EPA has requested that they notify the Agency so that we can take appropriate follow-up action to narrow Federal approval of their programs before GHGs become subject to PSD permitting on January 2, 2011.[10] On July 28, 2010, Mississippi provided a letter to EPA confirming that the State has the authority to issue PSD permits governing GHG emissions as of January 2, 2011, but explaining that Mississippi needs to amend its SIP to enable it to implement the Tailoring Rule thresholds. See the docket for this proposed rulemaking for a copy of Mississippi's letter.

3. What is the GHG SIP call?

By **Federal Register** notice dated September 2, 2010, EPA proposed the GHG SIP Call. In that action, along with the companion GHG FIP rulemaking published at the same time, EPA took steps to ensure that in the 13 states that do not appear to have authority to issue PSD permits to GHG-emitting sources at present, either the state or EPA will have the authority to issue such permits by January 2, 2011. EPA explained that although for most states, either the state or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, our preliminary information shows that these 13 states have EPA-approved PSD programs that do not appear to include GHG-emitting sources and therefore do not appear to authorize these states to issue PSD permits to such sources. Therefore, EPA proposed to find that these 13 states' SIPs are substantially inadequate to comply with CAA requirements and, accordingly, proposed to issue a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. In the companion GHG FIP rulemaking, EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any state that is unable to submit a corrective SIP revision by its deadline. Mississippi was not one of the states for which EPA proposed a SIP Call.

III. What is the relationship between today's proposed action and EPA's proposed GHG SIP call and GHG FIP?

As noted above, by notice dated September 2, 2010, EPA proposed the GHG SIP Call. At the same time, EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits to GHG-emitting sources.[11] As discussed in Section IV of this rulemaking, Mississippi interprets its current PSD regulations as providing it with the authority to regulate GHGs, and as such, Mississippi is not included on the list of areas for the proposed SIP call. Additionally, Mississippi would not be subject to the FIP to implement GHG for PSD applicability. Mississippi's September 14, 2010, proposed SIP revision (the subject of this rulemaking) merely modifies Mississippi's SIP to establish appropriate thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD program of the CAA.

IV. What is EPA's analysis of Mississippi's SIP revision?

On September 14, 2010, MDEQ provided a revision to Mississippi's SIP to EPA for parallel processing and eventual approval. This revision to Mississippi's SIP is necessary because without it, PSD requirements would apply, as of January 2, 2011, at the 100- or 250-tpy levels provided under the CAA. This would greatly increase the number of required permits, imposing undue costs on small sources; which would overwhelm Mississippi's

[8] The term "greenhouse gases" is commonly used to refer generally to gases that have heat-trapping properties. However, in this notice, unless noted otherwise, we use it to refer specifically to the pollutant regulated in the LDVR.

[9] The relevant thresholds are 100 tpy for title V, and 250 tpy for PSD, except for 28 categories listed in EPA regulations for which the PSD threshold is 100 tpy.

[10] Narrowing EPA's approval will ensure that for Federal purposes, sources with GHG emissions that are less than the Tailoring Rule's emission thresholds will not be obligated under Federal law to obtain PSD permits during the gap between when GHG PSD requirements go into effect on January 2, 2011 and when either (1) EPA approves a SIP revision adopting EPA's tailoring approach, or (2) if a state opts to regulate smaller GHG-emitting sources, the state demonstrates to EPA that it has adequate resources to handle permitting for such sources. EPA expects to finalize the narrowing action prior to the January 2, 2011 deadline with respect to those states for which EPA will not have approved the Tailoring Rule thresholds in their SIPs by that time.

[11] As explained in the proposed GHG SIP Call (75 FR at 53896), EPA intends to finalize its finding of substantial inadequacy and the SIP call for the 13 listed states by December 1, 2010. EPA requested that the states for which EPA is proposing a SIP call identify the deadline—between 3 weeks and 12 months from the date of signature of the final SIP Call—that they would accept for submitting their corrective SIP revision.

permitting resources and severely impair the function of the program.

The State of Mississippi's September 14, 2010, proposed SIP revision establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under Mississippi's PSD program. Specifically, Mississippi's September 14, 2010, proposed SIP revision incorporates by reference, the Federal tailoring rule provisions at 40 CFR 52.21 (as amended June 3, 2010, and effective August 2, 2010), into the Mississippi SIP (APC–S–5—*Regulations for the Prevention of Significant Deterioration* [12]) to address the thresholds for GHG permitting applicability.

Mississippi is currently a SIP-approved state for the PSD program, and has incorporated by reference EPA's 2002 NSR reform revisions for PSD at 40 CFR 52.21. In a letter provided to EPA on July 28, 2010, Mississippi notified EPA of its interpretation that the State's current PSD regulations provided MDEQ the authority to regulate GHG under Regulation APC–S–5 (which includes the preconstruction review program required by Part C of title I of the CAA). Mississippi's current PSD program incorporates by reference the Federal requirements, found at 40 CFR 52.21 (adopted prior to the promulgation of EPA's Tailoring Rule), into the State's major source PSD program (which applies to major stationary sources having the potential to emit at least 100-tpy or 250-tpy or more of a regulated NSR pollutant, depending on the type of source or modifications constructing in areas designated attainment or unclassifiable with respect to the NAAQS).

This current SIP revision to APC–S–5 (the subject of this proposed rulemaking) incorporates by reference the provisions at 40 CFR 52.21 as amended and promulgated as of September 13, 2010. Specifically, Mississippi's September 14, 2010, revision updates its existing incorporation by reference of the Federal NSR program to include the relevant Federal Tailoring Rule provisions set forth at 40 CFR 52.21. EPA has preliminarily determined that Mississippi's proposed SIP revision is consistent with the Tailoring Rule.

[12] Mississippi's submittal also revises definitions for APC–S–6—*Air Emissions Operating Permit Regulations for the Purposes of Title V of the Federal Clean Air;* however, these relate to title V and are not included in the SIP. As such, EPA is not proposing to take action to approve Mississippi's update to this regulation in this rulemaking.

Furthermore, EPA has preliminarily determined that this revision to Mississippi's SIP is consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, 75 FR at 31561.

V. Proposed Action

EPA is proposing to approve the Mississippi's September 14, 2010, SIP revision, relating to PSD requirements for GHG-emitting sources. Specifically, Mississippi's September 14, 2010, proposed SIP revision establishes appropriate emissions thresholds for determining PSD applicability with respect to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: October 27, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–28005 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0696–201042; FRL–9222–1]

Approval and Promulgation of Implementation Plans; Tennessee: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a draft revision to the State Implementation Plan (SIP), submitted by Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, to EPA on August 30, 2010, for parallel processing. The proposed SIP revision modifies Tennessee's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. Specifically, the

proposed SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Tennessee's PSD permitting requirements for their greenhouse gas (GHG) emissions. Tennessee's August 30, 2010, SIP revision is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels provided under the Clean Air Act (CAA or Act), which would overwhelm Tennessee's permitting resources. EPA is proposing approval of Tennessee's August 30, 2010, SIP revision relating to PSD requirements for GHG-emitting sources because the Agency has made the preliminary determination that this SIP revision is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0697, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0697, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2010–0697." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Tennessee SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; e-mail address: *bradley.twunjala@epa.gov.* For information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562–9185; e-mail address: *abrams.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing in today's notice?

On August 30, 2010, TDEC submitted a draft revision to EPA for approval into the Tennessee SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Tennessee's PSD permitting requirements for GHG emissions. Final approval of Tennessee's August 30, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010), ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is proposing to approve this revision into the Tennessee SIP.

Because this draft SIP revision is not yet state-effective, Tennessee requested that EPA "parallel process" the SIP revision. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and the federal actions in parallel.

After Tennessee submits the formal state-effective SIP revision request (including a response to all public comments raised during the state's

public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the SIP revision after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if the changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

II. What is the background for the action proposed by EPA in today's notice?

Today's proposed action on the Tennessee SIP relates to EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," Final Rule (the Tailoring Rule). 75 FR 31514. In the Tailoring Rule, EPA established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. These applicability thresholds were designed to ensure that smaller GHG sources will not be subject to GHG permitting requirements. While Tennessee already has authority to issue PSD permits governing GHGs when PSD requirements begin applying to GHGs on January 2, 2011, Tennessee needs to amend its SIP to incorporate the Tailoring Rule's applicability thresholds. Today's notice announces EPA's proposed approval of a revision to Tennessee's SIP that would put these applicability thresholds in place.[1]

Below is a brief overview of GHGs and GHG-emitting sources, the CAA PSD program, minimum SIP elements for a PSD program, and EPA's recent actions regarding GHG permitting. Following this section, EPA discusses, in sections III and IV, the relationship between the proposed Tennessee SIP revision and EPA's other national rulemakings as well as EPA's analysis of Tennessee's SIP revision.

A. What are GHGs and their sources?

A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is included in EPA's technical support document for EPA's GHG endangerment finding final rule (Document ID No. EPA–HQ–OAR–2009–0472–11292 at *http://www.regulations.gov*). The endangerment finding rulemaking is discussed later in this rulemaking. A summary of the nature and sources of GHGs is provided below.

GHGs trap the Earth's heat that would otherwise escape from the atmosphere into space and form the greenhouse effect that helps keep the Earth warm enough for life. GHGs are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment.

Some GHGs, such as carbon dioxide (CO_2), are emitted to the atmosphere through natural processes as well as human activities. Other gases, such as fluorinated gases, are created and emitted solely through human activities. The well-mixed GHGs of concern directly emitted by human activities include CO_2, methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6), hereafter referred to collectively as "the six well-mixed GHG," or, simply, GHGs. Together these six well-mixed GHGs constitute the "air pollutant" upon which the GHG thresholds in EPA's Tailoring Rule are based. These six gases remain in the atmosphere for decades to centuries where they become well-mixed globally in the atmosphere. When they are emitted more quickly than natural processes can remove them from the atmosphere, their concentrations increase, thus increasing the greenhouse effect.

In the U.S., the combustion of fossil fuels (*e.g.,* coal, oil, gas) is the largest source of CO_2 emissions and accounts for 80 percent of the total GHG emissions by mass. Anthropogenic CO_2 emissions released from a variety of sources, including through the use of fossil fuel combustion and cement production from geologically stored carbon (*e.g.,* coal, oil, and natural gas) that is hundreds of millions of years old, as well as anthropogenic CO_2 emissions from land-use changes such as deforestation, perturb the atmospheric concentration of CO_2, and the distribution of carbon within different reservoirs readjusts. More than half of the energy-related emissions come from large stationary sources such as power plants, while about a third come from transportation. Of the six well-mixed GHGs, four (CO_2, CH_4, N_2O, and HFCs) are emitted by motor vehicles. In the U.S., industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of GHGs.

Different GHGs have different heat-trapping capacities. The concept of Global Warming Potential (GWP) was developed to compare the heat-trapping capacity and atmospheric lifetime of one GHG to another. The definition of a GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to that of one unit mass of CO_2 over a specified time period. When quantities of the different GHGs are multiplied by their GWPs, the different GHGs can be summed and compared on a carbon dioxide equivalent (CO_2e) basis. For example, CH_4 has a GWP of 21, meaning each ton of CH_4 emissions would have 21 times as much impact on global warming over a 100-year time horizon as 1 ton of CO_2 emissions. Thus, on the basis of heat-trapping capability, 1 ton of CH_4 would equal 21 tons of CO_2e. The GWPs of the non-CO_2 GHG range from 21 (for CH_4) up to 23,900 (for SF_6). Aggregating all GHG on a CO_2e basis at the source level allows a facility to evaluate its total GHG emissions contribution based on a single metric.

B. What are the general requirements of the PSD program?

1. Overview of the PSD Program

The PSD program is a preconstruction review and permitting program applicable to new major stationary sources and major modifications at existing stationary sources. The PSD program applies in areas that are designated "attainment" or "unclassifiable" for a national ambient air quality standard (NAAQS). The PSD program is contained in part C of title I of the CAA. The "nonattainment NSR" program applies in areas not in attainment of a NAAQS or in the Ozone Transport Region, and it is implemented under the requirements of part D of title I of the CAA. Collectively, EPA commonly refers to these two programs as the major NSR program. The governing EPA rules are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendices S and W. There is no NAAQS for CO_2 or any of the other well-mixed GHGs, nor has EPA proposed any such NAAQS; Therefore, unless and until EPA takes further such action, the nonattainment NSR program does not apply to GHGs.

The applicability of PSD to a particular source must be determined in

[1] On September 2, 2010, EPA proposed a "SIP Call" that would require those states with SIPs that do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. 75 FR 53892. In a companion rulemaking, EPA proposed a federal implementation plan (FIP) that would apply in any state that is unable to submit the required SIP revision by its deadline. 75 FR 53883 (September 2, 2010). Because Tennessee's SIP already authorizes Tennessee to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, Tennessee is not subject to the proposed SIP Call or FIP.

advance of construction or modification and is pollutant-specific. The primary criterion in determining PSD applicability is whether the proposed project is sufficiently large (in terms of its emissions) to be a major stationary source or modification, both of which are described below. EPA has implemented these requirements in its regulations, which use somewhat different terminology than the CAA does, for determining PSD applicability.

a. Major Stationary Sources

Under PSD, a "major stationary source" is any source belonging to a specified list of 28 source categories that emits or has the potential to emit 100 tpy or more of any air pollutant subject to regulation under the CAA, or any other source type that emits or has the potential to emit such pollutants in amounts equal to or greater than 250 tpy. *See, e.g.,* 40 CFR 52.21(b)(1). We refer to these levels as the 100/250-tpy thresholds. A new source with a potential to emit (PTE) at or above the applicable "major stationary source threshold" is subject to major NSR. These limits originate from section 169 of the CAA, which applies PSD to any "major emitting facility" and defines the term to include any source that emits or has a PTE of 100 or 250 tpy, depending on the source category. Note that the major source definition incorporates the phrase "subject to regulation," which, as described later, will begin to include GHGs on January 2, 2011, under our interpretation of that phrase as discussed in the recent memorandum entitled, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program." 75 FR 17004 (April 2, 2010).

b. Major Modifications

PSD also applies to existing sources that undertake a "major modification," which occurs when: (1) There is a physical change in, or change in the method of operation of, a "major stationary source;" (2) the change results in a "significant" emissions increase of a pollutant subject to regulation (equal to or above the significance level that EPA has set for the pollutant in 40 CFR 52.21(b)(23)); and (3) there is a "significant net emissions increase" of a pollutant subject to regulation that is equal to or above the significance level (defined in 40 CFR 52.21(b)(23)). Significance levels, which EPA has promulgated for criteria pollutants and certain other pollutants, represent a de minimis contribution to air quality problems. When EPA has not set a significance level for a regulated NSR pollutant, PSD applies to an increase of the pollutant in any amount (that is, in effect, the significance level is treated as zero).

2. General Requirements for PSD

This section provides a very brief summary of the main requirements of the PSD program. One principal requirement is that a new major source or major modification must apply best available control technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost effectiveness of the control and energy and environmental impacts. EPA has developed a "top-down" approach for BACT review, which involves a decision process that includes identification of all available control technologies, elimination of technically infeasible options, ranking of remaining options by control and cost effectiveness, and then selection of BACT. Under PSD, once a source is determined to be major for any regulated NSR pollutant, a BACT review is performed for each attainment pollutant that exceeds its PSD significance level as part of new construction or for modification projects at the source, where there is a significant increase and a significant net emissions increase of such pollutant.[2]

In addition to performing BACT, the source must analyze impacts on ambient air quality to assure that sources do not cause or contribute to violation of any NAAQS or PSD increments and must analyze impacts on soil, vegetation, and visibility. In addition, sources or modifications that would impact Class I areas (*e.g.,* national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas. Under PSD, if a source's proposed project impacts a Class I area, the Federal Land Manager is notified and is responsible for evaluating a source's projected impact on the AQRVs and recommending either approval or disapproval of the source's permit application based on anticipated impacts. There are currently no NAAQS or PSD increments established for GHGs, and therefore these PSD requirements would not apply for GHGs, even when PSD is triggered for GHGs. However, if PSD is triggered for a GHG-emitting source, all regulated NSR pollutants that the new source emits in significant amounts would be subject to PSD requirements. Therefore, if a facility triggers NSR for non-GHG pollutants for which there are established NAAQS or increments, the air quality, additional impacts, and Class I requirements would apply to those pollutants.

Pursuant to existing PSD requirements, the permitting authority must provide notice of its preliminary decision on a source's application for a PSD permit and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to comments, the permitting authority must issue a final determination on the construction permit. Usually NSR permits are issued by a state or local air pollution control agency that has its own authority to issue PSD permits under a permit program that has been approved by EPA for inclusion in its SIP. In some areas, EPA has delegated its authority to issue PSD permits under federal regulations to the state or local agency. In other areas, EPA issues the permits under its own authority.

C. What are the CAA requirements to include the PSD program in the SIP?

The CAA contemplates that the PSD program be implemented in the first instance by the states and requires that states include PSD requirements in their SIPs. CAA section 110(a)(2)(C) requires that—

> Each implementation plan * * * shall * * * include a program to provide for * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part[] C * * * of this subchapter.

CAA section 110(a)(2)(J) requires that—

> Each implementation plan * * * shall * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that—

> [E]ach applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality in each region * * * designated * * * as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provisions as well as other provisions such as the BACT provision under CAA Section 165(a)(4), mandate that SIPs include

[2] EPA notes that the PSD program has historically operated in this fashion for all pollutants—when new sources or modifications are "major," PSD applies to all pollutants that are emitted in significant quantities from the source or project. This rule does not alter that for sources or modifications that are major due to their GHG emissions.

PSD programs that are applicable to, among other things, any air pollutant that is subject to regulation. As discussed below, this includes GHGs on and after January 2, 2011.[3]

A number of states do not have PSD programs approved into their SIPs. In those states, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the state as EPA's delegatee acts as the permitting authority. However, most states have PSD programs that have been approved into their SIPs, and these states implement their PSD programs and act as the permitting authority. Tennessee has a SIP-approved PSD program.

D. What actions has EPA taken concerning PSD requirements for GHG-emitting sources?

1. What are the endangerment finding, the Light Duty Vehicle Rule, and the Johnson Memo reconsideration?

By notice dated December 15, 2009, and pursuant to CAA section 202(a), EPA issued two findings regarding GHGs that are commonly referred to as the "Endangerment Finding" and the "Cause or Contribute Finding." "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," 74 FR 66496. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted GHGs—CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6—may reasonably be anticipated to endanger public health and welfare In the Cause or Contribute Finding, the Administrator "defin[ed] the air pollutant as the aggregate group of the same six * * * greenhouse gases," 74 FR at 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA published what is commonly referred to as the "Light-Duty Vehicle Rule" (LDVR), which for the first time established federal controls on GHGs emitted from light-duty vehicles. "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324. In its applicability provisions, the LDVR specifies that it "contains standards and other regulations applicable to the emissions of six greenhouse gases," including CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. 75 FR at 25686 (40 CFR 86.1818–12(a)).

On December 18, 2008, EPA issued a memorandum, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (known as the "Johnson Memo" or the "PSD Interpretive Memo," and referred to in this preamble as the "Interpretive Memo"), that set forth EPA's interpretation regarding which EPA and state actions, with respect to a previously unregulated pollutant, cause that pollutant to become "subject to regulation" under the Act. Whether a pollutant is "subject to regulation" is important for the purposes of determining whether it is covered under the federal PSD permitting program. The Interpretive Memo established that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant (referred to as the "actual control interpretation"). On February 17, 2009, EPA granted a petition for reconsideration on the Interpretive Memo and announced its intent to conduct a rulemaking to allow for public comment on the issues raised in the memorandum and on related issues. EPA also clarified that the Interpretive Memo would remain in effect pending reconsideration.

On March 29, 2010, EPA signed a notice conveying its decision to continue applying (with one limited refinement) the Interpretive Memo's interpretation of "subject to regulation," "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004. EPA concluded that the "actual control interpretation" is the most appropriate interpretation to apply given the policy implications. However, EPA refined the Agency's interpretation in one respect: EPA established that PSD permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). In addition, based on the anticipated promulgation of the LDVR, EPA stated that the GHG requirements of the vehicle rule would take effect on January 2, 2011, because that is the earliest date that a 2012 model year vehicle may be introduced into commerce. In other words, the compliance obligation under the LDVR does not occur until a manufacturer may introduce into commerce vehicles that are required to comply with GHG standards, which will begin with model year 2012 and will not occur before January 2, 2011.

2. What is EPA's Tailoring Rule?

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, the Tailoring Rule, for the purpose of relieving overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources. 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program[4] of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters. Additionally, EPA committed to certain follow-up actions regarding future steps beyond the first two, discussed in more detail later in this notice.

For the first step of the Tailoring Rule, which will begin on January 2, 2011, PSD requirements will apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA will not require sources or modifications to evaluate whether they are subject to PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most notably, the BACT requirement, will apply to projects that increase net GHG emissions by at least 75,000 tpy CO_2e, but only if the project also significantly increases emissions of at least one non-GHG pollutant.

The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources that emit, or have the potential to emit, at least 100,000 tpy CO_2e will become subject to the PSD requirements. In addition, sources that emit or have the potential to emit at least 100,000 tpy CO_2e and that undertake a modification that increases net GHG emissions by at least 75,000 tpy CO_2e will also be subject to PSD requirements. For both steps, EPA notes that if sources or modifications

[3] In the Tailoring Rule, EPA noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants, and not GHG, and EPA responded that the PSD provisions apply to all pollutants subject to regulation, including GHG. *See* 75 FR at 31560–62. EPA maintains its position that the PSD provisions apply to all pollutants subject to regulation, and the Agency incorporates by reference the discussion of this issue in the Tailoring Rule.

[4] The Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today's action does not affect Tennessee's title V program.

exceed these CO_2e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

EPA believes that the costs to the sources and the administrative burdens to the permitting authorities of PSD permitting will be manageable at the levels in these initial two steps and that it would be administratively infeasible to subject additional sources to PSD requirements at those times. However, EPA also intends to issue a supplemental notice of proposed rulemaking in 2011, in which the Agency will propose or solicit comment on a third step of the phase-in that would include more sources, beginning on July 1, 2013. In the Tailoring Rule, EPA established an enforceable commitment that the Agency will complete this rulemaking by July 1, 2012, which will allow for 1 year's notice before Step 3 would take effect.

In addition, EPA committed to explore streamlining techniques that may well make the permitting programs much more efficient to administer for GHG, and that therefore may allow their expansion to smaller sources. EPA expects that the initial streamlining techniques will take several years to develop and implement.

In the Tailoring Rule, EPA also included a provision, that no source with emissions below 50,000 tpy CO_2e, and no modification resulting in net GHG increases of less than 50,000 tpy CO_2e, will be subject to PSD permitting before at least 6 years (i.e., April 30, 2016). This is because EPA has concluded that at the present time, the administrative burdens that would accompany permitting sources below this level would be so great that even with the streamlining actions that EPA may be able to develop and implement in the next several years, and even with the increases in permitting resources that EPA can reasonably expect the permitting authorities to acquire, it would be impossible to administer the permit programs for these sources until at least 2016.

As EPA explained in the Tailoring Rule, the threshold limitations are necessary because without them, PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year beginning on January 2, 2011. This is the date when EPA's recently promulgated LDVR takes effect, imposing control requirements for the first time on CO_2 and other GHGs. If this January 2, 2011, date were to pass without the Tailoring Rule being in effect, PSD requirements would apply to GHG emissions at the 100/250 tpy applicability levels provided under a literal reading of the CAA as of that date. From that point forward, a source owner proposing to construct any new major source that emits at or higher than the applicability levels (and which therefore may be referred to as a "major" source) or modify any existing major source in a way that would increase GHG emissions would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin.

Under these circumstances, many small sources would be burdened by the costs of the individualized PSD control technology requirements and permit applications that the PSD provisions, absent streamlining, require. Additionally, state and local permitting authorities would be burdened by the extraordinary number of these permit applications, which are orders of magnitude greater than the current inventory of permits and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result since the permitting authorities would likely be able to issue only a tiny fraction of the permits requested.

The Tailoring Rule's thresholds are based on CO_2e for the aggregate sum of six GHGs that constitute the pollutant that will be subject to regulation, which we refer to as GHG.[5] These gases are: CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. Thus, in EPA's Tailoring Rule, EPA provided that PSD applicability is based on the quantity that results when the mass emissions of each of these gases is multiplied by the GWP of that gas, and then summed for all six gases. However, EPA further provided that in order for a source's GHG emissions to trigger PSD requirements, the quantity of the GHG emissions must equal or exceed both the applicability thresholds established in the Tailoring Rule on a CO_2e basis and the statutory thresholds of 100 or 250 tpy on a mass basis.[6] Similarly, in order for a source to be subject to the PSD modification requirements, the source's net GHG emissions increase must exceed the applicable significance level on a CO_2e basis and must also result in a net mass increase of the constituent gases combined.

In the Tailoring Rule, EPA adopted regulatory language codifying the phase-in approach. As explained in that rulemaking, many state, local and tribal area programs will likely be able to immediately implement the approach without rule or statutory changes by, for example, interpreting the term "subject to regulation" that is part of the applicability provisions for PSD permitting. EPA has requested permitting authorities to confirm that they will follow this implementation approach for their programs, and if they cannot, then EPA has requested that they notify the Agency so that we can take appropriate follow-up action to narrow federal approval of their programs before GHGs become subject to PSD permitting on January 2, 2011.[7] On July 30, 2010, Tennessee provided a letter to EPA confirming that the State has the authority to issue PSD permits governing GHG emissions as of January 2, 2011, but explaining that Tennessee needs to amend its SIP to enable it to implement the Tailoring Rule thresholds. See the docket for this proposed rulemaking for a copy of Tennessee's letter.

3. What is the GHG SIP call?

By **Federal Register** notice dated September 2, 2010, EPA proposed the GHG SIP Call. In that action, along with the companion GHG FIP rulemaking published at the same time, EPA took steps to ensure that in the 13 States that do not appear to have authority to issue PSD permits to GHG-emitting sources at present, either the state or EPA will have the authority to issue such permits by January 2, 2011. EPA explained that although for most states, either the State or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, our preliminary information shows that these 13 States have EPA-approved PSD programs that do not appear to include GHG-emitting sources and therefore do not appear to authorize these States to issue PSD permits to such sources. Therefore, EPA

[5] The term "greenhouse gases" is commonly used to refer generally to gases that have heat-trapping properties. However, in this notice, unless noted otherwise, we use it to refer specifically to the pollutant regulated in the LDVR.

[6] The relevant thresholds are 100 tpy for title V, and 250 tpy for PSD, except for 28 categories listed in EPA regulations for which the PSD threshold is 100 tpy.

[7] Narrowing EPA's approval will ensure that for Federal purposes, sources with GHG emissions that are less than the Tailoring Rule's emission thresholds will not be obligated under Federal law to obtain PSD permits during the gap between when GHG PSD requirements go into effect on January 2, 2011 and when either (1) EPA approves a SIP revision adopting EPA's tailoring approach, or (2) if a state opts to regulate smaller GHG-emitting sources, the state demonstrates to EPA that it has adequate resources to handle permitting for such sources. EPA expects to finalize the narrowing action prior to the January 2, 2011 deadline with respect to those States for which EPA will not have approved the Tailoring Rule thresholds in their SIPs by that time.

proposed to find that these 13 States' SIPs are substantially inadequate to comply with CAA requirements and, accordingly, proposed to issue a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. In the companion GHG FIP rulemaking, EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any State that is unable to submit a corrective SIP revision by its deadline. Tennessee was not one of the States for which EPA proposed a SIP Call.

III. What is the relationship between today's proposed action and EPA's proposed GHG SIP call and GHG FIP?

As noted above, by notice dated September 2, 2010, EPA proposed the GHG SIP Call. At the same time, EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits to GHG-emitting sources.[8] As discussed in Section IV of this rulemaking, Tennessee interprets its current PSD regulations as providing them with the authority to regulate GHGs, and as such, Tennessee is not included on the list of areas for the proposed SIP call. Additionally, Tennessee would not be subject to the FIP to implement GHG for PSD applicability. Tennessee's August 17, 2010, proposed SIP revision (the subject of this rulemaking) merely modifies Tennessee's SIP to establish appropriate thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD program of the CAA.

IV. What is EPA's analysis of Tennessee's SIP revision?

On August 30, 2010, TDEC provided a revision to Tennessee's SIP to EPA for parallel processing and eventual approval. This revision to Tennessee's SIP is necessary because without it, PSD requirements would apply, as of January 2, 2011, at the 100- or 250-tpy levels provided under the CAA. This would greatly increase the number of required permits, imposing undue costs on small sources; which would overwhelm Tennessee's permitting resources and severely impair the function of the program.

The State of Tennessee's August 30, 2010, proposed SIP revision establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under Tennessee's PSD program. Specifically, Tennessee's August 30, 2010, proposed SIP revision includes changes to Tennessee's Air Quality Regulations, 1200–03–09–.01(4)—*Construction and Operating Permits, Prevention of Significant Deterioration* [9] and addresses the thresholds for GHG permitting applicability.

Tennessee is currently a SIP-approved state for the PSD program, and has incorporated EPA's 2002 NSR reform revisions for PSD into its SIP. In a letter provided to EPA on July 30, 2010, Tennessee notified EPA of its interpretation that the State currently has the authority to regulate GHGs under TDEC's SIP-approved Rule 1200–03–09–.01(4)—*Construction and Operating Permits, Prevention of Significant Deterioration,* which includes the preconstruction review program required by Part C of title I of the CAA. The current Tennessee program (adopted prior to the promulgation of EPA's Tailoring Rule) applies to major stationary sources (having the potential to emit at least 100 tpy or 250 tpy or more of a regulated NSR pollutant, depending on the type of source) or modifications constructing in areas designated attainment or unclassifiable with respect to the NAAQS.

EPA performed a line-by-line review of the proposed change to Tennessee's SIP-approved PSD regulations (1200–03–09–.01(4)—*Construction and Operating Permits, Prevention of Significant Deterioration*) and preliminarily determined that the proposed change is consistent with (and substantively the same as) the change to the federal provisions made by EPA's Tailoring Rule. Furthermore, EPA preliminarily determined that this revision to Tennessee's SIP is consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, 75 FR at 31561.

V. Proposed Action

EPA is proposing to approve Tennessee's August 30, 2010, SIP revision, relating to PSD requirements for GHG-emitting sources. Specifically, Tennessee's August 30, 2010, proposed SIP revision establishes appropriate emissions thresholds for determining PSD applicability with respect to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

VI. Statutory and Executive Order Reviews

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

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

[8] As explained in the proposed GHG SIP Call (75 FR 53892, 53896), EPA intends to finalize its finding of substantial inadequacy and the SIP call for the 13 listed states by December 1, 2010. EPA requested that the states for which EPA is proposing a SIP call identify the deadline—between 3 weeks and 12 months from the date of signature of the final SIP Call—that they would accept for submitting their corrective SIP revision.

[9] Tennessee's submittal also revises regulation 1200–03–09–.02(11)—*Operating Permits,* however, these definitions relate to Title V and are not included in the SIP. As such, EPA is not proposing to take action to approve Tennessee's update to this regulation in this rulemaking.

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: October 26, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–28009 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0691–201045, FRL–9222–6]

Approval and Promulgation of Implementation Plans; Kentucky: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a draft revision to the State Implementation Plan (SIP), submitted by Kentucky's Energy and Environment Cabinet, through the Kentucky Division for Air Quality (KDAQ), to EPA on August 5, 2010, for parallel processing. The proposed SIP revision makes two changes impacting the Commonwealth of Kentucky's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. First, the proposed revision provides the Commonwealth of Kentucky with authority to regulate greenhouse gas (GHG) under its PSD program. Second, the proposed SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Kentucky's PSD permitting requirements for their GHG emissions. The first component of the proposed revision is necessary because the Commonwealth of Kentucky is required to apply its PSD program to GHG-emitting sources, and unless it does so (or unless EPA promulgates a Federal implementation plan (FIP) to do so), such sources will be unable to receive preconstruction permits and therefore may not be able to construct or modify. The second component is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels provided under the Clean Air Act (CAA or Act), which would overwhelm Kentucky's permitting resources. EPA is proposing approval of the Commonwealth of Kentucky's August 5, 2010, SIP revision relating to PSD requirements for GHG-emitting sources because the Agency has made the preliminary determination that this SIP revision is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0691, by one of the following methods:

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

2. *E-mail: benjamin.lynorae@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* EPA–R04–OAR–2010–0691, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2010–0691." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Kentucky SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404)

562–9352; *e-mail address: bradley.twunjala@epa.gov.* For information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562–9185; *e-mail address: abrams.heather@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing in today's notice?

On August 5, 2010,[1] KDAQ submitted a draft revision to EPA for approval into the Kentucky SIP to: (1) Provide the Commonwealth with the authority to regulate GHGs under its PSD program; and (2) establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Kentucky's PSD permitting requirements for GHG emissions. Final approval of Kentucky's August 5, 2010, SIP revision will make Kentucky's SIP adequate with respect to PSD requirements for GHG-emitting sources, thereby negating the need for a GHG FIP. Furthermore, final approval of Kentucky's August 5, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010), ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is proposing to approve this revision into the Kentucky SIP.

Because this draft SIP revision is not yet state-effective, Kentucky requested that EPA "parallel process" the SIP revision. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and the Federal actions in parallel.

After Kentucky submits the formal state-effective SIP revision request (including a response to all public comments raised during the Commonwealth's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the SIP revision after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if the changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

In addition to the above-described changes, Kentucky's August 5, 2010, proposed SIP revision included provisions (*i.e.,* 401 KAR 51:001 Section 1(80)(b) and (c)) to incorporate changes pursuant to EPA's Fugitive Emissions Rule.[2] 73 FR 77882 (December 19, 2008). Also, Kentucky's submitted changes to exclude facilities that produce ethanol through a natural fermentation process from the definition of "chemical process plants" in the major NSR source permitting program (*i.e.,* 401 KAR 51:001 Section 1 (118)). In today's proposed rulemaking, EPA is not proposing to take action on Kentucky's changes to its PSD regulations regarding the inclusion of fugitive emissions in NSR applicability determinations, nor is EPA taking any action on Kentucky's provisions to exclude facilities that produce ethanol through a natural fermentation process from the definition of "chemical process plants" in the major NSR permitting program.

II. What is the background for the action proposed by EPA in today's notice?

Today's proposed action on the Kentucky SIP relates to three Federal rulemaking actions. The first rulemaking is EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," Final Rule (the Tailoring Rule). 75 FR 31514 (June 3, 2010). The second rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call," Proposed Rule (GHG SIP Call). 75 FR 53892 (September 2, 2010). The third rulemaking is EPA's "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan," Proposed Rule, 75 FR 53883 (September 2, 2010) (GHG FIP), which serves as a companion rulemaking to EPA's proposed GHG SIP Call. A summary of each of these rulemakings is described below.

In the first rulemaking, the Tailoring Rule, EPA established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. In the second rulemaking, the GHG SIP Call (which is not yet final), EPA proposed to find that the EPA-approved PSD programs in 13 States (including Kentucky) are substantially inadequate to meet CAA requirements because they do not appear to apply PSD requirements to GHG-emitting sources. For each of these States, EPA proposed to require the State (through a "SIP Call") to revise its SIP as necessary to correct such inadequacies. EPA proposed an expedited schedule for these States to submit their SIP revision, in light of the fact that as of January 2, 2011, certain GHG-emitting sources will become subject to the PSD requirements and may not be able to obtain a PSD permit in order to construct or modify. In the third rulemaking, the GHG FIP (which is not yet final), EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits for GHG-emitting sources. Kentucky is now seeking to revise its SIP to make it adequate with respect to PSD requirements for GHG-emitting sources, thereby negating the need for a GHG FIP. Furthermore, Kentucky is seeking to revise its SIP to put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, thereby ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements

[1] While the transmittal letter for Kentucky's submission (the subject of this action) is dated July 15, 2010, EPA did not officially receive Kentucky's request for parallel processing until August 5, 2010.

[2] On March 31, 2010, EPA stayed the Fugitive Emissions Rule (73 FR 77882) for 18 months to October 3, 2011, to allow the Agency time to propose, take comment and issue a final action regarding the inclusion of fugitive emissions in NSR applicability determinations. Therefore, the 40 CFR Part 51 and Part 52 administrative regulations that were amended for the Fugitive Emissions Rule are stayed through October 3, 2011.

begin applying to GHGs on January 2, 2011.

Below is a brief overview of GHGs and GHG-emitting sources, the CAA PSD program, minimum SIP elements for a PSD program, and EPA's recent actions regarding GHG permitting. Following this section, EPA discusses, in sections III and IV, the relationship between the proposed Kentucky SIP revision and EPA's other national rulemakings as well as EPA's analysis of Kentucky's SIP revision.

A. What are GHGs and their sources?

A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is included in EPA's technical support document for EPA's GHG endangerment finding final rule (Document ID No. EPA–HQ–OAR–2009–0472–11292 at *http://www.regulations.gov*). The endangerment finding rulemaking is discussed later in this rulemaking. A summary of the nature and sources of GHGs is provided below.

GHGs trap the Earth's heat that would otherwise escape from the atmosphere into space and form the greenhouse effect that helps keep the Earth warm enough for life. GHGs are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment.

Some GHGs, such as carbon dioxide (CO_2), are emitted to the atmosphere through natural processes as well as human activities. Other gases, such as fluorinated gases, are created and emitted solely through human activities. The well-mixed GHGs of concern directly emitted by human activities include CO_2, methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6), hereafter referred to collectively as "the six well-mixed GHG," or, simply, GHGs. Together these six well-mixed GHGs constitute the "air pollutant" upon which the GHG thresholds in EPA's Tailoring Rule are based. These six gases remain in the atmosphere for decades to centuries where they become well-mixed globally in the atmosphere. When they are emitted more quickly than natural processes can remove them from the atmosphere, their concentrations increase, thus increasing the greenhouse effect.

In the U.S., the combustion of fossil fuels (*e.g.,* coal, oil, gas) is the largest source of CO_2 emissions and accounts for 80 percent of the total GHG emissions by mass. Anthropogenic CO_2 emissions released from a variety of sources, including through the use of fossil fuel combustion and cement production from geologically stored carbon (*e.g.,* coal, oil, and natural gas) that is hundreds of millions of years old, as well as anthropogenic CO_2 emissions from land-use changes such as deforestation, perturb the atmospheric concentration of CO_2, and the distribution of carbon within different reservoirs readjusts. More than half of the energy-related emissions come from large stationary sources such as power plants, while about a third come from transportation. Of the six well-mixed GHGs, four (CO_2, CH_4, N_2O, and HFCs) are emitted by motor vehicles. In the U.S., industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of GHGs.

Different GHGs have different heat-trapping capacities. The concept of Global Warming Potential (GWP) was developed to compare the heat-trapping capacity and atmospheric lifetime of one GHG to another. The definition of a GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to that of one unit mass of CO_2 over a specified time period. When quantities of the different GHGs are multiplied by their GWPs, the different GHGs can be summed and compared on a carbon dioxide equivalent (CO_2e) basis. For example, CH_4 has a GWP of 21, meaning each ton of CH_4 emissions would have 21 times as much impact on global warming over a 100-year time horizon as 1 ton of CO_2 emissions. Thus, on the basis of heat-trapping capability, 1 ton of CH_4 would equal 21 tons of CO_2e. The GWPs of the non-CO_2 GHG range from 21 (for CH_4) up to 23,900 (for SF_6). Aggregating all GHG on a CO_2e basis at the source level allows a facility to evaluate its total GHG emissions contribution based on a single metric.

B. What are the general requirements of the PSD program?

1. Overview of the PSD Program

The PSD program is a preconstruction review and permitting program applicable to new major stationary sources and major modifications at existing stationary sources. The PSD program applies in areas that are designated "attainment" or "unclassifiable" for a national ambient air quality standard (NAAQS). The PSD program is contained in part C of title I of the CAA. The "nonattainment NSR" program applies in areas not in attainment of a NAAQS or in the Ozone Transport Region, and it is implemented under the requirements of part D of title I of the CAA. Collectively, EPA commonly refers to these two programs as the major NSR program. The governing EPA rules are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendices S and W. There is no NAAQS for CO_2 or any of the other well-mixed GHGs, nor has EPA proposed any such NAAQS; therefore, unless and until EPA takes further such action, the nonattainment NSR program does not apply to GHGs.

The applicability of PSD to a particular source must be determined in advance of construction or modification and is pollutant-specific. The primary criterion in determining PSD applicability is whether the proposed project is sufficiently large (in terms of its emissions) to be a major stationary source or modification, both of which are described below. EPA has implemented these requirements in its regulations, which use somewhat different terminology than the CAA does, for determining PSD applicability.

a. Major Stationary Source

Under PSD, a "major stationary source" is any source belonging to a specified list of 28 source categories that emits or has the potential to emit 100 tpy or more of any air pollutant subject to regulation under the CAA, or any other source type that emits or has the potential to emit such pollutants in amounts equal to or greater than 250 tpy. *See, e.g.,* 40 CFR 52.21(b)(1). We refer to these levels as the 100/250-tpy thresholds. A new source with a potential to emit (PTE) at or above the applicable "major stationary source threshold" is subject to major NSR. These limits originate from section 169 of the CAA, which applies PSD to any "major emitting facility" and defines the term to include any source that emits or has a PTE of 100 or 250 tpy, depending on the source category. Note that the major source definition incorporates the phrase "subject to regulation," which, as described later, will begin to include GHGs on January 2, 2011, under EPA's interpretation of that phrase as discussed in the recent memorandum entitled, " EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program." 75 FR 17004 (April 2, 2010).

b. Major Modifications

PSD also applies to existing sources that undertake a "major modification," which occurs when: (1) There is a

physical change in, or change in the method of operation of, a "major stationary source;" (2) the change results in a "significant" emissions increase of a pollutant subject to regulation (equal to or above the significance level that EPA has set for the pollutant in 40 CFR 52.21(b)(23)); and (3) there is a "significant net emissions increase" of a pollutant subject to regulation that is equal to or above the significance level (defined in 40 CFR 52.21(b)(23)). Significance levels, which EPA has promulgated for criteria pollutants and certain other pollutants, represent a de minimis contribution to air quality problems. When EPA has not set a significance level for a regulated NSR pollutant, PSD applies to an increase of the pollutant in any amount (that is, in effect, the significance level is treated as zero).

2. General Requirements for PSD

This section provides a very brief summary of the main requirements of the PSD program. One principal requirement is that a new major source or major modification must apply best available control technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost effectiveness of the control and energy and environmental impacts. EPA has developed a "top-down" approach for BACT review, which involves a decision process that includes identification of all available control technologies, elimination of technically infeasible options, ranking of remaining options by control and cost effectiveness, and then selection of BACT. Under PSD, once a source is determined to be major for any regulated NSR pollutant, a BACT review is performed for each attainment pollutant that exceeds its PSD significance level as part of new construction or for modification projects at the source, where there is a significant increase and a significant net emissions increase of such pollutant.[3]

In addition to performing BACT, the source must analyze impacts on ambient air quality to assure that sources do not cause or contribute to violation of any NAAQS or PSD increments and must analyze impacts on soil, vegetation, and visibility. In addition, sources or modifications that would impact Class I areas (*e.g.,* national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas. Under PSD, if a source's proposed project may impact a Class I area, the Federal Land Manager is notified and is responsible for evaluating a source's projected impact on the AQRVs and recommending either approval or disapproval of the source's permit application based on anticipated impacts. There are currently no NAAQS or PSD increments established for GHGs, and therefore these PSD requirements would not apply for GHGs, even when PSD is triggered for GHGs. However, if PSD is triggered for a GHG-emitting source, all regulated NSR pollutants that the new source emits in significant amounts would be subject to PSD requirements. Therefore, if a facility triggers NSR for non-GHG pollutants for which there are established NAAQS or increments, the air quality, additional impacts, and Class I requirements would apply to those pollutants.

Pursuant to existing PSD requirements, the permitting authority must provide notice of its preliminary decision on a source's application for a PSD permit and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to comments, the permitting authority must issue a final determination on the construction permit. Usually NSR permits are issued by a State or local air pollution control agency that has its own authority to issue PSD permits under a permit program that has been approved by EPA for inclusion in its SIP. In some areas, EPA has delegated its authority to issue PSD permits under Federal regulations to the State or local agency. In other areas, EPA issues the permits under its own authority.

C. What are the CAA requirements to include the PSD Program in the SIP?

The CAA contemplates that the PSD program be implemented in the first instance by the states and requires that states include PSD requirements in their SIPs. CAA section 110(a)(2)(C) requires that—

> Each implementation plan * * * shall * * * include a program to provide for * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part[ ] C * * * of this subchapter.

CAA section 110(a)(2)(J) requires that—

> Each implementation plan * * * shall * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that—

> [E]ach applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality in each region * * * designated * * * as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provisions as well as other provisions such as the BACT provision under CAA Section 165(a)(4), mandate that SIPs include PSD programs that are applicable to, among other things, any air pollutant that is subject to regulation. As discussed below, this includes GHGs on and after January 2, 2011.[4]

A number of states do not have PSD programs approved into their SIPs. In those states, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the state as EPA's delegatee acts as the permitting authority. However, most states have PSD programs that have been approved into their SIPs, and these states implement their PSD programs and act as the permitting authority. Kentucky has a SIP-approved PSD program.

D. What actions has EPA taken concerning PSD requirements for GHG-emitting sources?

1. What are the Endangerment Finding, the Light Duty Vehicle Rule, and the Johnson memo reconsideration?

By notice dated December 15, 2009, and pursuant to CAA section 202(a), EPA issued two findings regarding GHGs that are commonly referred to as the "Endangerment Finding" and the "Cause or Contribute Finding." "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," 74 FR 66496. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted GHGs—CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6—may reasonably be anticipated to endanger public health and welfare. In the Cause or Contribute Finding, the Administrator "defin[ed] the air pollutant as the aggregate group of the

[3] EPA notes that the PSD program has historically operated in this fashion for all pollutants—when new sources or modifications are "major," PSD applies to all pollutants that are emitted in significant quantities from the source or project. This rule does not alter that for sources or modifications that are major due to their GHG emissions.

[4] In the Tailoring Rule, EPA noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants, and not GHG, and EPA responded that the PSD provisions apply to all pollutants subject to regulation, including GHG. *See* 75 FR 31560–62 (June 3, 2010). EPA maintains its position that the PSD provisions apply to all pollutants subject to regulation, and the Agency incorporates by reference the discussion of this issue in the Tailoring Rule.

same six * * * greenhouse gases," 74 FR at 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA published what is commonly referred to as the "Light-Duty Vehicle Rule" (LDVR), which for the first time established Federal controls on GHGs emitted from light-duty vehicles. "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324. In its applicability provisions, the LDVR specifies that it "contains standards and other regulations applicable to the emission * * * of six greenhouse gases," including CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. 75 FR at 25686 (40 CFR 86.1818–12(a)).

On December 18, 2008, EPA issued a memorandum, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (known as the "Johnson Memo" or the "PSD Interpretive Memo," and referred to in this preamble as the "Interpretive Memo"), that set forth EPA's interpretation regarding which EPA and state actions, with respect to a previously unregulated pollutant, cause that pollutant to become "subject to regulation" under the Act. Whether a pollutant is "subject to regulation" is important for the purposes of determining whether it is covered under the Federal PSD permitting program. The Interpretive Memo established that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant (referred to as the "actual control interpretation"). On February 17, 2009, EPA granted a petition for reconsideration on the Interpretive Memo and announced its intent to conduct a rulemaking to allow for public comment on the issues raised in the memorandum and on related issues. EPA also clarified that the Interpretive Memo would remain in effect pending reconsideration.

On March 29, 2010, EPA signed a notice conveying its decision to continue applying (with one limited refinement) the Interpretive Memo's interpretation of "subject to regulation," "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004. EPA concluded that the "actual control interpretation" is the most appropriate interpretation to apply given the policy implications. However, EPA refined the Agency's interpretation in one respect: EPA established that PSD permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). In addition, based on the anticipated promulgation of the LDVR, EPA stated that the GHG requirements of the vehicle rule would take effect on January 2, 2011, because that is the earliest date that a 2012 model year vehicle may be introduced into commerce. In other words, the compliance obligation under the LDVR does not occur until a manufacturer may introduce into commerce vehicles that are required to comply with GHG standards, which will begin with model year 2012 and will not occur before January 2, 2011.

2. What is EPA's Tailoring Rule?

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, the Tailoring Rule, for the purpose of relieving overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources. 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program [5] of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters. Additionally, EPA committed to certain follow-up actions regarding future steps beyond the first two, discussed in more detail later in this notice.

For the first step of the Tailoring Rule, which will begin on January 2, 2011, PSD requirements will apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA will not require sources or modifications to evaluate whether they are subject to PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most notably, the BACT requirement, will apply to projects that increase net GHG emissions by at least 75,000 tpy CO_2e, but only if the project also significantly increases emissions of at least one non-GHG pollutant.

The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources that emit, or have the potential to emit, at least 100,000 tpy CO_2e will become subject to the PSD requirements. In addition, sources that emit or have the potential to emit at least 100,000 tpy CO_2e and that undertake a modification that increases net GHG emissions by at least 75,000 tpy CO_2e will also be subject to PSD requirements. For both steps, EPA notes that if sources or modifications exceed these CO_2e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

EPA believes that the costs to the sources and the administrative burdens to the permitting authorities of PSD permitting will be manageable at the levels in these initial two steps and that it would be administratively infeasible to subject additional sources to PSD requirements at those times. However, EPA also intends to issue a supplemental notice of proposed rulemaking in 2011, in which the Agency will propose or solicit comment on a third step of the phase-in that would include more sources, beginning on July 1, 2013. In the Tailoring Rule, EPA established an enforceable commitment that the Agency will complete this rulemaking by July 1, 2012, which will allow for 1 year's notice before Step 3 would take effect.

In addition, EPA committed to explore streamlining techniques that may well make the permitting programs much more efficient to administer for GHG, and that therefore may allow their expansion to smaller sources. EPA expects that the initial streamlining techniques will take several years to develop and implement.

In the Tailoring Rule, EPA also included a provision, that no source with emissions below 50,000 tpy CO_2e, and no modification resulting in net GHG increases of less than 50,000 tpy CO_2e, will be subject to PSD permitting before at least 6 years (i.e., April 30, 2016). This is because EPA has concluded that at the present time, the administrative burdens that would accompany permitting sources below this level would be so great that even with the streamlining actions that EPA may be able to develop and implement in the next several years, and even with the increases in permitting resources that EPA can reasonably expect the

[5] The Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today's action does not affect Kentucky's title V program.

permitting authorities to acquire, it would be impossible to administer the permit programs for these sources until at least 2016.

As EPA explained in the Tailoring Rule, the threshold limitations are necessary because without them, PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year beginning on January 2, 2011. This is the date when EPA's recently promulgated LDVR takes effect, imposing control requirements for the first time on CO_2 and other GHGs. If this January 2, 2011, date were to pass without the Tailoring Rule being in effect, PSD requirements would apply to GHG emissions at the 100/250 tpy applicability levels provided under a literal reading of the CAA as of that date. From that point forward, a source owner proposing to construct any new major source that emits at or higher than the applicability levels (and which therefore may be referred to as a "major" source) or modify any existing major source in a way that would increase GHG emissions would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin.

Under these circumstances, many small sources would be burdened by the costs of the individualized PSD control technology requirements and permit applications that the PSD provisions, absent streamlining, require. Additionally, state and local permitting authorities would be burdened by the extraordinary number of these permit applications, which are orders of magnitude greater than the current inventory of permits and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result since the permitting authorities would likely be able to issue only a tiny fraction of the permits requested.

In the Tailoring Rule, EPA adopted regulatory language codifying the phase-in approach. As explained in that rulemaking, many state, local and tribal area programs will likely be able to immediately implement the approach without rule or statutory changes by, for example, interpreting the term "subject to regulation" that is part of the applicability provisions for PSD permitting. EPA has requested permitting authorities to confirm that they will follow this implementation approach for their programs, and if they cannot, then EPA has requested that they notify the Agency so that we can take appropriate follow-up action to narrow Federal approval of their programs before GHGs become subject to PSD permitting on January 2, 2011.[6] On July 27, 2010, Kentucky provided a letter to EPA explaining that it cannot interpret its SIP-approved PSD program as applying to GHGs. Kentucky informed EPA that it would undertake a rulemaking to include GHGs in its PSD program and presented EPA with a projected rulemaking schedule. See the docket for this proposed rulemaking for a copy of Kentucky's letter.

The thresholds that EPA established in the Tailoring Rule are based on CO_2e for the aggregate sum of six GHGs that constitute the pollutant that will be subject to regulation, which we refer to as GHG.[7] These gases are: CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. Thus, in EPA's Tailoring Rule, EPA provided that PSD applicability is based on the quantity that results when the mass emissions of each of these gases is multiplied by the GWP of that gas, and then summed for all six gases. However, EPA further provided that in order for a source's GHG emissions to trigger PSD requirements, the quantity of the GHG emissions must equal or exceed both the applicability thresholds established in the Tailoring Rule on a CO_2e basis and the statutory thresholds of 100 or 250 tpy on a mass basis.[8] Similarly, in order for a source to be subject to the PSD modification requirements, the source's net GHG emissions increase must exceed the applicable significance level on a CO_2e basis and must also result in a net mass increase of the constituent gases combined.

3. What is the GHG SIP Call?

By **Federal Register** notice dated September 2, 2010, EPA proposed the GHG SIP Call. In that action, along with the companion GHG FIP rulemaking published at the same time, EPA took steps to ensure that in the 13 States that do not appear to have authority to issue PSD permits to GHG-emitting sources at present, either the state or EPA will have the authority to issue such permits by January 2, 2011. EPA explained that although for most states, either the State or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, our preliminary information shows that these 13 States have EPA-approved PSD programs that do not appear to include GHG-emitting sources and therefore do not appear to authorize these States to issue PSD permits to such sources. Therefore, EPA proposed to find that these 13 States' SIPs are substantially inadequate to comply with CAA requirements and, accordingly, proposed to issue a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. In the companion GHG FIP rulemaking, EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any State that is unable to submit a corrective SIP revision by its deadline. The Commonwealth of Kentucky is included in the list of areas for which EPA proposed a SIP Call.

III. What is the relationship between today's proposed action and EPA's proposed GHG SIP Call and GHG FIP?

As noted above, by notice dated September 2, 2010, EPA proposed the GHG SIP Call. At the same time, EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits to GHG-emitting sources.[9] As discussed in section IV of this rulemaking, Kentucky does not interpret its current PSD regulations as providing it with the authority to regulate GHGs, and as such, Kentucky is included on the list of areas for the proposed SIP call. Kentucky's August 5, 2010, proposed SIP revision (the subject of this rulemaking) addresses this authority. EPA will not take final action on the GHG SIP Call for Kentucky if the Commonwealth submits its final SIP revision to EPA prior to the final rulemaking for the GHG SIP Call. Additionally, Kentucky would not be subject to the FIP if EPA finalizes

[6] Narrowing EPA's approval will ensure that for Federal purposes, sources with GHG emissions that are less than the Tailoring Rule's emission thresholds will not be obligated under Federal law to obtain PSD permits during the gap between when GHG PSD requirements go into effect on January 2, 2011 and when either (1) EPA approves a SIP revision adopting EPA's tailoring approach, or (2) if a state opts to regulate smaller GHG-emitting sources, the state demonstrates to EPA that it has adequate resources to handle permitting for such sources. EPA expects to finalize the narrowing action prior to the January 2, 2011 deadline with respect to those States for which EPA will not have approved the Tailoring Rule thresholds in their SIPs by that time.

[7] The term "greenhouse gases" is commonly used to refer generally to gases that have heat-trapping properties. However, in this notice, unless noted otherwise, we use it to refer specifically to the pollutant regulated in the LDVR.

[8] The relevant thresholds are 100 tpy for title V, and 250 tpy for PSD, except for 28 categories listed in EPA regulations for which the PSD threshold is 100 tpy.

[9] As explained in the proposed GHG SIP Call (75 FR 53892, 53896), EPA intends to finalize its finding of substantial inadequacy and the SIP call for the 13 listed states by December 1, 2010. EPA requested that the states for which EPA is proposing a SIP call identify the deadline—between 3 weeks and 12 months from the date of signature of the final SIP Call—that they would accept for submitting their corrective SIP revision.

today's proposed approval of the Commonwealth's SIP revision.

IV. What is EPA's analysis of Kentucky's proposed SIP revision?

On August 5, 2010, KDAQ provided a revision to Kentucky's SIP to EPA for parallel processing and eventual approval. This revision to Kentucky's SIP is necessary because without it: (1) The Commonwealth would not have authority to issue PSD permits to GHG-emitting sources, and as a result, absent further action, those sources may not be able to construct or undertake modifications beginning January 2, 2011; and (2) assuming that the Commonwealth attains authority to issue PSD permits to GHG-emitting sources, PSD requirements would apply, as of January 2, 2011, at the 100- or 250-tpy levels provided under the CAA. This would greatly increase the number of required permits, imposing undue costs on small sources; which would overwhelm Kentucky's permitting resources and severely impair the function of the program.

The Commonwealth's August 5, 2010, proposed SIP revision: (1) Provides the Commonwealth with the authority to regulate GHG under the PSD program of the CAA, and (2) establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under Kentucky's PSD program. Specifically, Kentucky's August 5, 2010, proposed SIP revision includes changes to Kentucky's Air Quality Regulations, 401 KAR 51:001—*Definitions for 401 KAR Chapter 51,*[10] revising Kentucky's regulations by updating the "subject to regulation" provision to provide authority for the Commonwealth to regulate GHG and addressing the thresholds for GHG permitting applicability.

The Commonwealth of Kentucky is currently a SIP-approved state for the PSD program, and has incorporated the EPA's 2002 NSR reform revisions for PSD into its SIP. However, Kentucky does not interpret its current rules, which are generally consistent with the Federal rules, to be automatically updating to include newly designated regulated air pollutants such as GHG.[11] In a letter provided to EPA on July 27, 2010, Kentucky notified EPA that the Commonwealth does not currently have the authority to regulate GHG and thus is in the process of revising its regulation (the subject of this proposed action) to provide this authority. To provide this authority, Kentucky is updating the definitions for "regulated NSR pollutant" and "subject to regulation" to explicitly include GHG as a regulated NSR pollutant under the CAA. Specifically, while Kentucky revises its SIP provisions in its August 5, 2010, submittal by establishing its own regulatory language, it adopts relevant GHG definitions as "defined in 40 CFR 51.166 or 52.21" as amended by the Tailoring Rule promulgated on June 3, 2010. EPA has preliminarily determined that this change to Kentucky's regulation is consistent with the CAA and its implementing regulations regarding GHG.

The changes included in Kentucky's PSD program are substantively the same as EPA's Tailoring Rule. The Kentucky rules have been formatted to conform to Kentucky's rule drafting standards for 401 KAR 51:001—*Definitions for 401 KAR Chapter 51,* but in substantive content the rules that address the Tailoring Rule provisions are the same as the Federal rules. As part of its review of the Kentucky submittal, EPA performed a line-by-line review of Kentucky's proposed changes to its regulations and has preliminarily determined that they are consistent with the Tailoring Rule. Furthermore, EPA preliminarily determined that this revision to Kentucky's SIP is consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, 75 FR at 31561.

V. Proposed Action

EPA is proposing to approve the Commonwealth of Kentucky's August 5, 2010, SIP revision, relating to PSD requirements for GHG-emitting sources. Specifically, Kentucky's August 5, 2010, proposed SIP revision: (1) Provides the Commonwealth with the authority to regulate GHGs under its PSD program, and (2) establishes appropriate emissions thresholds for determining PSD applicability with respect to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

VI. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial

[10] Kentucky's submittal also revises definitions for *401 KAR 52:001—Definitions for 401 KAR Chapter 52;* however, these definitions relate to title V and are not included in the SIP. As such, EPA is not proposing to take action to approve Kentucky's update to these definitions in this rulemaking.

[11] On July 23, 2010, Lynorae Benjamin, Region 4 EPA Chief of the Regulatory Development Section, confirmed with John Lyons, the Director of KDAQ, that it is the Commonwealth of Kentucky's interpretation that Kentucky does not have the authority to regulate GHG without the revision that is the subject of today's proposed rulemaking.

direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: October 25, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–28017 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0741–201043; FRL–9222–7]

Approval and Promulgation of Implementation Plans; North Carolina: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a draft revision to the North Carolina State Implementation Plan (SIP), submitted by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources' (NC DENR) Division of Air Quality, to EPA on August 11, 2010, for parallel processing. The proposed SIP revision establishes new provisions specific to greenhouse gas (GHG) for North Carolina's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. Specifically, the proposed SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to North Carolina's PSD permitting requirements for their GHG emissions. North Carolina's August 11, 2010, SIP revision is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels provided under the Clean Air Act (CAA or Act), which would overwhelm North Carolina's permitting resources. EPA is proposing approval of North Carolina's August 11, 2010, SIP revision relating to PSD requirements for GHG-emitting sources because the Agency has made the preliminary determination that this SIP revision is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0741 by one of the following methods:

1. *http://*www.regulations.gov: Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0741, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2010–0741." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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 *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the North Carolina SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; *e-mail address: bradley.twunjala@epa.gov.* For information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562–9185; *e-mail address: abrams.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

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VI. Statutory and Executive Order Reviews

I. What action is EPA proposing in today's notice?

On August 11, 2010,[1] NC DENR submitted a draft revision to EPA for approval into the North Carolina SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to North Carolina's PSD permitting requirements for GHG emissions. Final approval of North Carolina's August 11, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is proposing to approve this revision into the North Carolina SIP.

Because this draft SIP revision is not yet state-effective, North Carolina requested that EPA "parallel process" the SIP revision. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and the Federal actions in parallel.

After North Carolina submits the formal state-effective SIP revision request (including a response to all public comments raised during the state's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the SIP revision after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if the changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

II. What is the background for the action proposed by EPA in today's notice?

Today's proposed action on the North Carolina SIP relates to EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," Final Rule (the Tailoring Rule). 75 FR 31514. In the Tailoring Rule, EPA established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. These applicability thresholds were designed to ensure that smaller GHG sources will not be subject to GHG permitting requirements. While North Carolina already has authority to issue PSD permits governing GHGs when PSD requirements begin applying to GHGs on January 2, 2011, North Carolina needs to amend its SIP to incorporate the Tailoring Rule's applicability thresholds. Today's notice announces EPA's proposed approval of a revision to North Carolina's SIP that would put these applicability thresholds in place.[2]

A. What are GHGs and their sources?

A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is included in EPA's technical support document for EPA's GHG endangerment finding final rule (Document ID No. EPA–HQ–OAR–2009–0472–11292 at *http://www.regulations.gov*). The endangerment finding rulemaking is discussed later in this rulemaking. A summary of the nature and sources of GHGs is provided below.

GHGs trap the Earth's heat that would otherwise escape from the atmosphere into space and form the greenhouse effect that helps keep the Earth warm enough for life. GHGs are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment.

Some GHGs, such as carbon dioxide (CO_2), are emitted to the atmosphere through natural processes as well as human activities. Other gases, such as fluorinated gases, are created and emitted solely through human activities. The well-mixed GHGs of concern directly emitted by human activities include CO_2, methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6), hereafter referred to collectively as "the six well-mixed GHG," or, simply, GHGs. Together these six well-mixed GHGs constitute the "air pollutant" upon which the GHG thresholds in EPA's Tailoring Rule are based. These six gases remain in the atmosphere for decades to centuries where they become well-mixed globally in the atmosphere. When they are emitted more quickly than natural processes can remove them from the atmosphere, their concentrations increase, thus increasing the greenhouse effect.

In the U.S., the combustion of fossil fuels (*e.g.,* coal, oil, gas) is the largest source of CO_2 emissions and accounts for 80 percent of the total GHG emissions by mass. Anthropogenic CO_2 emissions released from a variety of sources, including through the use of fossil fuel combustion and cement production from geologically stored carbon (*e.g.,* coal, oil, and natural gas) that is hundreds of millions of years old, as well as anthropogenic CO_2 emissions from land-use changes such as deforestation, perturb the atmospheric concentration of CO_2, and the distribution of carbon within different reservoirs readjusts. More than half of the energy-related emissions come from large stationary sources such as power plants, while about a third come from transportation. Of the six well-mixed GHGs, four (CO_2, CH_4, N_2O, and HFCs) are emitted by motor vehicles. In the U.S., industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of GHGs.

Different GHGs have different heat-trapping capacities. The concept of Global Warming Potential (GWP) was developed to compare the heat-trapping capacity and atmospheric lifetime of one GHG to another. The definition of a GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to that of one unit mass of CO_2 over a specified time period. When quantities of the different GHGs are multiplied by their GWPs, the different GHGs can be summed and compared on

[1] Also on August 11, 2010, North Carolina submitted a proposed SIP revision to include amendments to incorporate fine particulate matter into North Carolina's New Source Review rules. EPA will consider and take action on this proposed revision to North Carolina's SIP in an action separate from today's proposed rulemaking.

[2] On September 2, 2010, EPA proposed a "SIP Call" that would require those states with SIPs that do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. 75 FR 53892. In a companion rulemaking, EPA proposed a Federal implementation plan (FIP) that would apply in any state that is unable to submit the required SIP revision by its deadline. 75 FR 53883 (September 2, 2010). Because North Carolina's SIP already authorizes North Carolina to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, North Carolina is not subject to the proposed SIP Call or FIP.

a carbon dioxide equivalent (CO_2e) basis. For example, CH_4 has a GWP of 21, meaning each ton of CH_4 emissions would have 21 times as much impact on global warming over a 100-year time horizon as 1 ton of CO_2 emissions. Thus, on the basis of heat-trapping capability, 1 ton of CH_4 would equal 21 tons of CO_2e. The GWPs of the non-CO_2 GHG range from 21 (for CH_4) up to 23,900 (for SF_6). Aggregating all GHG on a CO_2e basis at the source level allows a facility to evaluate its total GHG emissions contribution based on a single metric.

B. What are the general requirements of the PSD program?

1. Overview of the PSD Program

The PSD program is a preconstruction review and permitting program applicable to new major stationary sources and major modifications at existing stationary sources. The PSD program applies in areas that are designated "attainment" or "unclassifiable" for a national ambient air quality standard (NAAQS). The PSD program is contained in part C of title I of the CAA. The "nonattainment NSR" program applies in areas not in attainment of a NAAQS or in the Ozone Transport Region, and it is implemented under the requirements of part D of title I of the CAA. Collectively, EPA commonly refers to these two programs as the major NSR program. The governing EPA rules are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendices S and W. There is no NAAQS for CO_2 or any of the other well-mixed GHGs, nor has EPA proposed any such NAAQS; therefore, unless and until EPA takes further such action, the nonattainment NSR program does not apply to GHGs.

The applicability of PSD to a particular source must be determined in advance of construction or modification and is pollutant-specific. The primary criterion in determining PSD applicability is whether the proposed project is sufficiently large (in terms of its emissions) to be a major stationary source or modification, both of which are described below. EPA has implemented these requirements in its regulations, which use somewhat different terminology than the CAA does, for determining PSD applicability.

a. Major Stationary Sources

Under PSD, a "major stationary source" is any source belonging to a specified list of 28 source categories that emits or has the potential to emit 100 tpy or more of any air pollutant subject to regulation under the CAA, or any other source type that emits or has the potential to emit such pollutants in amounts equal to or greater than 250 tpy. *See, e.g.,* 40 CFR 52.21(b)(1). We refer to these levels as the 100/250-tpy thresholds. A new source with a potential to emit (PTE) at or above the applicable "major stationary source threshold" is subject to major NSR. These limits originate from section 169 of the CAA, which applies PSD to any "major emitting facility" and defines the term to include any source that emits or has a PTE of 100 or 250 tpy, depending on the source category. Note that the major source definition incorporates the phrase "subject to regulation," which, as described later, will begin to include GHGs on January 2, 2011, under our interpretation of that phrase as discussed in the recent memorandum entitled, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program." 75 FR 17004 (April 2, 2010).

b. Major Modifications

PSD also applies to existing sources that undertake a "major modification," which occurs when: (1) There is a physical change in, or change in the method of operation of, a "major stationary source;" (2) the change results in a "significant" emissions increase of a pollutant subject to regulation (equal to or above the significance level that EPA has set for the pollutant in 40 CFR 52.21(b)(23)); and (3) there is a "significant net emissions increase" of a pollutant subject to regulation that is equal to or above the significance level (defined in 40 CFR 52.21(b)(23)). Significance levels, which EPA has promulgated for criteria pollutants and certain other pollutants, represent a de minimis contribution to air quality problems. When EPA has not set a significance level for a regulated NSR pollutant, PSD applies to an increase of the pollutant in any amount (that is, in effect, the significance level is treated as zero).

2. General Requirements for PSD

This section provides a very brief summary of the main requirements of the PSD program. One principal requirement is that a new major source or major modification must apply best available control technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost effectiveness of the control and energy and environmental impacts. EPA has developed a "top-down" approach for BACT review, which involves a decision process that includes identification of all available control technologies, elimination of technically infeasible options, ranking of remaining options by control and cost effectiveness, and then selection of BACT. Under PSD, once a source is determined to be major for any regulated NSR pollutant, a BACT review is performed for each attainment pollutant that exceeds its PSD significance level as part of new construction or for modification projects at the source, where there is a significant increase and a significant net emissions increase of such pollutant.[3]

In addition to performing BACT, the source must analyze impacts on ambient air quality to assure that sources do not cause or contribute to violation of any NAAQS or PSD increments and must analyze impacts on soil, vegetation, and visibility. In addition, sources or modifications that would impact Class I areas (*e.g.,* national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas. Under PSD, if a source's proposed project impacts a Class I area, the Federal Land Manager is notified and is responsible for evaluating a source's projected impact on the AQRVs and recommending either approval or disapproval of the source's permit application based on anticipated impacts. There are currently no NAAQS or PSD increments established for GHGs, and therefore these PSD requirements would not apply for GHGs, even when PSD is triggered for GHGs. However, if PSD is triggered for a GHG-emitting source, all regulated NSR pollutants that the new source emits in significant amounts would be subject to PSD requirements. Therefore, if a facility triggers NSR for non-GHG pollutants for which there are established NAAQS or increments, the air quality, additional impacts, and Class I requirements would apply to those pollutants.

Pursuant to existing PSD requirements, the permitting authority must provide notice of its preliminary decision on a source's application for a PSD permit and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to comments, the permitting authority must issue a final determination on the construction permit. Usually NSR permits are issued by a state or local air

[3] EPA notes that the PSD program has historically operated in this fashion for all pollutants—when new sources or modifications are "major," PSD applies to all pollutants that are emitted in significant quantities from the source or project. This rule does not alter that for sources or modifications that are major due to their GHG emissions.

pollution control agency that has its own authority to issue PSD permits under a permit program that has been approved by EPA for inclusion in its SIP. In some areas, EPA has delegated its authority to issue PSD permits under Federal regulations to the state or local agency. In other areas, EPA issues the permits under its own authority.

C. What are the CAA requirements to include the PSD program in the SIP?

The CAA contemplates that the PSD program be implemented in the first instance by the states and requires that states include PSD requirements in their SIPs. CAA section 110(a)(2)(C) requires that—

> Each implementation plan * * * shall * * * include a program to provide for * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part[ ] C * * * of this subchapter.

CAA section 110(a)(2)(J) requires that—

> Each implementation plan * * * shall * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that—

> [E]ach applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality in each region * * * designated * * * as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provisions as well as other provisions such as the BACT provision under CAA Section 165(a)(4), mandate that SIPs include PSD programs that are applicable to, among other things, any air pollutant that is subject to regulation. As discussed below, this includes GHGs on and after January 2, 2011.[4]

A number of states do not have PSD programs approved into their SIPs. In those states, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the state as EPA's delegatee acts as the permitting authority. However, most states have PSD programs that have been approved into their SIPs, and these states implement their PSD programs and act as the permitting authority. North Carolina has a SIP-approved PSD program.

D. What actions has EPA taken concerning PSD requirements for GHG-emitting sources?

1. What are the Endangerment Finding, the Light-Duty Vehicle Rule, and the Johnson Memo reconsideration?

By notice dated December 15, 2009, and pursuant to CAA section 202(a), EPA issued two findings regarding GHGs that are commonly referred to as the "Endangerment Finding" and the "Cause or Contribute Finding." "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," 74 FR 66496. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted GHGs—CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6—may reasonably be anticipated to endanger public health and welfare. In the Cause or Contribute Finding, the Administrator "defin[ed] the air pollutant as the aggregate group of the same six * * * greenhouse gases," 74 FR at 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA published what is commonly referred to as the "Light-Duty Vehicle Rule" (LDVR), which for the first time established Federal controls on GHGs emitted from light-duty vehicles. "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324. In its applicability provisions, the LDVR specifies that it "contains standards and other regulations applicable to the emission * * * of six greenhouse gases," including CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. 75 FR at 25686 (40 CFR 86.1818–12(a)).

On December 18, 2008, EPA issued a memorandum, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (known as the "Johnson Memo" or the "PSD Interpretive Memo," and referred to in this preamble as the "Interpretive Memo"), that set forth EPA's interpretation regarding which EPA and state actions, with respect to a previously unregulated pollutant, cause that pollutant to become "subject to regulation" under the Act. Whether a pollutant is "subject to regulation" is important for the purposes of determining whether it is covered under the Federal PSD permitting program. The Interpretive Memo established that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant (referred to as the "actual control interpretation"). On February 17, 2009, EPA granted a petition for reconsideration on the Interpretive Memo and announced its intent to conduct a rulemaking to allow for public comment on the issues raised in the memorandum and on related issues. EPA also clarified that the Interpretive Memo would remain in effect pending reconsideration.

On April 2, 2010, EPA published a notice conveying its decision to continue applying (with one limited refinement) the Interpretive Memo's interpretation of "subject to regulation." "Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs," 75 FR 17004. EPA concluded that the "actual control interpretation" is the most appropriate interpretation to apply given the policy implications. However, EPA refined the Agency's interpretation in one respect: EPA established that PSD permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). In addition, based on the anticipated promulgation of the LDVR, EPA stated that the GHG requirements of the vehicle rule would take effect on January 2, 2011, because that is the earliest date that a 2012 model year vehicle may be introduced into commerce. In other words, the compliance obligation under the LDVR does not occur until a manufacturer may introduce into commerce vehicles that are required to comply with GHG standards, which will begin with model year 2012 and will not occur before January 2, 2011.

2. What is EPA's Tailoring Rule?

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, the Tailoring Rule, for the purpose of relieving overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources. 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become

[4] In the Tailoring Rule, EPA noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants, and not GHG, and EPA responded that the PSD provisions apply to all pollutants subject to regulation, including GHG. *See* 75 FR at 31560–62. EPA maintains its position that the PSD provisions apply to all pollutants subject to regulation, and the Agency incorporates by reference the discussion of this issue in the Tailoring Rule.

subject to the PSD program [5] of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters. Additionally, EPA committed to certain follow-up actions regarding future steps beyond the first two, discussed in more detail later in this notice.

For the first step of the Tailoring Rule, which will begin on January 2, 2011, PSD requirements will apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA will not require sources or modifications to evaluate whether they are subject to PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most notably, the BACT requirement, will apply to projects that increase net GHG emissions by at least 75,000 tpy CO_2e, but only if the project also significantly increases emissions of at least one non-GHG pollutant.

The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources that emit, or have the potential to emit, at least 100,000 tpy CO_2e will become subject to the PSD requirements. In addition, sources that emit or have the potential to emit at least 100,000 tpy CO_2e and that undertake a modification that increases net GHG emissions by at least 75,000 tpy CO_2e will also be subject to PSD requirements. For both steps, EPA notes that if sources or modifications exceed these CO_2e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

EPA believes that the costs to the sources and the administrative burdens to the permitting authorities of PSD permitting will be manageable at the levels in these initial two steps and that it would be administratively infeasible to subject additional sources to PSD requirements at those times. However, EPA also intends to issue a supplemental notice of proposed rulemaking in 2011, in which the Agency will propose or solicit comment on a third step of the phase-in that would include more sources, beginning on July 1, 2013. In the Tailoring Rule, EPA established an enforceable commitment that the Agency will complete this rulemaking by July 1, 2012, which will allow for 1 year's notice before Step 3 would take effect.

In addition, EPA committed to explore streamlining techniques that may well make the permitting programs much more efficient to administer for GHG, and that therefore may allow their expansion to smaller sources. EPA expects that the initial streamlining techniques will take several years to develop and implement.

In the Tailoring Rule, EPA also included a provision, that no source with emissions below 50,000 tpy CO_2e, and no modification resulting in net GHG increases of less than 50,000 tpy CO_2e, will be subject to PSD permitting before at least 6 years (*i.e.,* April 30, 2016). This is because EPA has concluded that at the present time, the administrative burdens that would accompany permitting sources below this level would be so great that even with the streamlining actions that EPA may be able to develop and implement in the next several years, and even with the increases in permitting resources that EPA can reasonably expect the permitting authorities to acquire, it would be impossible to administer the permit programs for these sources until at least 2016.

As EPA explained in the Tailoring Rule, the threshold limitations are necessary because without them, PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year beginning on January 2, 2011. This is the date when EPA's recently promulgated LDVR takes effect, imposing control requirements for the first time on CO_2 and other GHGs. If this January 2, 2011, date were to pass without the Tailoring Rule being in effect, PSD requirements would apply to GHG emissions at the 100/250 tpy applicability levels provided under a literal reading of the CAA as of that date. From that point forward, a source owner proposing to construct any new major source that emits at or higher than the applicability levels (and which therefore may be referred to as a "major" source) or modify any existing major source in a way that would increase GHG emissions would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin.

Under these circumstances, many small sources would be burdened by the costs of the individualized PSD control technology requirements and permit applications that the PSD provisions, absent streamlining, require. Additionally, state and local permitting authorities would be burdened by the extraordinary number of these permit applications, which are orders of magnitude greater than the current inventory of permits and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result since the permitting authorities would likely be able to issue only a tiny fraction of the permits requested.

The Tailoring Rule's thresholds are based on CO_2e for the aggregate sum of six GHGs that constitute the pollutant that will be subject to regulation, which we refer to as GHG.[6] These gases are: CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. Thus, in EPA's Tailoring Rule, EPA provided that PSD applicability is based on the quantity that results when the mass emissions of each of these gases is multiplied by the GWP of that gas, and then summed for all six gases. However, EPA further provided that in order for a source's GHG emissions to trigger PSD requirements, the quantity of the GHG emissions must equal or exceed both the applicability thresholds established in the Tailoring Rule on a CO_2e basis and the statutory thresholds of 100 or 250 tpy on a mass basis.[7] Similarly, in order for a source to be subject to the PSD modification requirements, the source's net GHG emissions increase must exceed the applicable significance level on a CO_2e basis and must also result in a net mass increase of the constituent gases combined.

In the Tailoring Rule, EPA adopted regulatory language codifying the phase-in approach. As explained in that rulemaking, many state, local and tribal area programs will likely be able to immediately implement the approach without rule or statutory changes by, for example, interpreting the term "subject to regulation" that is part of the applicability provisions for PSD permitting. EPA has requested permitting authorities to confirm that they will follow this implementation approach for their programs, and if they cannot, then EPA has requested that they notify the Agency so that we can take appropriate follow-up action to narrow Federal approval of their

[5] The Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today's action does not affect North Carolina's title V program.

[6] The term "greenhouse gases" is commonly used to refer generally to gases that have heat-trapping properties. However, in this notice, unless noted otherwise, we use it to refer specifically to the pollutant regulated in the LDVR.

[7] The relevant thresholds are 100 tpy for title V, and 250 tpy for PSD, except for 28 categories listed in EPA regulations for which the PSD threshold is 100 tpy.

programs before GHGs become subject to PSD permitting on January 2, 2011.[8]

On August 2, 2010, North Carolina provided a letter to EPA confirming that the State has the authority to issue PSD permits governing GHG emissions as of January 2, 2011, but explaining that North Carolina needs to amend its SIP to enable it to implement the Tailoring Rule thresholds. See the docket for this proposed rulemaking for a copy of North Carolina's letter.

3. What is the GHG SIP Call?

By **Federal Register** notice dated September 2, 2010, EPA proposed the GHG SIP Call. In that action, along with the companion GHG FIP rulemaking published at the same time, EPA took steps to ensure that in the 13 States that do not appear to have authority to issue PSD permits to GHG-emitting sources at present, either the state or EPA will have the authority to issue such permits by January 2, 2011. EPA explained that although for most states, either the State or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, our preliminary information shows that these 13 States have EPA-approved PSD programs that do not appear to include GHG-emitting sources and therefore do not appear to authorize these States to issue PSD permits to such sources. Therefore, EPA proposed to find that these 13 States' SIPs are substantially inadequate to comply with CAA requirements and, accordingly, proposed to issue a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. In the companion GHG FIP rulemaking, EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any State that is unable to submit a corrective SIP revision by its deadline. North Carolina was not one of the states for which EPA proposed a SIP Call.

[8] Narrowing EPA's approval will ensure that for Federal purposes, sources with GHG emissions that are less than the Tailoring Rule's emission thresholds will not be obligated under Federal law to obtain PSD permits during the gap between when GHG PSD requirements go into effect on January 2, 2011 and when either (1) EPA approves a SIP revision adopting EPA's tailoring approach, or (2) if a state opts to regulate smaller GHG-emitting sources, the state demonstrates to EPA that it has adequate resources to handle permitting for such sources. EPA expects to finalize the narrowing action prior to the January 2, 2011 deadline with respect to those States for which EPA will not have approved the Tailoring Rule thresholds in their SIPs by that time.

III. What is the relationship between today's proposed action and EPA's proposed GHG SIP Call and GHG FIP?

As noted above, by notice dated September 2, 2010, EPA proposed the GHG SIP Call. At the same time, EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits to GHG-emitting sources.[9] As discussed in Section IV of this rulemaking, North Carolina interprets its current PSD regulations as providing it with the authority to regulate GHGs, and as such, North Carolina is not included on the list of areas for the proposed SIP call. Additionally, North Carolina would not be subject to the FIP to implement GHG for PSD applicability. North Carolina's August 11, 2010, proposed SIP revision (the subject of this rulemaking) merely modifies North Carolina's SIP to establish appropriate thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD program of the CAA.

IV. What is EPA's analysis of North Carolina's proposed SIP revision?

On August 11, 2010, NC DENR provided a revision to North Carolina's SIP to EPA for parallel processing and eventual approval. This revision to North Carolina's SIP is necessary because without it, PSD requirements would apply, as of January 2, 2011, at the 100- or 250-tpy levels provided under the CAA. This would greatly increase the number of required permits, imposing undue costs on small sources; which would overwhelm North Carolina's permitting resources and severely impair the function of the program.

The State of North Carolina's August 11, 2010, proposed SIP revision establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under North Carolina's PSD program. Specifically, North Carolina's proposed SIP revision incorporates a new PSD rule into North Carolina's SIP for GHG, at 15A North Carolina Administrative Code (NCAC) 02D .0544—*Prevention of Significant Deterioration Requirements for Greenhouse Gases,* to address the thresholds for GHG permitting applicability. This new regulation, 15A NCAC 02D .0544, incorporates by reference, the Federal tailoring rule provisions at 40 CFR 51.166 as amended June 3, 2010, and effective August 2, 2010.

North Carolina is currently a SIP-approved state for the PSD program. The State of North Carolina has incorporated by reference EPA's 2002 NSR reform revisions for PSD at 40 CFR 51.166 at the state-level.[10] In a letter provided to EPA on August 2, 2010, North Carolina notified EPA of its interpretation that the State's current PSD regulations provided NC DENR the authority to regulate GHG under 15A NCAC 2D .0530—*Prevention of Significant Deterioration* (which incorporates by reference, the provisions for the preconstruction review process that provides the PSD for ambient air quality as published at 40 CFR 51.166.) North Carolina's current PSD program incorporates by reference the Federal requirements, found at 40 CFR 51.166, into the State's major source PSD program (which applies to major stationary sources having the potential to emit at least 100-tpy or 250-tpy or more of a regulated NSR pollutant, depending on the type of source or modifications constructing in areas designated attainment or unclassifiable with respect to the NAAQS).

This current SIP revision to include 15A NCAC 02D .0544 (the subject of this proposed rulemaking) incorporates by reference the provisions at 40 CFR 51.166 as effective on August 2, 2010, to specifically include the Federal Tailoring Rule requirements defined at 40 CFR 51.166. This SIP revision updates North Carolina's existing PSD program to include a new rule applicable to GHGs only. For all other regulated NSR pollutants, the provisions of Rule 15A NCAC 02D .0530 apply. EPA has preliminarily determined that North Carolina's proposed SIP revision is consistent with the Tailoring Rule. Furthermore, EPA has preliminarily determined that this revision to North Carolina's SIP is consistent with section 110 of the CAA. See, e.g., Tailoring Rule, 75 FR at 31561.

[9] As explained in the proposed GHG SIP Call (75 FR 53892, 53896), EPA intends to finalize its finding of substantial inadequacy and the SIP call for the 13 listed states by December 1, 2010. EPA requested that the states for which EPA is proposing a SIP call identify the deadline—between 3 weeks and 12 months from the date of signature of the final SIP Call—that they would accept for submitting their corrective SIP revision.

[10] On September 9, 2008, EPA proposed to approve three North Carolina submittals related to the 2002 NSR reform rules. *See* 73 FR 52226. EPA is considering comments received on the September 9, 2008, proposal, and will address the comments and any future final action in rulemaking separate from today's proposed rulemaking. North Carolina's SIP-approved rules that are applicable to the State's authority to regulate GHG stem from the 1996 edition of EPA's Federal PSD rules.

V. Proposed Action

EPA is proposing to approve North Carolina's August 11, 2010, SIP revision, relating to PSD requirements for GHG-emitting sources. Specifically, North Carolina's August 11, 2010, proposed SIP revision establishes appropriate emissions thresholds for determining PSD applicability with respect to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: October 27, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–28031 Filed 11–4–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0697–201044; FRL–9222–8]

Approval and Promulgation of Implementation Plans; Alabama: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a draft revision to the State Implementation Plan (SIP), submitted by Alabama, through the Alabama Department of Environmental Management (ADEM), to EPA on August 17, 2010, for parallel processing. The proposed SIP revision modifies Alabama's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. Specifically, the proposed SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Alabama's PSD permitting requirements for their greenhouse gas (GHG) emissions. Alabama's August 17, 2010, SIP revision is necessary because without it, on January 2, 2011, PSD requirements would apply at the 100 or 250 tons per year (tpy) levels provided under the Clean Air Act (CAA or Act), which would overwhelm Alabama's permitting resources. EPA is proposing approval of Alabama's August 17, 2010, SIP revision relating to PSD requirements for GHG-emitting sources because the Agency has made the preliminary determination that this SIP revision is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0697 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2010–0697, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2010–0697." EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment.

If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Alabama SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; e-mail address: *bradley.twunjala@epa.gov.* For information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562–9185; e-mail address: *abrams.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing in today's notice?

On August 17, 2010, ADEM submitted a draft revision to EPA for approval into the Alabama SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Alabama's PSD permitting requirements for GHG emissions. Final approval of Alabama's August 17, 2010, SIP revision will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010), ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements when these requirements begin applying to GHGs on January 2, 2011. Pursuant to section 110 of the CAA, EPA is proposing to approve this revision into the Alabama SIP.

Because this draft SIP revision is not yet state-effective, Alabama requested that EPA "parallel process" the SIP revision. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed state action and prepares a notice of proposed rulemaking. EPA publishes this notice of proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same time frame during which the state is holding its public hearing. The state and EPA thus provide for public comment periods on both the state and the Federal actions in parallel.

After Alabama submits the formal state-effective SIP revision request (including a response to all public comments raised during the state's public participation process), EPA will prepare a final rulemaking notice for the SIP revision. If changes are made to the SIP revision after EPA's notice of proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA may be obliged to re-propose the action. In addition, if the changes render the SIP revision not approvable, EPA's re-proposal of the action would be a disapproval of the revision.

II. What is the background for the action proposed by EPA in today's notice?

Today's proposed action on the Alabama SIP relates to EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule," Final Rule (the Tailoring Rule). 75 FR 31514. In the Tailoring Rule, EPA established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources. These applicability thresholds were designed to ensure that smaller GHG sources will not be subject to GHG permitting requirements. While Alabama already has authority to issue PSD permits governing GHGs when PSD requirements begin applying to GHGs on January 2, 2011, Alabama needs to amend its SIP to incorporate the Tailoring Rule's applicability thresholds. Today's notice announces EPA's proposed approval of a revision to Alabama's SIP that would put these applicability thresholds in place.[1]

Below is a brief overview of GHGs and GHG-emitting sources, the CAA PSD program, minimum SIP elements for a PSD program, and EPA's recent actions regarding GHG permitting. Following this section, EPA discusses, in sections III and IV, the relationship between the proposed Alabama SIP revision and EPA's other national rulemakings as well as EPA's analysis of Alabama's SIP revision.

A. What are GHGs and their sources?

A detailed explanation of GHGs, climate change and the impact on health, society, and the environment is included in EPA's technical support document for EPA's GHG endangerment finding final rule (Document ID No. EPA–HQ–OAR–2009–0472–11292 at *http://www.regulations.gov*). The endangerment finding rulemaking is

[1] On September 2, 2010, EPA proposed a "SIP Call" that would require those states with SIPs that do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. 75 FR 53892. In a companion rulemaking, EPA proposed a Federal implementation plan (FIP) that would apply in any state that is unable to submit the required SIP revision by its deadline. 75 FR 53883 (September 2, 2010). Because Alabama's SIP already authorizes Alabama to regulate GHGs once GHGs become subject to PSD requirements on January 2, 2011, Alabama is not subject to the proposed SIP Call or FIP.

discussed later in this rulemaking. A summary of the nature and sources of GHGs is provided below.

GHGs trap the Earth's heat that would otherwise escape from the atmosphere into space and form the greenhouse effect that helps keep the Earth warm enough for life. GHGs are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment.

Some GHGs, such as carbon dioxide (CO_2), are emitted to the atmosphere through natural processes as well as human activities. Other gases, such as fluorinated gases, are created and emitted solely through human activities. The well-mixed GHGs of concern directly emitted by human activities include CO_2, methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6), hereafter referred to collectively as "the six well-mixed GHG," or, simply, GHGs. Together these six well-mixed GHGs constitute the "air pollutant" upon which the GHG thresholds in EPA's Tailoring Rule are based. These six gases remain in the atmosphere for decades to centuries where they become well-mixed globally in the atmosphere. When they are emitted more quickly than natural processes can remove them from the atmosphere, their concentrations increase, thus increasing the greenhouse effect.

In the U.S., the combustion of fossil fuels (*e.g.,* coal, oil, gas) is the largest source of CO_2 emissions and accounts for 80 percent of the total GHG emissions by mass. Anthropogenic CO_2 emissions released from a variety of sources, including through the use of fossil fuel combustion and cement production from geologically stored carbon (*e.g.,* coal, oil, and natural gas) that is hundreds of millions of years old, as well as anthropogenic CO_2 emissions from land-use changes such as deforestation, perturb the atmospheric concentration of CO_2, and the distribution of carbon within different reservoirs readjusts. More than half of the energy-related emissions come from large stationary sources such as power plants, while about a third come from transportation. Of the six well-mixed GHGs, four (CO_2, CH_4, N_2O, and HFCs) are emitted by motor vehicles. In the U.S., industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of GHGs.

Different GHGs have different heat-trapping capacities. The concept of Global Warming Potential (GWP) was developed to compare the heat-trapping capacity and atmospheric lifetime of one GHG to another. The definition of a GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to that of one unit mass of CO_2 over a specified time period. When quantities of the different GHGs are multiplied by their GWPs, the different GHGs can be summed and compared on a carbon dioxide equivalent (CO_2e) basis. For example, CH_4 has a GWP of 21, meaning each ton of CH_4 emissions would have 21 times as much impact on global warming over a 100-year time horizon as 1 ton of CO_2 emissions. Thus, on the basis of heat-trapping capability, 1 ton of CH_4 would equal 21 tons of CO_2e. The GWPs of the non-CO_2 GHG range from 21 (for CH_4) up to 23,900 (for SF_6). Aggregating all GHG on a CO_2e basis at the source level allows a facility to evaluate its total GHG emissions contribution based on a single metric.

B. What are the general requirements of the PSD program?

1. Overview of the PSD Program

The PSD program is a preconstruction review and permitting program applicable to new major stationary sources and major modifications at existing stationary sources. The PSD program applies in areas that are designated "attainment" or "unclassifiable" for a national ambient air quality standard (NAAQS). The PSD program is contained in part C of title I of the CAA. The "nonattainment NSR" program applies in areas not in attainment of a NAAQS or in the Ozone Transport Region, and it is implemented under the requirements of part D of title I of the CAA. Collectively, EPA commonly refers to these two programs as the major NSR program. The governing EPA rules are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendices S and W. There is no NAAQS for CO_2 or any of the other well-mixed GHGs, nor has EPA proposed any such NAAQS; therefore, unless and until EPA takes further such action, the nonattainment NSR program does not apply to GHGs.

The applicability of PSD to a particular source must be determined in advance of construction or modification and is pollutant-specific. The primary criterion in determining PSD applicability is whether the proposed project is sufficiently large (in terms of its emissions) to be a major stationary source or modification, both of which are described below. EPA has implemented these requirements in its regulations, which use somewhat different terminology than the CAA does, for determining PSD applicability.

a. Major Stationary Sources

Under PSD, a "major stationary source" is any source belonging to a specified list of 28 source categories that emits or has the potential to emit 100 tpy or more of any air pollutant subject to regulation under the CAA, or any other source type that emits or has the potential to emit such pollutants in amounts equal to or greater than 250 tpy. *See, e.g.,* 40 CFR 52.21(b)(1). We refer to these levels as the 100/250-tpy thresholds. A new source with a potential to emit (PTE) at or above the applicable "major stationary source threshold" is subject to major NSR. These limits originate from section 169 of the CAA, which applies PSD to any "major emitting facility" and defines the term to include any source that emits or has a PTE of 100 or 250 tpy, depending on the source category. Note that the major source definition incorporates the phrase "subject to regulation," which, as described later, will begin to include GHGs on January 2, 2011, under our interpretation of that phrase as discussed in the recent memorandum entitled, " EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program." 75 FR 17004 (April 2, 2010).

b. Major Modifications

PSD also applies to existing sources that undertake a "major modification," which occurs when: (1) There is a physical change in, or change in the method of operation of, a "major stationary source;" (2) the change results in a "significant" emissions increase of a pollutant subject to regulation (equal to or above the significance level that EPA has set for the pollutant in 40 CFR 52.21(b)(23)); and (3) there is a "significant net emissions increase" of a pollutant subject to regulation that is equal to or above the significance level (defined in 40 CFR 52.21(b)(23)). Significance levels, which EPA has promulgated for criteria pollutants and certain other pollutants, represent a de minimis contribution to air quality problems. When EPA has not set a significance level for a regulated NSR pollutant, PSD applies to an increase of the pollutant in any amount (that is, in effect, the significance level is treated as zero).

2. General Requirements for PSD

This section provides a very brief summary of the main requirements of the PSD program. One principal requirement is that a new major source or major modification must apply best available control technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost effectiveness of the control and energy and environmental impacts. EPA has developed a "top-down" approach for BACT review, which involves a decision process that includes identification of all available control technologies, elimination of technically infeasible options, ranking of remaining options by control and cost effectiveness, and then selection of BACT. Under PSD, once a source is determined to be major for any regulated NSR pollutant, a BACT review is performed for each attainment pollutant that exceeds its PSD significance level as part of new construction or for modification projects at the source, where there is a significant increase and a significant net emissions increase of such pollutant.[2]

In addition to performing BACT, the source must analyze impacts on ambient air quality to assure that sources do not cause or contribute to violation of any NAAQS or PSD increments and must analyze impacts on soil, vegetation, and visibility. In addition, sources or modifications that would impact Class I areas (*e.g.,* national parks) may be subject to additional requirements to protect air quality related values (AQRVs) that have been identified for such areas. Under PSD, if a source's proposed project impacts a Class I area, the Federal Land Manager is notified and is responsible for evaluating a source's projected impact on the AQRVs and recommending either approval or disapproval of the source's permit application based on anticipated impacts. There are currently no NAAQS or PSD increments established for GHGs, and therefore these PSD requirements would not apply for GHGs, even when PSD is triggered for GHGs. However, if PSD is triggered for a GHG-emitting source, all regulated NSR pollutants that the new source emits in significant amounts would be subject to PSD requirements. Therefore, if a facility triggers NSR for non-GHG pollutants for which there are established NAAQS or increments, the air quality, additional impacts, and Class I requirements would apply to those pollutants.

Pursuant to existing PSD requirements, the permitting authority must provide notice of its preliminary decision on a source's application for a PSD permit and must provide an opportunity for comment by the public, industry, and other interested persons. After considering and responding to comments, the permitting authority must issue a final determination on the construction permit. Usually NSR permits are issued by a state or local air pollution control agency that has its own authority to issue PSD permits under a permit program that has been approved by EPA for inclusion in its SIP. In some areas, EPA has delegated its authority to issue PSD permits under Federal regulations to the state or local agency. In other areas, EPA issues the permits under its own authority.

C. What are the CAA requirements to include the PSD program in the SIP?

The CAA contemplates that the PSD program be implemented in the first instance by the states and requires that states include PSD requirements in their SIPs. CAA section 110(a)(2)(C) requires that—

> Each implementation plan * * * shall * * * include a program to provide for * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part[ ] C * * * of this subchapter.

CAA section 110(a)(2)(J) requires that—

> Each implementation plan * * * shall * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that—

> [E]ach applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality in each region * * * designated * * * as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provisions as well as other provisions such as the BACT provision under CAA Section 165(a)(4), mandate that SIPs include PSD programs that are applicable to, among other things, any air pollutant that is subject to regulation. As discussed below, this includes GHGs on and after January 2, 2011.[3]

A number of states do not have PSD programs approved into their SIPs. In those states, EPA's regulations at 40 CFR 52.21 govern, and either EPA or the state as EPA's delegatee acts as the permitting authority. However, most states have PSD programs that have been approved into their SIPs, and these states implement their PSD programs and act as the permitting authority. Alabama has a SIP-approved PSD program.

D. What actions has EPA taken concerning PSD requirements for GHG-emitting sources?

1. What are the Endangerment Finding, the Light Duty Vehicle Rule, and the Johnson Memo reconsideration?

By notice dated December 15, 2009, and pursuant to CAA section 202(a), EPA issued two findings regarding GHGs that are commonly referred to as the "Endangerment Finding" and the "Cause or Contribute Finding." "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," 74 FR 66496. In the Endangerment Finding, the Administrator found that six long-lived and directly emitted GHGs—CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6—may reasonably be anticipated to endanger public health and welfare. In the Cause or Contribute Finding, the Administrator "defin[ed] the air pollutant as the aggregate group of the same six * * * greenhouse gases," 74 FR at 66536, and found that the combined emissions of this air pollutant from new motor vehicles and new motor vehicle engines contribute to the GHG air pollution that endangers public health and welfare.

By notice dated May 7, 2010, EPA published what is commonly referred to as the "Light-Duty Vehicle Rule" (LDVR), which for the first time established Federal controls on GHGs emitted from light-duty vehicles. "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324. In its applicability provisions, the LDVR specifies that it "contains standards and other regulations applicable to the emission * * * of six

[2] EPA notes that the PSD program has historically operated in this fashion for all pollutants—when new sources or modifications are "major," PSD applies to all pollutants that are emitted in significant quantities from the source or project. This rule does not alter that for sources or modifications that are major due to their GHG emissions.

[3] In the Tailoring Rule, EPA noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants, and not GHG, and EPA responded that the PSD provisions apply to all pollutants subject to regulation, including GHG. *See* 75 FR at 31560–62. EPA maintains its position that the PSD provisions apply to all pollutants subject to regulation, and the Agency incorporates by reference the discussion of this issue in the Tailoring Rule.

greenhouse gases," including CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. 75 FR at 25686 (40 CFR 86.1818–12(a)).

On December 18, 2008, EPA issued a memorandum, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (known as the "Johnson Memo" or the "PSD Interpretive Memo," and referred to in this preamble as the "Interpretive Memo"), that set forth EPA's interpretation regarding which EPA and state actions, with respect to a previously unregulated pollutant, cause that pollutant to become "subject to regulation" under the Act. Whether a pollutant is "subject to regulation" is important for the purposes of determining whether it is covered under the Federal PSD permitting program. The Interpretive Memo established that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant (referred to as the "actual control interpretation"). On February 17, 2009, EPA granted a petition for reconsideration on the Interpretive Memo and announced its intent to conduct a rulemaking to allow for public comment on the issues raised in the memorandum and on related issues. EPA also clarified that the Interpretive Memo would remain in effect pending reconsideration.

On April 2, 2010, EPA published a notice conveying its decision to continue applying (with one limited refinement) the Interpretive Memo's interpretation of "subject to regulation." "Reconsideration of Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs," 75 FR 17004. EPA concluded that the "actual control interpretation" is the most appropriate interpretation to apply given the policy implications. However, EPA refined the Agency's interpretation in one respect: EPA established that PSD permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). In addition, based on the anticipated promulgation of the LDVR, EPA stated that the GHG requirements of the vehicle rule would take effect on January 2, 2011, because that is the earliest date that a 2012 model year vehicle may be introduced into commerce. In other words, the compliance obligation under the LDVR does not occur until a manufacturer may introduce into commerce vehicles that are required to comply with GHG standards, which will begin with model year 2012 and will not occur before January 2, 2011.

2. What is EPA's Tailoring Rule?

On June 3, 2010 (effective August 2, 2010), EPA promulgated a final rulemaking, the Tailoring Rule, for the purpose of relieving overwhelming permitting burdens that would, in the absence of the rule, fall on permitting authorities and sources. 75 FR 31514. EPA accomplished this by tailoring the applicability criteria that determine which GHG emission sources become subject to the PSD program [4] of the CAA. In particular, EPA established in the Tailoring Rule a phase-in approach for PSD applicability and established the first two steps of the phase-in for the largest GHG-emitters. Additionally, EPA committed to certain follow-up actions regarding future steps beyond the first two, discussed in more detail later in this notice.

For the first step of the Tailoring Rule, which will begin on January 2, 2011, PSD requirements will apply to major stationary source GHG emissions only if the sources are subject to PSD anyway due to their emissions of non-GHG pollutants. Therefore, in the first step, EPA will not require sources or modifications to evaluate whether they are subject to PSD requirements solely on account of their GHG emissions. Specifically, for PSD, Step 1 requires that as of January 2, 2011, the applicable requirements of PSD, most notably, the BACT requirement, will apply to projects that increase net GHG emissions by at least 75,000 tpy CO_2e, but only if the project also significantly increases emissions of at least one non-GHG pollutant.

The second step of the Tailoring Rule, beginning on July 1, 2011, will phase in additional large sources of GHG emissions. New sources that emit, or have the potential to emit, at least 100,000 tpy CO_2e will become subject to the PSD requirements. In addition, sources that emit or have the potential to emit at least 100,000 tpy CO_2e and that undertake a modification that increases net GHG emissions by at least 75,000 tpy CO_2e will also be subject to PSD requirements. For both steps, EPA notes that if sources or modifications exceed these CO_2e-adjusted GHG triggers, they are not covered by permitting requirements unless their GHG emissions also exceed the corresponding mass-based triggers in tpy.

EPA believes that the costs to the sources and the administrative burdens to the permitting authorities of PSD permitting will be manageable at the levels in these initial two steps and that it would be administratively infeasible to subject additional sources to PSD requirements at those times. However, EPA also intends to issue a supplemental notice of proposed rulemaking in 2011, in which the Agency will propose or solicit comment on a third step of the phase-in that would include more sources, beginning on July 1, 2013. In the Tailoring Rule, EPA established an enforceable commitment that the Agency will complete this rulemaking by July 1, 2012, which will allow for 1 year's notice before Step 3 would take effect.

In addition, EPA committed to explore streamlining techniques that may well make the permitting programs much more efficient to administer for GHG, and that therefore may allow their expansion to smaller sources. EPA expects that the initial streamlining techniques will take several years to develop and implement.

In the Tailoring Rule, EPA also included a provision, that no source with emissions below 50,000 tpy CO_2e, and no modification resulting in net GHG increases of less than 50,000 tpy CO_2e, will be subject to PSD permitting before at least 6 years (*i.e.,* April 30, 2016). This is because EPA has concluded that at the present time, the administrative burdens that would accompany permitting sources below this level would be so great that even with the streamlining actions that EPA may be able to develop and implement in the next several years, and even with the increases in permitting resources that EPA can reasonably expect the permitting authorities to acquire, it would be impossible to administer the permit programs for these sources until at least 2016.

As EPA explained in the Tailoring Rule, the threshold limitations are necessary because without them, PSD would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year beginning on January 2, 2011. This is the date when EPA's recently promulgated LDVR takes effect, imposing control requirements for the first time on CO_2 and other GHGs. If this January 2, 2011, date were to pass without the Tailoring Rule being in effect, PSD requirements would apply to GHG emissions at the 100/250 tpy applicability levels provided under a

[4] The Tailoring Rule also applies to the title V program, which requires operating permits for existing sources. However, today's action does not affect Alabama's title V program.

literal reading of the CAA as of that date. From that point forward, a source owner proposing to construct any new major source that emits at or higher than the applicability levels (and which therefore may be referred to as a "major" source) or modify any existing major source in a way that would increase GHG emissions would need to obtain a permit under the PSD program that addresses these emissions before construction or modification could begin.

Under these circumstances, many small sources would be burdened by the costs of the individualized PSD control technology requirements and permit applications that the PSD provisions, absent streamlining, require. Additionally, state and local permitting authorities would be burdened by the extraordinary number of these permit applications, which are orders of magnitude greater than the current inventory of permits and would vastly exceed the current administrative resources of the permitting authorities. Permit gridlock would result since the permitting authorities would likely be able to issue only a tiny fraction of the permits requested.

The Tailoring Rule's thresholds are based on CO_2e for the aggregate sum of six GHGs that constitute the pollutant that will be subject to regulation, which we refer to as GHG.[5] These gases are: CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. Thus, in EPA's Tailoring Rule, EPA provided that PSD applicability is based on the quantity that results when the mass emissions of each of these gases is multiplied by the GWP of that gas, and then summed for all six gases. However, EPA further provided that in order for a source's GHG emissions to trigger PSD requirements, the quantity of the GHG emissions must equal or exceed both the applicability thresholds established in the Tailoring Rule on a CO_2e basis and the statutory thresholds of 100 or 250 tpy on a mass basis.[6] Similarly, in order for a source to be subject to the PSD modification requirements, the source's net GHG emissions increase must exceed the applicable significance level on a CO_2e basis and must also result in a net mass increase of the constituent gases combined.

In the Tailoring Rule, EPA adopted regulatory language codifying the phase-in approach. As explained in that rulemaking, many state, local and tribal area programs will likely be able to immediately implement the approach without rule or statutory changes by, for example, interpreting the term "subject to regulation" that is part of the applicability provisions for PSD permitting. EPA has requested permitting authorities to confirm that they will follow this implementation approach for their programs, and if they cannot, then EPA has requested that they notify the Agency so that we can take appropriate follow-up action to narrow Federal approval of their programs before GHGs become subject to PSD permitting on January 2, 2011.[7] On July 31, 2010, Alabama provided a letter to EPA confirming that the State has the authority to issue PSD permits governing GHG emissions as of January 2, 2011, but explaining that Alabama needs to amend its SIP to enable it to implement the Tailoring Rule thresholds. See the docket for this proposed rulemaking for a copy of Alabama's letter.

3. What is the GHG SIP call?

By **Federal Register** notice dated September 2, 2010, EPA proposed the GHG SIP Call. In that action, along with the companion GHG FIP rulemaking published at the same time, EPA took steps to ensure that in the 13 States that do not appear to have authority to issue PSD permits to GHG-emitting sources at present, either the State or EPA will have the authority to issue such permits by January 2, 2011. EPA explained that although for most states, either the state or EPA is already authorized to issue PSD permits for GHG-emitting sources as of that date, our preliminary information shows that these 13 States have EPA-approved PSD programs that do not appear to include GHG-emitting sources and therefore do not appear to authorize these States to issue PSD permits to such sources. Therefore, EPA proposed to find that these 13 States' SIPs are substantially inadequate to comply with CAA requirements and, accordingly, proposed to issue a SIP Call to require a SIP revision that applies their SIP PSD programs to GHG-emitting sources. In the companion GHG FIP rulemaking, EPA proposed a FIP that would give EPA authority to apply EPA's PSD program to GHG-emitting sources in any State that is unable to submit a corrective SIP revision by its deadline. Alabama was not one of the States for which EPA proposed a SIP Call.

III. What is the relationship between today's proposed action and EPA's proposed GHG SIP call and GHG FIP?

As noted above, by notice dated September 2, 2010, EPA proposed the GHG SIP Call. At the same time, EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a SIP revision to ensure that the state has authority to issue PSD permits to GHG-emitting sources.[8] As discussed in Section IV of this rulemaking, Alabama interprets its current PSD regulations as providing it with the authority to regulate GHGs, and as such, Alabama is not included on the list of areas for the proposed SIP call. Additionally, Alabama would not be subject to the FIP to implement GHG for PSD applicability. Alabama's August 17, 2010, proposed SIP revision (the subject of this rulemaking) merely modifies Alabama's SIP to establish appropriate thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under the PSD program of the CAA.

IV. What is EPA's analysis of Alabama's SIP revision?

On August 17, 2010, ADEM provided a revision to Alabama's SIP to EPA for parallel processing and eventual approval. This revision to Alabama's SIP is necessary because without it, PSD requirements would apply, as of January 2, 2011, at the 100- or 250-tpy levels provided under the CAA. This would greatly increase the number of required permits, imposing undue costs on small sources; which would overwhelm Alabama's permitting resources and severely impair the function of the program.

The State of Alabama's August 17, 2010, proposed SIP revision establishes thresholds for determining which stationary sources and modification

[5] The term "greenhouse gases" is commonly used to refer generally to gases that have heat-trapping properties. However, in this notice, unless noted otherwise, we use it to refer specifically to the pollutant regulated in the LDVR.

[6] The relevant thresholds are 100 tpy for title V, and 250 tpy for PSD, except for 28 categories listed in EPA regulations for which the PSD threshold is 100 tpy.

[7] Narrowing EPA's approval will ensure that for Federal purposes, sources with GHG emissions that are less than the Tailoring Rule's emission thresholds will not be obligated under Federal law to obtain PSD permits during the gap between when GHG PSD requirements go into effect on January 2, 2011 and when either (1) EPA approves a SIP revision adopting EPA's tailoring approach, or (2) if a state opts to regulate smaller GHG-emitting sources, the state demonstrates to EPA that it has adequate resources to handle permitting for such sources. EPA expects to finalize the narrowing action prior to the January 2, 2011 deadline with respect to those States for which EPA will not have approved the Tailoring Rule thresholds in their SIPs by that time.

[8] As explained in the proposed GHG SIP Call (75 FR 53892, 53896), EPA intends to finalize its finding of substantial inadequacy and the SIP call for the 13 listed states by December 1, 2010. EPA requested that the states for which EPA is proposing a SIP call identify the deadline—between 3 weeks and 12 months from the date of signature of the final SIP Call—that they would accept for submitting their corrective SIP revision.

projects become subject to permitting requirements for GHG emissions under Alabama's PSD program. Specifically, Alabama's August 17, 2010, proposed SIP revision includes changes to ADEM's Rule 335–3–14–04 *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD)* and addresses the thresholds for GHG permitting applicability.

Alabama is currently a SIP-approved state for the PSD program, and has incorporated EPA's 2002 NSR reform revisions for PSD into its SIP. In a letter provided to EPA on July 31, 2010, Alabama notified EPA of its interpretation that the State currently has the authority to regulate GHGs under ADEM's SIP-approved Rule 335–3–14–04 *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD),* which includes the preconstruction review program required by Part C of title I of the CAA. The current Alabama program (adopted prior to the promulgation of EPA's Tailoring Rule) applies to major stationary sources (having the potential to emit at least 100 tpy or 250 tpy or more of a regulated NSR pollutant, depending on the type of source) or modifications constructing in areas designated attainment or unclassifiable with respect to the NAAQS.

EPA performed a line-by-line review of the proposed change to Alabama's SIP-approved PSD regulations 335–3–14–04, *Air Permits Authorizing Construction in Clean Air Areas—Prevention of Significant Deterioration Permitting (PSD)* and preliminarily determined that the proposed change is consistent with (and substantively the same as) the change to the Federal provisions made by EPA's Tailoring Rule. Furthermore, EPA preliminarily determined that this revision to Alabama's SIP is consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, 75 FR at 31561.

V. Proposed Action

EPA is proposing to approve Alabama's August 17, 2010, SIP revision, relating to PSD requirements for GHG-emitting sources. Specifically, Alabama's August 17, 2010, proposed SIP revision establishes appropriate emissions thresholds for determining PSD applicability with respect to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

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

Dated: October 27, 2010.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–28010 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0209; FRL–9221–5]

Approval and Promulgation of State Implementation Plans; Texas; Revisions to Chapters 39, 55, and 116 Which Relate to Public Participation on Permits for New and Modified Sources; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is withdrawing our proposed limited approval and limited disapproval of revisions to the Texas state implementation plan (SIP), which relate to public participation for air permits for new and modified sources, because the subject SIP revisions are no longer before us for review. On November 26, 2008 (73 FR 72003) EPA proposed limited approval and limited disapproval. In response to our proposed limited approval and limited disapproval, the Texas Commission on Environmental Quality (TCEQ or the Commission) adopted new regulations governing public participation for air permits and submitted these regulations to EPA as revisions to the SIP in a letter dated July 2, 2010. Also at this time, TCEQ withdrew from consideration the previously submitted revisions to the Texas SIP concerning public participation for air permits that were the subject of our November 26, 2008, proposed limited approval and limited disapproval. Consequently, the State's July 2, 2010 action also withdraws from EPA's review the public participation component of the May 21, 2009, Settlement Agreement (as modified on February 12, 2010) between EPA and the BCCA Appeal Group, Texas Association of Business, and Texas Oil and Gas Association (Settlement Agreement).

DATES: The proposed rule published November 26, 2008 (73 FR 72003) is withdrawn as of November 5, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2007–TX–0209. All documents in the docket are listed on the *http://www.regulations.gov* web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Permitting 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 FOIA 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.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, Air Permitting Section (6PD–R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone 214–665–2115, *wiley.adina@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is withdrawing our November 26, 2008 proposed limited approval and limited disapproval of revisions to the Texas SIP regarding public participation for air permits of new and modified sources. Texas withdrew the component titled "Public Participation Chapter 39, 55 (Rule Project No. 88030–039–AD and 99030–039–AD) (submittal of 12/15/95, as modified 7/22/98, and 10/25/99)" in the Settlement Agreement. As a result of the State's withdrawal, these pending submissions are no longer before EPA for review. As discussed further below, Texas' withdrawal of the component on July 2, 2010 left before EPA three minor subsections: 30 Texas Administrative Code (TAC) sections 39.411(a); 55.152(b); and 39.418(b)(3). Texas also submitted newly revised versions of the public participation provisions in Chapters 39 and 55 to EPA. The State's intent was to include the three minor subsections noted above that were not withdrawn as part of the July 2010 submission. Accordingly, consistent with that intent, EPA will evaluate those three subsections as a part of the newly adopted public participation regulations submitted by Texas on July 2, 2010, pursuant to section 110(k) of the Clean Air Act (CAA).

Our proposed action on November 26, 2008 (73 FR 72003) encompassed revisions submitted by the TCEQ on December 15, 1995; July 22, 1998; and on October 25, 1999. These SIP packages included the following rules:

- The December 15, 1995, submittal includes Texas' submittal of TAC, Title 30, Chapter 116, Subchapter D, section 116.312—Public Notification and Comment Procedures.
- The July 22, 1998, submittal includes Texas' submittal of repeal and readoption (with nonsubstantive revisions) of 30 TAC section 116.312—Public Notification and Comment Procedures.
- The October 25, 1999, submittal includes the following revisions related to this action.
  - New rules affecting 30 TAC Chapter 39—Public Notice—are as follows: Section 39.201—Application for a Preconstruction Permit; section 39.401—Purpose; section 39.403—Applicability; section 39.405—General Notice provisions; section 39.409—Deadline for Public Comment, Requests for Reconsideration, Contested Case Hearing, or Notice and Comment hearing; section 39.411—Text of Public Notice; section 39.413—Mailed Notice; section 39.418—Notice of Receipt of Application and Intent to Obtain Permit; section 39.419—Notice of Application and Preliminary Determination; section 39.420—Transmittal of the Executive Director's Response to Comments and Decision; section 39.423—Notice of Contested Case Hearing; section 39.601—Applicability; section 39.602—Mailed Notice; section 39.603—Newspaper Notice; section 39.604—Sign-Posting; section 39.605—Notice to Affected Agencies.
  - New rules affecting 30 TAC Chapter 55—Requests for Reconsideration and Contested Case Hearing—are as follows: Section 55.1—Applicability; section 55.21 Requests for Contested Case Hearing, Public Comment; section 55.101—Applicability; section 55.103—Definitions; section 55.150—Applicability; section 55.152—Public Comment Period; section 55.154—Public Meetings; section 55.156—Public Comment Processing; section 55.200—Applicability; section 55.201—Requests for Reconsideration and Contested Case Hearing; section 55.203—Determination of Affected Person; section 55.205—Request by Group or Association; section 55.209—Processing Requests for Reconsideration or Contested Case Hearing; and section 55.211—Commission Action or Requests for Reconsideration and Contested Case Hearing.
  - Rule revisions affecting 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction and Modification are as follows: Section 116.111—General Application; section 116.114—Application Review Schedule; section 116.116—Changes to Facilities; section 116.183—Public Notice Requirements; section 116.312—Public Notification and Comment Procedures; and section 116.740—Public Notice.
  - Repeal of 30 TAC section 116.124—Public Notice of Compliance History.

On June 2, 2010, the TCEQ adopted amendments to 30 TAC Chapter 39, Public Notice; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 60, Compliance History; and Chapter 116, Control of Air Pollution by Permits for New Construction or Modification; and corresponding revisions to the Texas SIP. On July 2, 2010, the TCEQ submitted these new and amended sections regarding public participation to EPA as SIP revisions. At that time, TCEQ also adopted the withdrawal from consideration by EPA for revisions to the Texas SIP that were previously submitted to EPA as revisions to the SIP on October 25, 1999; July 31, 2002; and March 9, 2006. The sections submitted to EPA in 1999 were 30 TAC sections 39.201; 39.401; 39.403(a) and (b)(8)–(10); 39.405(f)(1) and (g); 39.409; 39.411(a), (b)(1)–(6) and (8)–(10) and (c)(1)–(6) and (d); 39.413(9), (11), (12) and (14); 39.418(a) and (b)(3) and (4); 39.419(a), (b), (d), and (e); 39.420(a), (b), and (c)(3) and (4); 39.423(a) and (b); 39.601; 39.602; 39.603; 39.604; and 39.605. The sections submitted to EPA in 2002 were new 30 TAC section 39.404, and amended sections 39.411, 39.419, 39.420, 39.603, 39.604 and 39.606. The sections submitted to EPA in 2005 were amended 30 TAC sections 39.403(b)(8)–(10) and new (f); 39.411(a), (b)(1)–(6), (8)–(10), (c)(1)–(6) and (d); 39.419(a), (b), (d) and (e); and 39.420(a), (b) and (c)(3) and (4). In 2005, the TCEQ also submitted the repeal of 30 TAC section 39.404 and the adoption of new section 39.404, and the withdrawal of sections 39.411, 39.419, and 39.420 as submitted to EPA in 2002. At that time the TCEQ also adopted the withdrawal of the following rules which were submitted as SIP revisions on October 25, 1999: 30 TAC sections 55.1; 55.21(a)–(d), (e)(2), (3) and (12), (f) and (g); 55.101(a), (b), (c)(6)–(8); 55.103; 55.150; 55.152(a)(1), (2) and (5); 55.154;

55.156; 55.200; 55.201(a)–(h); 55.203; 55.205; 55.209; and 55.211. Therefore, on July 2, 2010, the TCEQ withdrew from EPA's consideration as revisions to the SIP all of the rules specified previously in this paragraph, except for three subsections: 30 TAC sections 39.411(a) and 55.152(b) as adopted in 1999, and currently amended 30 TAC section 39.418(b)(3), submitted to EPA in 1999 as section 39.418(b)(4). As explained below, EPA concludes that it is TCEQ's intent for EPA to consider the three subsections as part of the new package that TCEQ submitted to EPA on July 2, 2010.

Withdrawal of EPA's Proposed Action on Chapter 39 and Chapter 55

In this notice, EPA is withdrawing our proposed limited approval and limited disapproval of 30 TAC sections 39.201, 39.401, 39.403, 39.405, 39.409, 39.411, 39.413, 39.418, 39.419, 39.420, 39.423, 39.601–39.605, 55.1, 55.21, 55.101, 55.103, 55.150, 55.152, 55.154, 55.156, 55.200, 55.201, 55.203, 55.205, 55.209, and 55.211. While we are withdrawing our proposed limited approval and limited disapproval of subsections 30 TAC sections 39.411(a), 39.418(b)(4), and 55.152(b) as well, we are not taking any further action at this time on these three subsections that the State did not withdraw for the reasons discussed below.

First, TCEQ originally intended to withdraw these three subsections when it withdrew the rest of the 30 TAC Chapter 39 and 55 subsections pertaining to public participation for new and modified sources and resubmit them as part of the new July 2010 submission. Their intent is demonstrated by the fact that TCEQ proposed to withdraw these three subsections from EPA consideration along with all the other withdrawn rules. At the time of the Commission's adoption, however, TCEQ did not withdraw these three subsections because it discovered that these three subsections were inadvertently not included in the notice proposing the new public participation rules for the SIP. As such, a final withdrawal of these three subsections would have left unintended gaps in the July 2010 submission. This administrative error can be tracked through the State proposal and adoption notices, and is noted in the Commission's adoption order and transmittal letter to EPA. See, e.g., discussion in the "Prior SIP Submissions" section of the rule adoption preamble, at page 5198 in the June 18, 2010 edition of the Texas Register.[1] Thus, although TCEQ intended to fully withdraw these three subsections with the other pre-2010 submissions and resubmit them as part of the July 2010 submissions, TCEQ's failure to include these subsections with the proposed rule revisions precluded them from reaching that goal. TCEQ achieved the intended result by not withdrawing these three subsections, and thereby preserving them for EPA's review with the July 2010 submissions. The end result of this is to present EPA with a complete set of integrated provisions upon which to act.

Second, the three unwithdrawn subsections, in the absence of the withdrawn provisions, lack the substance that they had in the context of the full submission.

- Section 30 TAC 39.411 contains the requirements for the "Text of Public Notice." The unwithdrawn subsection from this section, in 30 TAC 39.411(a), states that "Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given." But, the applicable requirements for notice text (contained in subsections 30 TAC 39.411(b)(1)–(6)[2] and (8)–(10) and (c)(1)–(6) and (d)) were all withdrawn from EPA's consideration on July 2, 2010. As a result, 30 TAC 39.411(a) lacks the substance that it had in the context of the provisions stating the applicable requirements for the notice text.
- Subsection 30 TAC 39.418(b)(4) provides a 30-day deadline for providing notice of certain "applicable information," stating: "Not later than 30 days after the executive director declares an application administratively complete: The notice must include the applicable information required by section 39.411(b) of this title (relating to Text of Public Notice)." But, TCEQ withdrew the rest of 30 TAC 39.418 and the cross-referenced 30 TAC 39.411(b) from EPA's consideration on July 2, 2010. Thus, 30 TAC 39.418(b) lacks the substance that it had in the context of the provisions identifying the "applicable information" and the other parts of 30 TAC 39.418.
- Subsection 30 TAC 55.152(b) states that: "The public comment period shall automatically be extended to the close of any public meeting." But, in July 2010, TCEQ withdrew the provisions for "Public Meetings" when it withdrew 30 TAC 55.154 and the provisions for "Public Comment Period" when it withdrew 30 TAC 55.152. Thus, 30 TAC 55.152(b) lacks the substance that it had in the context of these withdrawn provisions.

Third, these three subsections are integral parts of the newly submitted public participation rules. (*see* the Texas SIP submittal dated July 2, 2010). The July 2010 submissions contain the provisions that give substance and context to these three subsections. Further, these three subsections fit numerically into the July 2010 submissions to form an integrated set of provisions.

- Section 30 TAC 39.411 contains the requirements for the "Text of Public Notice." The unwithdrawn subsection from this section, in 30 TAC 39.411(a), states that "Applicants shall use notice text provided and approved by the agency. The executive director may approve changes to notice text before notice being given." The applicable requirements for notice text (contained in subsections 30 TAC 39.411(b)(1)–(6) and (8)–(10) and (c)(1)–(6) and (d)) is included in the July 2010 submission. As a result, newly submitted 39.411(b) provides the context and meaning for unwithdrawn 30 TAC 39.411(a).
- Currently amended subsection 39.418(b)(3), submitted to EPA in 1999 as subsection 39.418(b)(4)[3] provides a 30-day deadline for providing notice of certain "applicable information," stating: "Not later than 30 days after the executive director declares an application administratively complete: The notice must include the applicable information required by section 39.411(b) of this title (relating to Text of Public Notice)." The remainder of 30 TAC 39.418 and the cross-referenced 30 TAC 39.411(b) are also contained in the July 2010 submission. Thus, the provisions identifying the "applicable information" and the other parts of 30 TAC 39.418 give meaning to the language in the unwithdrawn subsection.
- Subsection 30 TAC 55.152(b) states that: "The public comment period shall automatically be extended to the close of any public meeting." TCEQ included the provisions for "Public Comment Period" and "Public Meetings" in the July 2010 submission at 30 TAC 55.152 and 30 TAC 55.154, respectively. Subsection 30 TAC 55.152(b) must be

[1] *See* also the e-mail from Janis Hudson of TCEQ to Lucinda Watson of Region 6 EPA dated September 28, 2010, explaining this situation, available in the e-docket for this rulemaking.

[2] Note that TCEQ never submitted subsection 30 TAC 39.411(b)(7) as SIP revisions because it contains a State-only requirement under Texas' Coastal Management Program.

[3] Note that the July 2010 submission deletes the previous 30 TAC 39.418(b)(3) and simply re-numbers 30 TAC 39.418(b)(4) as 30 TAC 39.418(b)(3).

read in conjunction with these provisions to be meaningful.

For all of the reasons discussed above, the submission relating to public participation on which EPA had an obligation, under the Settlement Agreement, to take action is no longer before us. Instead, the effect of the July 2010 submissions and withdrawals is to create a new submission, as of July 2, 2010, which combines the three unwithdrawn provisions with the July 2010 submissions and creates a single integrated submission that must subsequently be reviewed as provided under section 110(k) of the CAA. Thus, EPA will evaluate these three subsections, 30 TAC sections 39.411(a), 55.152(b) and 39.418(b)(3), when we evaluate, pursuant to section 110(k) of the CAA, the newly adopted public participation regulations submitted by Texas on July 2, 2010.

Withdrawal of EPA's Proposed Action on Chapter 116

EPA is also withdrawing our proposed limited approval and limited disapproval of the revisions to 30 TAC Chapter 116 submitted on December 15, 1995; July 22, 1998; and October 25, 1999. The 30 TAC Chapter 116 submissions are not a component of the Settlement Agreement, and while TCEQ withdrew the previously-noted sections of Chapters 39 and 55, TCEQ has not withdrawn these Chapter 116 submissions. Specifically, EPA is withdrawing our proposed limited approval and limited disapproval of 30 TAC section 116.312 as submitted by TCEQ on December 15, 1995. The TCEQ repealed and replaced this section with new section 116.312 on July 22, 1998. Therefore, EPA finds that the December 15, 1995 submittal of 30 TAC 116.312 is moot. The TCEQ submitted new section 116.312 on July 22, 1998 and amendments to this section on October 25, 1999. The TCEQ also submitted amendments to 30 TAC sections 116.111, 116.114, and 116.116 on October 25, 1999. Because these sections all cross-reference and rely on the Chapter 39 public participation provisions that have been withdrawn and replaced with the July 2, 2010, SIP submittal, EPA will also consider these revisions in the context of the July 2, 2010, Chapter 39 public participation SIP submittal. Therefore, we are withdrawing our proposed limited approval and limited disapproval and will evaluate the July 22, 1998 and October 25, 1999, revisions to 30 TAC section 116.312 and the October 25, 1999, revisions to 30 TAC sections 116.111, 116.114, and 116.116 when we evaluate, pursuant to section 110(k) of the CAA, the newly adopted public participation regulations submitted by Texas on July 2, 2010. EPA is also withdrawing our proposed limited approval and limited approval of the October 25, 1999, revisions to 30 TAC section 116.183. However, because this section provides public notice requirements for hazardous air pollutants subject to section 112(g) of the CAA, we find that no further action is necessary on the revisions to this section because 112(g) requirements are not part of the SIP. EPA is also withdrawing our proposed limited approval and limited disapproval of the October 25, 1999, revisions to 30 TAC section 116.740 because EPA fully disapproved this revision in our July 15, 2010, disapproval of the Texas Flexible Permits Program (*see* 75 FR 41312). Note that even though EPA proposed limited approval and limited disapproval of 30 TAC sections 116.111, 116.114, 116.116, and 116.312 at the same that we proposed limited approval and limited disapproval of the remainder of the Texas Public Participation provisions, the timing of action on these Chapter 116 provisions is not governed by the Settlement Agreement. Therefore, our withdrawal today of the proposed limited approval and limited disapproval of 30 TAC sections 116.111, 116.114, 116.116, and 116.312 does not impact in any way EPA's obligations or actions under the Settlement Agreement.

List of Subjects in 40 CFR Part 52

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

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

Dated: October 29, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–28013 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0794; FRL–9222–5]

Revisions to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X), carbon monoxide (CO), oxides of sulfur (SO_2) and particulate matter emissions from boilers, steam generators and process heaters greater than 5.0 MMbtu/hour. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *December 6, 2010.*

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2010–0794], by one of the following methods:

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

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

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

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an

appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULE

Local Agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4320	Advance Emission Reduction Options for Boilers, Steam Generators and Process Heaters greater than 5.0 MMbtu/hr.	10/16/08	03/17/09

On April 20, 2009, EPA determined that the submittal for SJVUAPCD Rule 4320 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 4320 in the SIP.

C. What is the purpose of the submitted rule?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. Rule 4320 limits NO_X, SO_2, PM10 and CO emissions from boilers, steam generators and process heaters with a total rated heat input greater than 5 MMBtu/hour. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in nonattainment areas (see CAA sections 172(c)(1)). The SJVUAPCD regulates an ozone nonattainment area and a PM–2.5 nonattainment area (see 40 CFR part 81), so the SIP as a whole, including Rule 4320 and 4306, must fulfill RACT and implement a RACM level of control.

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

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement), 57 FR 55620, November 25, 1992.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498, April 16, 1992; 57 FR 18070, April 28, 1992.
5. "Clean Air Fine Particle Implementation Rule" 72 FR 20586, April 25, 2007.
6. "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters", CARB, July 18, 1991.
7. "Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers", US EPA 453/R–94–022, March 1994.
8. "Alternative Control Techniques Document—NO_X Emissions from Utility Boilers", US EPA 452/R–93–008, March 1994.
9. "Control Techniques for Sulfur Oxide Emissions from Stationary Sources", US EPA 450/3–81–004, April 1981.
10. "Improving Air Quality with Economic Incentive Programs," US EPA, 452/R–01–001, January 2001.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. However, we do not believe that the rule is consistent with EPA's Economic Incentive Programs (EIP) guidance. The rule includes payment of a fee as an option for compliance and prohibitory rules that include fee provisions are EIPs subject to the EIP guidance. The District will use the fees to purchase emission reductions. To ensure that all emission reductions purchased by the District are adequately surplus, quantifiable, enforceable, permanent and otherwise consistent with EPA's EIP guidance, this component of the program must be fully described and included in a SIP submittal. The existing submittal of Rule 4320 does not include all necessary details on how creditable emission reductions will be achieved. Thus, it is not appropriate to fully credit emission reductions for this rule without additional documentation. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

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

D. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act.

We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: October 25, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–28019 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2009–0559; FRL–9222–4]

RIN 2060–AP90

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; technical correction.

SUMMARY: This action clarifies certain text of the proposed rules titled "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units." The proposed rules were published in the **Federal Register** on October 14, 2010. The action proposes how EPA will address Clean Air Act requirements to establish new source performance standards for new units and emission guidelines for existing units for specific categories of solid waste incineration units.

DATES: Comments must be received on or before November 29, 2010.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2009–0559 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *A-and-r-docket@epa.gov.*
- *Facsimile:* Fax your comments to (202) 566–1741, Attention Docket ID Number EPA–HQ–OAR–2009–0559.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket Information Center, 1200 Pennsylvania Avenue, NW.; Mail Code: 6102T, Washington, DC 20460. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Hand Delivery:* To send comments or documents through a courier service, the address to use is: EPA Docket Center, Public Hearing Room, EPA West, Room 334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are accepted only during the Docket's normal hours of operation—8:30 a.m. to 4:30 p.m., Monday through Friday. Special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Hambrick, Natural Resource and Commerce Group, Sector Policies and Programs Division (E143–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0964; facsimile number: (919) 541–3470; e-mail address: *hambrick.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in this notice.

I. What is the background for the correction?
II. What are the corrections to the proposed rules (75 FR 63260)?
III. Statutory and Executive Order Reviews

I. What is the background for the correction?

On October 14, 2010 (75 FR 63260), EPA proposed rules that would address in part Clean Air Act requirements to establish new source performance standards (NSPS) for new units and emission guidelines (EG) for existing units for specific categories of solid waste incineration units. In that action, EPA proposed NSPS and EG for sewage sludge incineration (SSI) units. EPA subsequently determined that one sentence in the proposed regulatory text could have been interpreted in a manner inconsistent with what EPA intended to propose. This notice clarifies that language.

This action does not affect the substance of the proposed rules, nor does it change the rights or obligations of any party. Rather, this notice merely clarifies certain regulatory text in the proposed rules. This action is minor,

noncontroversial, and does not substantively change the proposed rule.

II. What are the corrections to the proposed rules (75 FR 63260)?

In this notice, we are clarifying the scope of the proposed affirmative defense for exceedance of an emission limit or standard during a malfunction. *See* proposed regulatory text at 75 FR 63260. Specifically, we are clarifying the regulatory text to reflect that the affirmative defense is available only against claims for civil penalties. The preamble to the October 14, 2010 (75 FR 63283), notice stated this position, as did other portions of the proposed regulatory text. *See* 75 FR 63299 proposed § 60.4861(b) and 75 FR 63323 proposed § 60.5181(b). However, one sentence in the regulatory text created a potential ambiguity that may not have reflected the Agency's intent. Therefore, we are clarifying this in the proposed regulatory text to explain that a facility may assert an affirmative defense to a claim for civil penalties for exceedances of the standards that are caused by a malfunction, as defined in 40 CFR 60.2, but may not assert such a defense to a claim for injunctive relief.

EPA is soliciting public comment on the proposed SSI rule published on October 14, 2010, until November 15, 2010, unless a public hearing is held. If a public hearing is held, then comments on the proposed SSI rule published on October 14, 2010, must be received by November 29, 2010. Members of the public may also comment on this technical correction during that time, and should submit any such comments to the docket for that proposed rule. Submit your comments, identified by Docket ID Number EPA–HQ–OAR–2009–0559, by one of the following methods identified in 75 FR 63260.

III. Statutory and Executive Order Reviews

EPA's compliance with relevant statutes and Executive Orders for the proposed SSI rule is discussed in the October 14, 2010, **Federal Register** notice titled "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units." (75 FR 63260). This technical correction does not affect the analyses contained in the October 14, 2010, notice.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 29, 2010.

Gina A. McCarthy,

Assistant Administrator.

For the reasons stated in the preamble, FR Doc. No. 2010–25122, published in the **Federal Register** on October 14, 2010, at 75 FR 63260 is corrected as follows:

1. Beginning on page 63298, in the third column, remove the second sentence in § 60.4861 introductory text and add the following two sentences in its place: "Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief."

2. On page 63323, in the center column, remove the second sentence in § 60.5181 introductory text and add the following two sentences in its place: "Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief."

[FR Doc. 2010–28002 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152

[EPA–HQ–OPP–2009–0456; FRL–8424–8]

RIN 2070–AJ58

Pesticides; Satisfaction of Data Requirements; Procedures To Ensure Protection of Data Submitters' Rights

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to revise its regulations governing procedures for the satisfaction of data requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These provisions include, among other things, procedures for the protection of exclusive use and data compensation rights of data submitters. The proposed revisions would update the regulations, which have not been revised since issuance in 1984, to accommodate statutory and procedural changes that have occurred since that time. The revisions would also make minor changes to clarify the regulations. The revisions would simplify the procedures and reduce burdens for certain data submitters.

DATES: Comments must be received on or before January 4, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0456, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0456. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available

at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Cameo G. Smoot, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–5454; *fax number:* (703) 305–5884; *e-mail address: smoot.cameo@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you produce pesticide products that require registration with EPA (NAICS code 32532).

This listing is not all-inclusive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 152.81 of the regulatory text. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. Statutory Authority

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.,* EPA regulates the sale, distribution and use of pesticides, and the allowable levels of such pesticides in or on food under the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA regulations covering activities under these statutes are located in 40 CFR parts 150–180.

The process of registering a pesticide begins with submission to EPA of an application package and required data. In reviewing applications for pesticide product registration under FIFRA, EPA must determine, among other things, whether the pesticide generally causes unreasonable adverse effects on the environment when used in accordance with widespread and commonly recognized practice. If EPA determines that a pesticide product meets the registration standard of FIFRA section 3(c), EPA registers (or licenses) the product for distribution and sale in the United States (U.S.). Pesticides must be registered or exempted by EPA's Office of Pesticide Programs before they may be sold or distributed in the U.S. Once registered, a pesticide may not legally be used unless the use is consistent with the approved directions for use on the pesticide's label or labeling.

B. Data Requirements

FIFRA section 3(c)(2) directs EPA to publish guidelines specifying the kinds of data that applicants and registrants must submit to support EPA regulatory determinations under FIFRA. These data requirements are set forth in 40 CFR part 158 and 40 CFR part 161. The data allow EPA to evaluate whether a pesticide has the potential to cause harmful effects on certain nontarget organisms and endangered species that include: Humans; wildlife; plants; and surface water or ground water.

C. Satisfaction of Data Requirements

EPA regulations in 40 CFR part 152, subpart E prescribe a variety of means by which applicants may satisfy EPA's data requirements. These include submitting new studies, but they also allow an applicant to cite to data previously submitted by another person that are relevant to that applicant's product. When the latter option is selected, an applicant may be required to either obtain permission or offer compensation to cite the data, depending upon whether the data at issue are subject to the exclusive use or data compensation provisions of FIFRA section 3(c)(1)(F). In addition, the regulations in 40 CFR part 152, subpart E spell out the circumstances under which certain applicants are exempt from data submission or citation obligations (*i.e.,* the formulators' exemption provided by FIFRA section 3(c)(2)(D)).

D. Protection of Data Submitters' Rights

The bulk of the regulations in 40 CFR part 152, subpart E address those situations in which applicants for registration choose to satisfy data requirements by citation to existing data submitted by other persons. In that respect, the regulations prescribe:

1. The means by which a pesticide data submitter can protect and document his/her exclusive use and compensation rights in data submitted to the Agency. Generally, persons submitting data must request inclusion on an Agency-maintained Data Submitters List as the means for

asserting their rights to offers of compensation from applicants who cite their data.

2. Procedures that applicants who cite to data submitted by others must follow to ensure that data submitters' rights are protected. The procedures apply to new and amended registrations, as well as maintenance of existing registrations under the reregistration and registration review programs.

3. Procedures for the transfer of data rights to other persons. Data rights are separate from the registration of the pesticide, and therefore may be transferred to another person separate from the registration.

4. The procedures that a data submitter may use to seek redress when the submitter believes he/she has been deprived of data rights accorded under FIFRA.

III. Today's Proposed Revisions

EPA is proposing to update certain aspects of 40 CFR part 152, subpart E regulations governing satisfaction of data requirements and the associated data rights procedures. The regulations were promulgated in 1984 and have served satisfactorily since then. EPA has, however, identified the need to update the provisions to reflect changes in the statute and related practices over time. For example, the scope of the protections has expanded by statute to include both new protections and new decisions that are subject to data rights protection procedures, including reregistration under FIFRA section 4, and registration review under FIFRA section 3(g). In addition, EPA's needs and practices have changed.

A. Applicability (40 CFR 152.81 and 40 CFR 152.46)

EPA proposes to replace the limited listing of actions to which the subpart does not apply (excepted actions) with a single reference to actions that may be accomplished by notification or non-notification under 40 CFR 152.46. EPA's intention is first to simplify the exception provisions. At the same time, however, the revision highlights the underlying principle that an action that does not require scientific review of data also does not require satisfaction of data requirements, and is not subject to the requirements in 40 CFR part 152, subpart E. While the current regulation contains this *proviso* in 40 CFR 152.81(b)(4)(xvi), the proposed revision gives prominence to this fundamental precept, and provides a firm basis for future determinations of the applicability of 40 CFR part 152, subpart E to specific actions.

1. *Applicability (40 CFR 152.81).* 40 CFR 152.81 describes the applicability of the provisions of subpart E to applications of various types, and more important to today's proposal, those actions to which the procedures do not apply. Some actions are not covered by the provisions of FIFRA section 3(c)(1)(F), including actions such as emergency exemptions under FIFRA section 18, experimental use permits under FIFRA section 5, and State registrations under FIFRA section 24(c). These exceptions would not change.

However, the bulk of the exceptions listed in current 40 CFR 152.81(b) rely not on statutory exceptions, but on the principle that if EPA does not need to review scientific data in order to make its regulatory determinations, it need not require that applicants address the satisfaction of data requirements at all. Accordingly, current 40 CFR 152.81(b) identifies a detailed set of amendments to registration that do not require review of scientific data. These include, among other things, minor amendments to composition and labeling, deletion of uses, clarifications of labeling content and presentation, and other actions of an essentially administrative nature. The list was not intended to be all-inclusive when promulgated, and is in fact only illustrative, given the wide variety of possible revisions to registration. EPA reserved the right to make determinations on the need for scientific data on a case-by-case basis, and either to require the procedures if scientific data are needed, or excuse the applicant from the procedures if scientific data are not needed (*see* 40 CFR 152.81(b)(4) and 40 CFR 152.81(b)(4)(xvi) respectively).

2. *Notifications and non-notifications (40 CFR 152.46).* In a major restructuring of its procedural regulations in 1988, EPA introduced the concept of revisions to registration that could be accomplished by notification (40 CFR 152.46(a)) or non-notification (40 CFR 152.46(b)). Further, in 1996, those regulations were amended (61 FR 33039, June 26, 1996) (FRL–5372–8) to permit the Agency to issue procedures (generally issued using Pesticide Registration (PR) Notices) to implement actions by notification or non-notification.

The notification and non-notification processes are intended to provide a streamlined means for registrants to make registration changes that have no potential to cause adverse effects. As the terms suggest, changes identified in these procedures may be accomplished without the need for Agency approval. EPA regards an action that will "have no potential to cause unreasonable adverse effects" as used in 40 CFR 152.46 as equivalent to a determination that no scientific data are needed to make the change within the meaning of 40 CFR 152.81(b)(4)(xvi). In the latest PR Notice that addresses revisions that may be made by notification and non-notification (*i.e.,* PR Notice 98–10, October 22, 1998), EPA expanded the list of eligible actions considerably. Note that EPA has also permitted certain specific labeling changes to be made through notification or non-notification in other PR Notices (*see, e.g.,* PR Notices 2007–1 and 2008–1) and in case-by-case registration actions.

3. *Comparison of actions (40 CFR 152.81 and 40 CFR 152.46).* EPA has reviewed the list of actions in 40 CFR 152.81(b)(4) against those permitted by notification or non-notification under 40 CFR 152.46, as expressed in PR Notice 98–10, to determine whether the changes are comparable. PR Notice 98–10 represents an additional 14 years of evolving Agency regulations and policy from the 1984 promulgation of 40 CFR 152.81, and is considerably more detailed in its description of actions. Thus comparisons between the two are not exact.

In a number of cases, the types of amendments excepted under 40 CFR 152.81(b)(4) are covered by the provisions of 40 CFR 152.46, as expressed in PR Notice 98–10, and thus the proposed revision would have no effect on applications of those amendments (for example, minor changes in labeling having no substantive impact). In other cases, statutory, regulatory and policy changes since 1984 have resulted in excepted actions no longer being eligible for exception under 40 CFR 152.81(b). For example, addition or deletion of an active ingredient is now generally regarded as a new formulation requiring new registration. Finally, some types of excepted actions have been rendered moot as they are no longer treated as "applications" for the purposes of subpart E, and are governed by other regulations (*e.g.,* supplemental distribution, name and address changes, label splitting for marketing purposes).

EPA regards the determinations under 40 CFR 152.46, as expressed in PR Notice 98–10 and in other notices implementing notification or non-notification procedures, as the Agency's written finding under 40 CFR 152.81(b)(4) as to whether scientific data (and thus compliance with subpart E) are required to evaluate an application. Today's proposal simply articulates this principle in the text of the regulations.

EPA will generally make these determinations in connection with its

review of applications. However, applicants and registrants may seek EPA's determination as to whether subpart E procedures will apply to their actions in advance of submission of their applications.

The proposed revision would broadly apply to future actions that EPA determines can be implemented through notification or non-notification procedures. Changes to the actions permitted by notification or non-notification in the future may change the applicability of the procedures in subpart E. Excepted actions not addressed specifically in the regulation or that are not subject to notification and non-notification procedures would continue to be subject to subpart E unless EPA determines, on a case-by-case basis, that such actions do not require scientific review of data.

Accordingly, EPA proposes to eliminate the limited listing in 40 CFR 152.81 in favor of a reference to any action that may be implemented by the notification or non-notification procedures under 40 CFR 152.46.

B. Update Definition of Exclusive Use Study (40 CFR 152.83)

EPA proposes to update and restructure the existing definition of "exclusive use study" to incorporate the additional exclusive use criteria added by the Food Quality Protection Act (1996). In that act, Congress expanded the exclusive use provisions of FIFRA section 3(c)(1)(F) in two circumstances:

1. Congress amended section 3(c)(1)(F)(ii) to allow for the extension of an original 10-year exclusive use provision for a period of up to an additional 3 years when the registrant adds minor uses meeting certain criteria to the original registration for which the exclusive use data were submitted.

2. Congress added a new section 3(c)(1)(F)(vi) that creates exclusive use rights in data submitted by an applicant or registrant to support an amendment adding a new use to an existing registration that does not retain any period of exclusive use, provided such data relate solely to a minor use of a pesticide. These provisions would be incorporated into the new definition.

Because of the complexity of the new definition of exclusive use, EPA proposes to create a separate provision in the regulation to define "exclusive use study." To do so, EPA proposes to move the existing definitions from 40 CFR 152.83 into 40 CFR 152.82, and to add a new 40 CFR 152.83.

C. When Materials Must Be Submitted (40 CFR 152.84)

EPA proposes to revise 40 CFR 152.84 to conform to the requirements of FIFRA section 33(f)(4) (as amended by the Pesticide Registration Improvement Renewal Act, Public Law 110–94, commonly called PRIA II).

Current 40 CFR 152.84 allows an applicant to submit required documents, forms, and other materials related to satisfaction of data requirements at any time before the Agency approves the application, although it recommends submission at the time of application. Some of the required information must be submitted with the application, *e.g.,* a request for waiver of a data requirement, because the Agency must make a determination as part of its review process. Other information has routinely been provided on forms supplied by the Agency, such as the Formulators' Exemption Statement or the General Offer to Pay Statement, and typically is submitted with the application.

Under FIFRA section 33(f)(4)(B), EPA must determine during the initial screen (within 21 days after receiving an application and the required registration service fee) that "the application contains all the necessary forms, data, and draft labeling, formatted in accordance with guidance published by the Administrator." Information and forms required by subpart E pertaining to satisfaction of data requirements are covered by this provision. Furthermore, the Agency must reject applications that do not pass the initial 21-day content screen. Accordingly, the information and forms required by subpart E are no longer permitted to be submitted at any time prior to approval of the application, but must be submitted at the time of application.

In addition to the above reasons, EPA believes that the primary rationale for the provision of 40 CFR 152.84 that allows applicants to satisfy subpart E requirements after submission of an application no longer exists. In the preamble to the existing regulations (49 FR 30884, at 30897, August 1, 1984), EPA identified the 60-day waiting period for data gap certification letters as the primary example of time-consuming activities that could unduly delay the submission of an application were applicants are required to submit completed subpart E materials at the time of submission of their applications. Because this proposed regulation will eliminate the requirement for applicants to send data gap letters in order to claim a data gap under the selective method of data support (*see* Unit III.G.), EPA sees no compelling reason for maintaining the existing provision even in the absence of the requirements of PRIA II.

Accordingly, EPA proposes to revise 40 CFR 152.84 to specify that the necessary forms and information pertaining to satisfaction of data requirements must be submitted at the time of application.

D. Addition of Electronic Means of Contacting Data Submitters (40 CFR 152.86 and 40 CFR 152.95)

EPA proposes to revise 40 CFR 152.86 and 40 CFR 152.95 to include the use of electronic methods of communication, such as e-mail, in addition to regular mail. This change would update communication methods between applicants.

E. Selective Method (40 CFR 152.90)

EPA proposes to eliminate the requirement that applicants use a Registration Standard as the default source of the listing of data requirements under the selective method in 40 CFR 152.90.

Under the provisions of subpart E, an applicant may choose between two methods to address data compensation for cited data: Cite-all or selective. The cite-all method (40 CFR 152.86) permits an applicant to cite collectively all data in the Agency's files that might pertain to his/her product, provided, among other things, the applicant certifies that he/she has obtained the original data submitter's permission to cite any exclusive use data for the chemical, makes an offer to pay each person listed on the Data Submitters List for each active ingredient in his/her product and makes a general offer to pay other persons to the extent required by FIFRA section 3(c)(1)(F). The cite-all method, while easier to use and less burdensome procedurally, potentially subjects the applicant to an unknown or uncertain compensation liability.

In contrast, under the selective method (40 CFR 152.90), an applicant must provide a list of data requirements that would apply to his/her product if it were being proposed for registration under FIFRA section 3(c)(5) for the first time, and must choose an acceptable method of satisfying each data requirement individually. If the applicant chooses to cite to existing data to satisfy an individual requirement, the applicant will need the permission of the original data submitter if the data are entitled to exclusive use treatment under FIFRA, or will need to make an offer to pay compensation to the original data submitter if the data are subject to the compensation provisions of FIFRA.

Because this method allows the applicant to select the data to be relied upon to meet EPA data requirements, the applicant under the selective method may thereby limit the scope of the required offers to pay.

Currently, 40 CFR 152.90(a) requires that an applicant use an issued Registration Standard (the EPA reregistration decision documents issued prior to 1988) as the source of his/her list of data requirements for the selective method. If the Registration Standard does not address all required data or there is no Registration Standard, the applicant must refer to 40 CFR part 158 data requirements as the alternate source of his/her list of data requirements.

The form of EPA decision documents has evolved since the 1984 regulations were promulgated. Registration Standards were superseded beginning in 1988 by Reregistration Eligibility Decision documents (REDs) as the Agency implemented the reregistration requirements of FIFRA section 4. In turn, REDs will likely be superseded or updated by determinations made under the new Registration Review program required by FIFRA section 3(g) and 40 CFR part 155. Given the growth and evolution of the program's systematic review of existing pesticides, EPA believes it should no longer identify by regulation a specific type of decision document as the source of data requirement listings. These documents are a snapshot of the data requirements at a particular review period, and are likely to become outdated over time as EPA's risk assessments evolve and new types of data are needed.

EPA also notes that on October 26, 2007 ((72 FR 60934) (FRL–8106–5); (72 FR 60988) (FRL–8109–8)), EPA significantly amended its data requirements in 40 CFR part 158 for conventional, biochemical and microbial pesticides. 40 CFR part 158 and 40 CFR part 161 represent the most up-to-date iteration of data requirements for pesticides, and are likely to be updated in the future when appropriate to meet changing data needs. For example, EPA proposed revisions to the data requirements for antimicrobial pesticides (73 FR 59381, October 8, 2008), and other amendments are under development. In general, EPA believes that the regulations in 40 CFR part 158 and 40 CFR part 161 should be the primary source of the data listings needed for the selective method.

Thus, EPA proposes to remove from 40 CFR 152.90 the requirement that any specific Agency listing of data requirements serve as the basis for the selective method listing. Instead, EPA would refer applicants to the data requirements in 40 CFR part 158 and 40 CFR part 161.

Notwithstanding, consideration of existing decision documents such as REDs will continue to provide useful guidance to applicants and registrants in determining how EPA has applied the data requirements to individual products and uses. However, such documents do not represent a binding Agency determination regarding the data requirements that must be fulfilled to satisfy the requirements of any individual registration.

F. Data Waivers (40 CFR 152.91)

EPA proposes to make minor revisions in the data waiver provisions in the selective method in 40 CFR 152.91 to conform to current policy concerning waivers, and to update them to accommodate Reregistration and Registration Review programs.

When the regulations were initially promulgated, the Agency's program for the systematic review and maintenance of existing registration was called the Registration Standards program, and the program had not fully matured. EPA anticipated that data waivers would be evaluated, granted and documented in the context of that program. 40 CFR 152.91 allows an applicant to rely on a previously granted waiver that has been documented in a Registration Standard.

As indicated previously, the Registration Standards program was replaced in 1988 by the reregistration program mandated by FIFRA section 4, which, in turn will be succeeded by the Registration Review program. These second- and third-generation pesticide review programs use different terminology for the decision documents that result. Applicants may rely on these later program documents to identify and document an existing waiver.

Accordingly, EPA proposes to add Reregistration Eligibility and Registration Review decision documents as additional Agency records that applicants may refer to. This revision does not change the substance of the provision, as the current listing of applicable documents is merely illustrative.

EPA also proposes to specify that a denial of a waiver decision is a final Agency action. Similar language is already included in the Agency's regulations on waivers found in 40 CFR 158.45, and this proposal would simply modify 40 CFR 152.91 to reflect the Agency's existing position.

G. Elimination of Certification and Documentation Procedures for Data Gaps (40 CFR 152.96)

As touched upon in Unit III.E., when the regulations were initially promulgated in 1984, EPA was in the midst of establishing procedures for the review of existing registrations. The purpose of reregistration was to update and modernize the scientific database supporting pesticide registrations. At the time, EPA was also on the verge of promulgating for the first time the data requirements supporting registration. Shortly after subpart E was promulgated in August 1984, EPA promulgated a final rule on data requirements (October 24, 1984; 49 FR 42881) (FRL–2591–5).

In acknowledgement of the fact that many of these data requirements were to be satisfied during the reregistration process, the data compensation provisions of subpart E explicitly provide a procedure to satisfy a data requirement for which data have not yet been submitted—the data gap procedures in 40 CFR 152.96. In essence, an applicant can satisfy a data requirement by documenting that no data have been submitted to fulfill the data requirement. The applicant does so by writing to data submitters and requesting verification that they have not submitted data to satisfy the data requirement. Data submitters are not required to respond to such requests, but lose the right to later challenge the applicant's data gap claim if they do not respond.

As noted, however, the processes for review of existing pesticides have evolved significantly over the years, and most data gaps have been eliminated by the submission of data under the reregistration program. Few, if any, applicants can legitimately claim a data gap for a pesticide that has undergone reregistration. The absence or availability of data is evident because the data are likely to be listed in an Agency decision document such as a RED. Moreover, in EPA's experience, the data gap procedures are rarely used, even when data gaps were much more common.

Although there may be circumstances when an applicant may legitimately claim that a data gap exists, EPA believes the required data gap documentation process is no longer needed because: (1) As noted above, most data gaps have been eliminated; and (2) EPA is in a much better position today to evaluate the legitimacy of data gap claims because of its reregistration program. Consequently, EPA proposes to eliminate 40 CFR 152.96(b) and 40 CFR 152.96(c).

EPA will continue to allow a claim of a data gap to satisfy an initial screen of an application, but will not require the submission of the certification of data gap procedures. EPA will also scrutinize such claims carefully, as it believes that few such claims can be supported given the significant amounts of data now available for most pesticides. EPA's current regulations in 40 CFR 152.115(a) provide that any data requirement that remains legitimately unfulfilled at the time of registration is established as a condition of the registration under FIFRA section 3(c)(7), and the new registrant is required to fulfill the data requirement whenever existing registrants of similar products must do so.

Under the proposed rule, a data submitter would no longer routinely receive requests from applicants to confirm a data gap. However, under 40 CFR 152.119, EPA will make available 30 days after registration the means by which an applicant satisfied the data requirements, including whether, under the selective method, the applicant claimed a data gap. A registrant thus has the means to ascertain whether he/she has submitted data that might fulfill a data requirement for which the applicant has claimed a data gap exists.

Since EPA would no longer require the data gap procedures, EPA also proposes to revise the petition procedures in 40 CFR 152.99 such that a data submitter may petition for redress on the basis of a false or improper data gap claim rather than failure to comply with the data gap procedures. EPA also proposes to eliminate 40 CFR 152.97(b) (Obligation to respond to data gap letters) since that provision will serve no purpose with the elimination of the data gap letter procedure as proposed today.

IV. FIFRA Mandated Reviews

In accordance with FIFRA sections 25(a) and (d), the Agency submitted a draft of this proposed rule to the Committee on Agriculture in the United States House of Representatives, the Committee on Agriculture, Nutrition, and Forestry in the United States Senate, the Secretary of Agriculture, and the FIFRA Scientific Advisory Panel (SAP). The SAP and the Secretary of Agriculture waived review of this proposed rule.

V. Statutory and Executive Order Reviews

A. Regulatory Review

This action is not a "significant" regulatory action under the terms of Executive Order 12866 entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), and is therefore not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

B. Paperwork Reduction Act

The information collection activities related to the submission of data to EPA in order to register a pesticide product are already approved by OMB under the Paperwork Reduction Act (PRA) 44 U.S.C. 3501 *et seq.* This action does not impose any new information collection burden. The information collection requirements, *i.e.,* the paperwork collection activities, contained in this proposal are already approved by OMB under the following information collection requests (ICRs):

1. The activities associated with the application for a new or amended registration of a pesticide are currently approved under OMB Control No. 2070–0060 (EPA ICR No. 0277).

2. The activities associated with the generation of data for the Pesticide Data Call-In Program are currently approved under OMB Control No. 2070–0174 (EPA ICR No. 2288.01).

Copies of these OMB-approved ICRs may be obtained from Susan Aby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460; or by calling (202) 566–1672.

Under the PRA, "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; 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. An agency may not conduct or sponsor, and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number, or is otherwise required to submit the specific information by a statute. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9 and 48 CFR chapter 15, and included on the related collection instrument (*e.g.,* form or survey). EPA has determined that this proposed rule imposes no additional information collection and paperwork burden.

These existing ICRs cover the paperwork activities contained in this proposal because these activities already occur as part of existing program activities.

These program activities are an integral part of the Agency pesticide program and the corresponding ICRs are regularly renewed. The total estimated average annual public reporting burden currently approved by OMB for these various activities ranges from 8 hours to approximately 3,000 hours per respondent, depending on the activity and other factors surrounding the particular pesticide product.

Comments are requested on the Agency's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Send comments to EPA as part of your overall comments on this proposed action in the manner specified in Unit I. In the final rule, the Agency will address any comments received regarding the information collection requirements contained in this proposal.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* after considering the potential economic impacts of this proposed rule on small entities, the Agency hereby certifies that this action will not have a significant adverse economic impact on a substantial number of small entities.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, a 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 action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the

regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

EPA believes that this proposed rule would not have any adverse impacts on affected small entities, because it does not alter the scope of existing pesticide data submission or citation obligations. Further, small business entities already receive the benefit of the statutory "formulators' exemption" provision which exempts qualifying applicants and registrants from most data submission and citation obligations. No changes to this provision are proposed in this action.

The proposed changes discussed in this document are expected to simplify the procedures and reduce burdens on certain data submitters. EPA has therefore concluded that this proposed rule will not have any adverse impacts on affected small entities. Of course EPA continues to be interested in the potential impacts of the procedures on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4. Therefore, this action is not subject to the requirements of UMRA.

E. Federalism

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have "federalism implications," because 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 the Order. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Tribal Implications

Under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have any effect on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Children's Health Protection

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this proposed rule because this action is not designated as an "economically significant" regulatory action as defined by Executive Order 12866 (*see* Unit V.A.), nor does this action establish an environmental standard that is intended to have a disproportionate effect on children.

H. Energy Effects

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. Technology Standards

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed regulation does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Environmental Justice

This proposed rule does not involve special considerations of any environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 152

Environmental protection, Administrative practice and procedure, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 18, 2010.

Lisa P. Jackson,

Administrator.

Therefore, it is proposed that 40 CFR part 152, subpart E, would be amended as follows:

1. The authority citation for part 152 continues to read as follows:

Authority: 7 U.S.C. 136–136y; subpart U is also issued under 31 U.S.C. 9701.

2. The title of subpart E is revised to read "Satisfaction of Data Requirements and Protection of Data Submitters' Rights."

3. Section 152.81 is revised to read as follows:

§ 152.81 Applicability.

(a) Except as provided in paragraph (b) of this section, the requirements of this subpart apply to:

(1) Each application for registration of a new product.

(2) Each application for amended registration of a currently registered product.

(3) Each submission in response to a Data Call-In under FIFRA section 3(c)(2)(B) for an existing registration, including, but not limited to, a product subject to reregistration under FIFRA section 4 or registration review under FIFRA section 3(g). If the Data Call-In establishes procedures for protection of data submitters' rights, recipients must comply with the specific requirements of the Data Call-In rather than the generic procedures set forth in §§ 152.85 through 152.96.

(b) This subpart E does not apply to any of the following:

(1) An application for registration submitted to a State under FIFRA section 24(c).

(2) An application for an experimental use permit under FIFRA section 5.

(3) An application for an emergency exemption under FIFRA section 18.

(4) A request for cancellation of a registration, or a request for deletion of one or more existing uses, in accordance with FIFRA section 6(f).

(5) A modification to registration of a currently registered product that may be accomplished under the notification or non-notification provisions of § 152.46 and any procedures issued thereunder. Notwithstanding the preceding sentence, compliance with this subpart is required if the Administrator has, by written notice under § 152.46, determined that the modification may

not be accomplished by notification or non-notification.

(6) Any type of amendment if the Administrator determines, by written finding, that Agency consideration of data would not be necessary in order to approve the amendment under FIFRA section 3(c)(5).

(7) Compliance with Agency regulations, adjudicatory hearing decisions, notices, or other Agency announcements that unless the registration is amended in the manner the Agency proposes, the product's registration will be suspended or canceled, or that a hearing will be held under FIFRA section 6. However, this paragraph does not apply to amendments designed to avoid cancellation or suspension threatened under FIFRA section 3(c)(2)(B) or because of failure to submit data.

4. Section 152.83 is redesignated as § 152.82 and the introductory text of newly redesignated § 152.82 is revised to read as follows:

§ 152.82 Definitions.

For the purposes of this subpart, the definitions set forth in the Federal Insecticide, Fungicide, and Rodenticide Act, in § 152.3, and in this section apply. In addition, the term "exclusive use study" shall have the meaning set forth in § 152.83.

5. Section 152.83 is added, to read as follows:

§ 152.83 Definition of exclusive use study.

A study is an exclusive use study if it meets the conditions of either paragraph (a) or paragraph (b) of this section.

(a) *Initial exclusive use period.* A study submitted to support the registration of a product containing a new active ingredient (new chemical) or new combination of active ingredients (new combination) is an exclusive use study if all the following conditions are met:

(1) The study pertains to a new active ingredient (new chemical) or new combination of active ingredients (new combination) first registered after September 30, 1978.

(2) The study was submitted in support of, or as a condition of approval of, the application resulting in the first registration of a product containing such new chemical or new combination, or an application to amend such registration to add a new use.

(3) Less than 10 years have passed (or up to 13 years, if the period of exclusive use protection has been extended under FIFRA section 3(c)(1)(F)(ii)) since the issuance of the registration for which the data were submitted.

(4) The study was not submitted to satisfy a data requirement imposed under FIFRA section 3(c)(2)(B).

(b) *Exclusive use period for certain minor use data.* A study submitted by an applicant or registrant to support an amendment adding a new minor use to an existing registration that does not retain any period of exclusive use under paragraph (b)(1) of this section is an exclusive study under FIFRA section 3(c)(1)(F)(vi) if all the following conditions are met:

(1) The study relates solely to a minor use of a pesticide.

(2) The applicant or registrant at the time the new use is requested has notified the Administrator that any exclusive use pesticide for the period has expired and that the study is eligible for exclusive use treatment.

(3) Less than 10 years have passed since the study was submitted to EPA.

(4) The study was not submitted to satisfy a data requirement imposed under FIFRA section 3(c)(2)(B).

(5) The minor use supported by the data has not been voluntarily canceled nor have such data been used to support a non-minor use.

6. Section 152.84 is revised to read as follows:

§ 152.84 When materials must be submitted to the Agency.

Information and materials required by this subpart must be submitted at the time of application, unless the application is determined not to be subject to the requirements of this subpart.

7. Section 152.86 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 152.86 The cite-all method.

* * * * *

(b) * * *

(2) * * *

(iv) The applicant's name, address and contact information, including a telephone number and e-mail address.

8. Section 152.90 is amended by revising the reference in the last sentence of the introductory text from "demonstrating" to "claiming," and by revising paragraphs (a) and (b)(6) to read as follows:

§ 152.90 The selective method.

* * * * *

(a) *List of data requirements.* (1) Each applicant must submit a list of the data requirements that would apply to his/her pesticide, its active ingredients, and its use patterns, if the product were being proposed for registration under FIFRA section 3(c)(5) for the first time.

(2) The applicant must list the applicable requirements, as prescribed by part 158 of this chapter or part 161 of this chapter, as applicable. All required (R) studies, and any studies that could be conditionally required (CR) based upon composition, use pattern, or the results of required studies, are to be listed. The applicant need not list data requirements pertaining to any ingredient which qualifies for the formulators' exemption.

(b) * * *

(6) *Claim of a data gap.* Refer to § 152.96.

9. Section 152.91 is amended by revising paragraphs (a) and (c), to read as follows:

§ 152.91 Waiver of a data requirement.

* * * * *

(a) *Request for extension of an existing waiver.* An applicant may claim that a waiver previously granted by the Agency also applies to a data requirement for his/her product. To document this claim, the applicant must provide a reference to the Agency record that describes the previously granted waiver, such as an Agency list of waivers or an applicable Registration Standard, Reregistration Eligibility Decision document or Registration Review decision document, and explain why that waiver should apply to his/her product.

* * * * *

(c) *Effect of denial of waiver request.* A decision by the Agency to deny a written request for a new waiver or an extension of an existing waiver is a final Agency action. Following denial, the applicant must choose another method of satisfying the data requirement.

10. Section 152.95 is amended by revising the introductory text and by revising paragraph (b)(2)(v), to read as follows:

§ 152.95 Citation of all studies in the Agency's files pertinent to a specific data requirement.

An applicant normally may demonstrate compliance for a data requirement by citation of all studies in the Agency's files pertinent to that data requirement. The applicant who selects this cite-all option must submit to the Agency:

* * * * *

(b) * * *

(2) * * *

(v) The applicant's name, address and contact information, including a telephone number and e-mail address.

* * * * *

11. Section 152.96 is revised to read as follows:

§ 152.96 Claim of data gap.

(a) *When a data gap may be claimed.* Except as provided in paragraph (b) of this section, an applicant may defer his/her obligation to satisfy an applicable data requirement until the Agency requires the data if no other person has previously submitted to the Agency a valid study that would satisfy the data requirement in question.

(b) *When a data gap may not be claimed*—(1) *Product containing a new active ingredient.* An applicant for registration of a product containing a new active ingredient may not defer his/her obligation by claiming a data gap unless he/she can demonstrate to the Agency's satisfaction that the data requirement was imposed so recently that insufficient time has elapsed for the study to have been completed and that, in the public interest, the product should be registered during the limited period of time required to complete the study. Refer to FIFRA section 3(c)(7)(C).

(2) *Product not containing a new active ingredient.* An applicant for registration of a product under FIFRA section 3(c)(7)(A) or (B) (a product not containing a new active ingredient) may not defer his/her obligation by claiming a data gap if the data are:

(i) Data needed to determine whether the product is identical or substantially similar to another currently registered product or differs only in ways that would substantially increase the risk of unreasonable adverse effects on the environment.

(ii) Efficacy data specific to the product, if required to be submitted to the Agency.

(iii) If a new use is proposed for a product that is identical or substantially similar to an existing product, data to demonstrate whether the new use would substantially increase the risk of unreasonable adverse effects on the environment.

(c) *Approval of application with a data gap claim.* (1) In accordance with § 152.115(a), any registration that is approved based upon a data gap claim shall be conditioned on the submission of the data no later than the time that the data are required to be submitted for similar products already registered.

(2) Notwithstanding paragraph (c)(1) of this section, the Agency will not approve an application if it determines that the data for which a data gap claim has been made are needed to determine if the product meets the requirements of FIFRA section 3(c)(5) or 3(c)(7).

12. Section 152.97 is revised to read as follows:

§ 152.97 Rights and obligations regarding the Data Submitters List.

(a) Each original data submitter shall have the right to be included on the Agency's Data Submitters List.

(b) Each original data submitter who wishes to have his/her name added to the current Data Submitters List must submit to the Agency the following information:

(1) Name and current address.

(2) Chemical name, common name (if any) and CAS number (if any) of the active ingredient(s), with respect to which he/she is an original data submitter.

(3) For each such active ingredient, the type(s) of study he/she has previously submitted (identified by reference to data/information requirements listed in part 158 of this chapter or part 161 of this chapter as applicable), the date of submission, and the EPA registration number, file symbol, or other identifying reference for which it was submitted.

(c) Each applicant not already included on the Data Submitters List for a particular active ingredient must inform the Agency at the time of submission of a relevant study whether he/she wishes to be included on the Data Submitters List for that pesticide.

13. Section 152.99 is amended by removing paragraph (a)(2)(iv), redesignating paragraphs (a)(2)(v) and (a)(2)(vi) as (a)(2)(iv) and (a)(2)(v), and revising newly redesignated paragraph (a)(2)(iv) to read as follows:

§ 152.99 Petitions to cancel registration.

* * * * *

(a) * * *

(2) * * *

(iv) The applicant has falsely or improperly claimed that a data gap existed at the time of his/her application.

[FR Doc. 2010–27906 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 450

[EPA–HQ–OW–2010–0884; FRL–9222–3]

Proposed Rule Staying Numeric Limitation for the Construction and Development Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to stay the numeric effluent limitation of 280 NTU and associated monitoring requirements for the Construction and Development Point Source Category. This action is necessary so that EPA can reconsider the record basis for calculating the numeric effluent limitation. EPA plans to take final action to recalculate the numeric effluent limitation by June 29, 2011. EPA proposes to stay the 280 NTU limit and associated monitoring requirements until it takes final action to recalculate the numeric limitation.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2010–0884, by one of the following methods:

- *http://www.regulations.gov:* This is EPA's preferred approach, although you may use the alternatives presented below. Follow the on-line instructions for submitting comments.
- *E-mail: OW-Docket@epa.gov.*
- *Mail:* USEPA Docket Center, Environmental Protection Agency, Docket Number EPA–HQ–OW–2010–0884, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* USEPA Docket Center, Public Reading Room, 1301 Constitution Ave., NW., Room 3334, EPA West Building, 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 comments to Docket ID No. EPA–HQ–OW–2010–0884. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your

name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the USEPA Docket Center, Public Reading Room, Room 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Janet Goodwin, USEPA Office of Water by phone at (202) 566–1060 or by e-mail at *goodwin.janet@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Regulated Entities

Entities potentially regulated by this action include:

Category	Examples of regulated entities	North American industry classification system (NAICS) code
Industry	Construction activities required to obtain 236 NPDES permit coverage and performing the following activities: Construction of buildings, including building, developing and general contracting.	236
	Heavy and civil engineering construction, including land subdivision.	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR 450.10 (74 FR 62995) and the definition of "storm water discharges associated with industrial activity" and "storm water discharges associated with small construction activity" in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular site, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Discussion of Direct Final Rulemaking

EPA is proposing to stay the provisions of 40 CFR 450.22(a) and (b) that contain the numeric limitation and associated monitoring requirements for the Construction and Development Point Source category. This stay is necessary to reconsider the record underlying the calculation of the 280 NTU numeric limitation. After the numeric limitation was promulgated, and based on EPA's examination of the dataset underlying the 280 NTU limit, EPA concluded that it improperly interpreted the data and, as a result, the calculations in the existing administrative record are no longer adequate to support the 280 NTU effluent limitation. EPA intends to expeditiously conduct a separate rulemaking to correct the numeric effluent limitation. Until the new rulemaking is effective, it is proposed that the stay will remain in place. EPA expects to complete a notice and comment rulemaking to correct the data error by May 30, 2011 so that the revised numeric limitation will be effective by June 29, 2011. An effective date of June 29, 2011 for the corrected numeric limit will enable EPA to incorporate the revised numeric limit and associated monitoring requirements in EPA's Construction General Permit. In the "Rules and Regulations" section of today's Federal Register, we are issuing this stay as a direct final rule without prior proposal because we view this stay as noncontroversial and anticipate no adverse comment. We have described the justification for the stay in the direct final rule. If EPA receives no adverse comment on either of these two actions, the Agency will not take further action on this proposed rule. If EPA receives adverse comment on either of these two actions, the Agency will publish a timely withdrawal of the direct final rule in the **Federal Register**. We would then address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

For the various statutes and Executive Orders that require findings for each rulemaking, EPA incorporates the findings from the direct final rulemaking into this companion notice for the purpose of providing public notice and opportunity for comment.

List of Subjects in 40 CFR Part 450

Environmental protection, Construction industry, Land development, Erosion, Sediment, Stormwater, Water pollution control.

Dated: November 1, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–28034 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2009–0669; FRL–8849–7]

RIN 2070–AB27

Modification of Significant New Uses of 2-Propen-1-one, 1-(4-morpholinyl)-

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Toxic Substances Control Act (TSCA), EPA is proposing to amend the significant new use rule (SNUR) for 2–Propen-1-one, 1-(4-morpholinyl)- (CAS No. 5117–12–4) to allow certain uses without requiring a significant new use notice (SNUN). EPA

is proposing this amendment based on review of new toxicity test data and receipt of a SNUN for this chemical substance. The proposed amended SNUR would continue to require a SNUN for new uses that may involve significant changes in human exposure.

DATES: Comments must be received on or before December 6, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0669, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2009–0669. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2009–0669. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Tracey Klosterman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2209; e-mail address: *klosterman.tracey@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, import, process, or use 2-Propen-1-one, 1-(4-morpholinyl)- (CAS No. 5117–12–4). Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of the subject chemical substance (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127; *see also* 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to a final SNUR must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after December 6, 2010 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (*see* § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in

accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What action is the agency taking?

Under section 5(a)(2) of the Toxic Substances Control Act (TSCA), EPA is proposing to modify the significant new use and recordkeeping requirements at § 721.5185, for the chemical substance 2-Propen-1-one, 1-(4-morpholinyl)- (CAS No. 5117–12–4). In this unit, EPA provides a brief description for the chemical substance, including the Premanufacture Notice (PMN) number, chemical name, CAS number, basis for modification of the TSCA section 5(e) consent order, and the CFR citation. The modified SNUR would require persons who intend to manufacture, import, or process the chemical substance for an activity designated as a significant new use to notify EPA at least 90 days before commencing that activity.

In the **Federal Register** of January 5, 2000 (65 FR 354) (FRL–6055–2), EPA issued a direct final SNUR for this chemical substance in accordance with the procedures at § 721.160. The record established for this proposed SNUR is available in the docket under docket ID number EPA–HQ–OPPT–2009–0669. That record includes all information considered by the Agency in developing the direct final rule, the modified TSCA section 5(e) consent order negotiated with the PMN submitter, and review of a SNUN (S–08–07) submitted in 2008 by a person other than the PMN submitter.

PMN Number P–95–169

Chemical name: 2-Propen-1-one, 1-(4-morpholinyl)-.

CAS number: 5117–12–4.

Effective date of modified TSCA section 5(e) consent order: May 9, 2006.

Federal Register *publication date and reference:* January 5, 2000 (65 FR 354).

Basis for modified TSCA section 5(e) consent order and SNUR: The PMN substance will be used as a diluent for ultraviolet (UV) and electron beam (EB) curable resin for coatings, inks, and curable adhesives. The consent order was issued under sections 5(e)(1)(A)(i) and 5(e)(l)(A)(ii)(I) of TSCA based on a finding that the chemical substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the Agency issued a TSCA 5(e) consent order which became effective on November 27, 1998. The order required the use of dermal personal protective equipment (including gloves demonstrated to be impervious) and respiratory personal protective equipment (including a National Institute of Occupational Safety and Health (NIOSH)-approved respirator); required establishment of a hazard communication program; prohibited domestic manufacturing; prohibited processing and use activities in non-enclosed processes; established maximum importation volume limits for submission of required testing; established waste disposal practices (including restrictions for no release to surface waters and requirement of disposal only in a RCRA hazardous waste landfill); and prohibited use of the chemical substance involving an application method that generates a vapor, mist, or aerosol. The proposed SNUR for this chemical substance is based on and consistent with the provisions of the modified consent order. The proposed SNUR designates as a "significant new use" the absence of the protective measures required in the corresponding consent order.

Toxicity concern: Under the terms of the TSCA section 5(e) consent order, the PMN submitter completed the following tiered studies: An *in vivo* mouse micronucleus test, a 90-day oral toxicity study in rats, and a reproductive toxicity screening study in rats. The results of the micronucleus test were negative. Based on the results of the 90-day study, the Agency established a no observed adverse effect level (NOAEL) of 20 mg/kg/day for neurotoxicity. Further, based on the results of the reproductive toxicity screening study, a NOAEL of 75 mg/kg/day (highest dose tested) was established for reproductive effects. From these data, the Agency calculated Margins of Exposure (MOEs) for predicted workplace exposures. Based on these new data, concerns remain for possible effects to the liver, testes, kidney, and blood from dermal exposure. However, EPA no longer has substantial human health concerns for mutagenicity and neurotoxicity. In addition, Agency concerns for carcinogenicity by inhalation were reduced, but were further mitigated by retaining the original consent order prohibition of industrial processing and use in a non-enclosed process and any use application methods that generate a vapor, mist, or aerosol form of the PMN substance.

In addition, to address Agency environmental concerns, a re-review of the environmental toxicity profile for the PMN substance was conducted. The results of this evaluation indicated a low concern for chronic aquatic toxicity. Therefore, EPA could no longer make a "may present unreasonable risk" finding for releases of the PMN substance to surface waters. As a result of the aforementioned review, EPA issued a modified TSCA section 5(e) consent order which became effective on May 9, 2006. The modified order removed requirements for respiratory protection, waived further required trigger testing for mutagenicity and cancer (*i.e.,* required by a set production volume or time), removed the restriction on domestic manufacture, and removed waste disposal restrictions (*i.e.,* no longer prohibiting releases to surface waters or limiting disposal to incineration or landfill). Pursuant to § 721.185(a)(5), the Agency has examined new information and reexamined the test data and other information supporting its finding under section 5(e)(1)(A)(ii)(I) of TSCA, and has concluded that a rational basis no longer exists to support findings that certain activities involving the substance may present an unreasonable risk of injury to human health and the environment required under section 5(e)(1)(A) of TSCA. Therefore, the Agency is proposing to modify the SNUR based on and consistent with the provisions in the underlying modified consent order. To protect against the remaining potential risks, the modified consent order:

- Requires the use of dermal personal protective equipment (including gloves demonstrated to be impervious).
- Requires establishment of a hazard communication program.
- Prohibits processing and use activities in non-enclosed processes.

• Prohibits the use of the chemical substance involving an application method that generates a vapor, mist, or aerosol.

The proposed modified SNUR designates as a "significant new use" the absence of these protective measures. In addition, EPA has included, in the proposed regulatory text, clarifying language for those forms of the PMN substance which are exempt from the provisions of the proposed SNUR. These exemptions apply to quantities of the PMN substance after it has been completely reacted (cured).

On June 27, 2008, the Agency received a SNUN (S–08–07) for the subject chemical substance. The significant new use identified in the notice was release to water for the generic (non-confidential) use of "contained use in energy production". The 90-day review period for the SNUN expired on October 2, 2008 with the Agency not taking action on the "significant new use" of release of the substance to water. The proposed modified SNUR would similarly no longer include release to water as a significant new use, along with the other changes noted.

Recommended testing: EPA has determined that the results of the combined repeated dose toxicity with the reproductive/developmental toxicity screening test (OPPTS Test Guideline 870.3650 or Organisation for Economic Co-operation and Development (OECD) Test Guideline 422) would help further characterize the human health effects of the PMN substance. The modified 5(e) consent order does not require submission of the aforementioned information at any specified time or production volume. However, the order's restrictions on manufacturing, import, processing, distribution in commerce, use and disposal of the PMN substance will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.5185.

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2) (see Unit III.). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a SNUN to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under § 721.5.

Section 5(a)(1) of TSCA (15 U.S.C. 2604(a)(1)) and its implementing regulations at 40 CFR parts 720 and 721 require that any person intending to manufacture a new chemical substance, or to manufacture or process any chemical substance for a significant new use, must give EPA 90-days advance written notice in the form of a PMN or SNUN, respectively.

Upon reviewing those notices, if EPA makes certain determinations regarding potential exposures and risks that may be presented by the activities associated with the chemical, EPA may regulate the chemical by issuing an order under TSCA section 5(e) and/or a significant new use rule (SNUR) under TSCA section 5(a)(2) and 40 CFR part 721. The TSCA section 5(e) order governs only the entity who submitted the PMN whereas the section 5(a)(2) SNUR applies to all manufacturers and processors of the chemical substance.

EPA may respond to SNUNs by issuing or modifying a TSCA section 5(e) consent order and/or amending the SNUR promulgated under TSCA section 5(a)(2). Amendment of the SNUR will often be necessary to allow companies other than the SNUN submitter to engage in the newly authorized use(s), because even after a manufacturer submits a SNUN and the review period expires, processors of the same substance still must submit a SNUN before engaging in the significant new use. Provisions regarding EPA's authority to modify or revoke SNUR requirements appear at § 721.185.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the proposed rule, recordkeeping requirements, and exemptions to reporting requirements. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28 (the corresponding EPA policy appears at 40 CFR part 707, subpart B). Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemical substances subject to a final SNUR must certify their compliance with the SNUR requirements. In addition, any persons who export or intend to export a chemical substance identified in a proposed SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (*see* § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

• The projected volume of manufacturing and processing of a chemical substance.

• The extent to which a use changes the type or form of exposure to human beings or the environment to a chemical substance.

• The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

• The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorized EPA to consider any other relevant factors.

To determine what would constitute a significant new use for the chemical substance that is the subject of this proposed rule, EPA considered relevant information about the toxicity of the chemical substance, likely human exposures and environmental releases associated with possible uses, and the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Rationale and Objectives of the Proposed Rule

A. Rationale

During the review of test data submitted under the TSCA section 5(e)

consent order for 2-Propen-1-one, 1-(4-morpholinyl)-, EPA determined that the chemical substance still met one or more of the criteria of concern established at § 721.160. (see Unit II.)

B. Objectives

EPA is proposing this SNUR modification for the specific chemical substance because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this proposed rule:

- EPA would receive notice of any person's intent to manufacture, import, or process a listed chemical substance for the described significant new use before that activity begins.
- EPA would have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for the described significant new use.
- EPA would be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before the described significant new use of that chemical substance occurs, provided that regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6 or 7.
- EPA would ensure that all manufacturers, importers, and processors of the chemical substance that is the subject of a TSCA section 5(e) consent order are subject to similar requirements.

V. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. EPA solicits comments on whether any of the uses proposed as significant new uses are ongoing. As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication of the proposed rule, rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who begin commercial manufacture, import, or processing activities with the chemical substances that would be regulated as a "significant new use" through this proposed rule, must cease any such activity as of the effective date of the rule if and when finalized. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities.

VI. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require the development of any particular test data before submission of a SNUN. There are two exceptions:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (*see* TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (*see* TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (*see* § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit II. lists those tests. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines." The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.* The American Society for Testing and Materials (ASTM) standards are available at *http://www.astm.org/Standard/index.shtml.*

The modified TSCA section 5(e) consent order for the chemical substance that would be regulated under this proposed rule does not require submission of test data at any specified time or volume. However, the restrictions on manufacture, import, processing, distribution in commerce, use and disposal of the PMN substance would remain in effect until the consent order is modified or revoked by EPA based on submission of that or other relevant information. These restricted activities cannot be commenced unless the PMN submitter first submits the results of toxicity tests that would permit a reasoned evaluation of the potential risks posed by this chemical substance. The test specified in the modified TSCA section 5(e) consent order is included in Unit II. The proposed SNUR would contain the same restrictions as the modified TSCA section 5(e) consent order. Persons who intend to commence non-exempt commercial manufacture, import, or processing for those activities proposed as significant new uses would be required to notify the Agency by submitting a SNUN at least 90 days in advance of commencement of those activities.

The recommended tests may not be the only means of addressing the potential risks of the chemical substance. However, SNUN submission for a significant new use without any test data may increase the likelihood that EPA will take action under TSCA section 5(e). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substance.
- Potential benefits of the chemical substance.
- Information on risks posed by the chemical substance compared to risks posed by potential substitutes.

VII. SNUN Submissions

As stated in Unit II.C., according to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in § 720.50. SNUNs must be submitted to EPA, on EPA Form No. 7710–25 in accordance with the procedures set forth in § 721.25 and § 720.40. This form is available from the Environmental Assistance Division (7408M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Forms and information are also available

electronically at *http://www.epa.gov/opptintr/newchems/pubs/pmnforms.htm.*

VIII. Economic Analysis

EPA evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances during the development of the direct final rule. The Agency's complete economic analysis is available in the public docket under docket ID number EPA–HQ–OPPT–2009–0669.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866

This proposed rule would modify a SNUR for a chemical substance that is the subject of a PMN and TSCA section 5(e) consent order. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and 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**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this proposed rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, Collection Strategies Division, Office of Environmental Information (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this conclusion is discussed in this unit. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a "significant new use." Because these uses are "new," based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of over 1,400 SNURs, the Agency receives on average only 5 notices per year. Of those SNUNs submitted from 2006–2008, only one appears to be from a small entity. In addition, the estimated reporting cost for submission of a SNUN (*see* Unit VIII.) is minimal regardless of the size of the firm. Therefore, the potential economic impacts of complying with this SNUR would not be expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government would be impacted by this proposed rule. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

E. Executive Order 13132

This action would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

This proposed rule would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly or uniquely affect the communities of Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this proposed rule.

G. Executive Order 13045

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because this action is not expected to affect energy supply, distribution, or use and this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, 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), does not apply to this action.

J. Executive Order 12898

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 1, 2010.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. Amend § 721.5185 as follows:

a. Revise the section heading.

b. Revise paragraphs (a)(1) and (a)(2)(i).

c. Add paragraph (a)(2)(ii).

d. Revise paragraph (a)(2)(iii).

e. Remove paragraphs (a)(2)(iv), (a)(2)(v), and (a)(2)(vi).

f. Revise paragraph (b)(1).

The revisions and addition read as follows:

§ 721.5185 2-Propen-1-one, 1-(4-morpholinyl)-.

(a) * * *

(1) The chemical substance identified as 2-Propen-1-one, 1-(4-morpholinyl)- (PMN P–95–169; CAS No. 5117–12–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this rule do not apply to quantities of the PMN substance after it has been completely reacted (cured).

(2) * * *

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(iv), (a)(3)(i), (a)(3)(ii), (a)(4), (a)(6)(v), (b) (concentration set at 1.0 percent), and (c). Safety 4/4H EVOH/PE laminate, Ansell Edmont Neoprene number 865, and Solvex Nitrile Rubber number 275 gloves have been tested in accordance with the American Society for Testing Materials (ASTM) F739 method and found by EPA to satisfy the consent orders and § 721.63(a)(2)(i) requirements for dermal protection to 100 percent PMN substance. Gloves and other dermal protection may not be used for a time period longer than they are actually tested and must be replaced at the end of each work shift. For additional dermal protection materials, a company must submit all test data to the Agency and must receive written Agency approval for each type of material tested prior to use of that material as worker dermal protection. However, for the purposes of determining the imperviousness of gloves, up to 1 year after the commencement of commercial manufacture or import, the employer may use the method described in § 721.63(a)(3)(ii), thereafter, they must use the method described in § 721.63(a)(3)(i).

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(2)(v), and (g)(5).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(a), (c), and (y)(1).

(b) * * *

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this chemical substance as specified in § 721.125(a) through (i).

* * * * *

[FR Doc. 2010–28006 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 523, 534, and 535

[Docket No. NHTSA–2010–0079]

Notice of Availability of a Draft Environmental Impact Statement (DEIS) for New Medium- and Heavy-Duty Fuel Efficiency Improvement Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of availability of a Draft Environmental Impact Statement (DEIS).

SUMMARY: NHTSA has prepared a DEIS to disclose and analyze the potential environmental impacts of the agency's newly proposed fuel consumption standards for commercial medium- and heavy-duty on-highway vehicles and work trucks ("HD vehicles"), which NHTSA recently proposed pursuant to the Energy Independence and Security Act of 2007. NHTSA invites Federal, State, and local agencies, Indian tribes, and the public to submit written comments on the DEIS using the instructions set forth in this notice. To facilitate review of the DEIS, NHTSA has posted the DEIS on its Web site (*http://www.nhtsa.gov/fuel-economy*) and placed it in the agency's docket, identified by the docket number at the beginning of this notice. NHTSA will consider all public comments received on the DEIS in preparing final NEPA documents to support final fuel consumption standards, which NHTSA plans to issue next year.

DATES: To ensure that NHTSA has the opportunity to consider comments on the DEIS, NHTSA must receive written comments by January 3, 2011. NHTSA will try to consider comments received after that date to the extent the NEPA and rulemaking schedules allow, but NHTSA cannot ensure that it will be able to do so.

FOR FURTHER INFORMATION CONTACT: Questions concerning the DEIS should be addressed to Ms. Angel Jackson, Telephone: 1–202–366–0154, Fuel Economy Division, Office of International Vehicle, Fuel Economy and Consumer Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. E-mail: *nhtsa.nepa@dot.gov*. Information about the HD vehicle rulemaking and the NEPA process is also available at *http://www.nhtsa.gov/fuel-economy*.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Online:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket Web site by clicking on "Help" or "FAQs."
- *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.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. *Please see* the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Telephone: (202) 366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to the Docket Management Facility at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION: NHTSA has prepared a DEIS to disclose and analyze the potential environmental impacts of the agency's newly proposed Fuel Efficiency Improvement Program for HD vehicles.[1] Concurrent with the DEIS, NHTSA and the U.S. Environmental Protection Agency (EPA) announced a joint proposed rulemaking that would reduce greenhouse gas (GHG) emissions from and increase the fuel efficiency of HD vehicles. The joint proposed rules will be published in the near future in the **Federal Register**. NHTSA is proposing fuel consumption standards under the Energy Independence and Security Act of 2007 (EISA),[2] and EPA is proposing GHG emissions standards under the Clean Air Act. These proposed standards would be tailored to each of three regulatory categories of HD vehicles: Combination Tractors; Pick-up Trucks and Vans; and Vocational Vehicles, as well as gasoline and diesel HD vehicle engines. EPA's proposed GHG emissions standards would begin with model year (MY) 2014. NHTSA's proposed fuel consumption standards would be optional in MYs 2014 and 2015, becoming mandatory beginning in MY 2016 for most regulatory categories. The joint proposed rulemaking is consistent with President Obama's May 21, 2010 directive to improve the fuel efficiency of and reduce GHG pollution from HD vehicles through coordinated Federal standards.[3] EPA and the Federal Motor Carrier Safety Administration (FMCSA) served as cooperating agencies in the preparation of the DEIS. EPA has special expertise in the areas of climate change and air quality and FMCSA has special expertise in HD vehicles.

To inform decisionmakers and the public, the DEIS analyzes the potential environmental impacts of the proposed standards and alternative standards for MYs 2014–2018, including a "No Action" Alternative, pursuant to NEPA regulations.[4] The DEIS analyzes direct, indirect, and cumulative impacts in proportion to their significance. It provides a detailed analysis of potential impacts on energy resources, air quality, and climate. The DEIS uses climate modeling and estimated fuel savings to provide quantitative estimates of potential impacts on air quality, CO_2 emissions, global mean surface temperature, precipitation, and sea level rise. The DEIS provides a qualitative analysis of resources that may be impacted by changes in climate, such as freshwater resources, terrestrial ecosystems, coastal ecosystems, land use, human health, and environmental justice. It examines impacts on the U.S. and on a global scale. In addition, the DEIS analyzes potential environmental impacts unrelated to climate change.

How can I get a copy of the DEIS?

The DEIS is available on NHTSA's Web site at *http://www.nhtsa.gov/fuel-economy* and in the agency's docket identified by the docket number at the beginning of this notice. To request a CD containing the DEIS and its Appendices, please contact Ms. Angel Jackson using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above.

How do I comment on the DEIS?

NHTSA invites the submission of written comments on the DEIS which the agency will consider in preparing the final NEPA documents to support the new Fuel Efficiency Improvement Program. Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number at the beginning of this notice in your comments.

Your primary comments cannot exceed 15 pages.[5] However, you may

[1] *See* National Environmental Policy Act (NEPA), 42 U.S.C. Sec. 4321–4347, and implementing regulations issued by the Council on Environmental Quality (CEQ), 40 CFR Parts 1500–1508, and NHTSA, 49 CFR Part 520.

[2] Public Law No. 110–140, 121 Stat. 1492 (Dec. 19, 2007) (codified at 49 U.S.C. 32901).

[3] *See* The White House, Office of the Press Secretary, *Presidential Memorandum Regarding Fuel Efficiency Standards* (May 21, 2010), *available at http://www.whitehouse.gov/the-press-office/presidential-memorandum-regarding-fuel-efficiency-standards* (last accessed Nov. 1, 2010); *see also* The White House, Office of the Press Secretary, *President Obama Directs Administration to Create First-Ever National Efficiency and Emissions Standards for Medium- and Heavy-Duty Trucks* (May 21, 2010), *available at http://www.whitehouse.gov/the-press-office/president-obama-directs-administration-create-first-ever-national-efficiency-and-em* (last accessed Nov. 1, 2010).

[4] The "No Action" Alternative assumes that NHTSA would not issue a rule regarding a HD Fuel Efficiency Improvement Program, and is considered to comply with NEPA and to provide an analytical baseline against which to compare environmental impacts of the other regulatory alternatives. *See* 40 CFR 1502.2(e), 1502.14(d). NEPA requires agencies to consider a "no action" alternative in their NEPA analyses and to compare the effects of not taking action with the effects of the reasonable action alternatives to demonstrate the different environmental effects of the action alternatives.

[5] 49 CFR 553.21.

attach additional documents to your primary comments. There is no limit to the length of the attachments.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** at 65 FR 19477, April 11, 2000, or you may visit *http://www.regulations.gov.*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

As NHTSA and EPA recently announced in the **Federal Register**,[6] the agencies are holding two public hearings on the proposed fuel consumption standards. At these hearings, NHTSA will also accept comments to the DEIS.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590, or submit them electronically, in the manner described at the beginning of this notice.

Will the agency consider late comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent the NEPA and rulemaking schedules allow, NHTSA will try to consider comments that Docket Management receives after that date, but we cannot ensure that we will be able to do so.[7]

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some commenters may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

Issued on: November 1, 2010.

Joseph S. Carra

Acting Associate Administrator for Rulemaking.

[FR Doc. 2010–27930 Filed 11–4–10; 8:45 am]

BILLING CODE 4910–59–P

[6] *See* 75 FR 67059 (Nov. 1, 2010).

[7] *See* 49 CFR 553.23.

Notices

Federal Register
Vol. 75, No. 214
Friday, November 5, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 2, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Patent License Application.

OMB Control Number: 0518–0003.

Summary of Collection: Public Law 96–517, HR 209 (Technology Transfer Commercialization Act of 2000), and 37 CFR Part 404 requires Federal agencies to use the patent system to promote the utilization of inventions arising from Federally supported research and provide the authority to grant patent licenses. The Agricultural Research Service (ARS) oversees licensing of Federally owned inventions which must be done in accordance with terms, conditions, and procedures prescribed under 37 CFR part 404. Application information must be collected to identify the business or individual desiring the patent license along with a plan for the development and marketing of the invention and a description of the applicant's ability to fulfill the plan.

Need and Use of the Information: ARS will collect identifying information on the applicant, identifying information for the business, and a detailed description for development and/or marketing of the invention using form AD–761. The information collected is used to determine whether the applicant has both a complete and sufficient plan for developing and marketing the invention and the necessary manufacturing, marketing, technical, and financial resources to carry out the submitted plan.

Description of Respondents: Business or other for profit; Not-for-profit institutions; Individuals or households.

Number of Respondents: 75.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–28048 Filed 11–4–10; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–LS–10–0085]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension and revision of a currently approved information collection used to compile and generate the livestock and meat market reports for the Livestock and Grain Market News Branch of the Livestock and Seed Program.

DATES: Comments must be received on or before January 4, 2011.

Additional Information or Comments: Comments should be submitted electronically at *http://www.regulations.gov*. Comments may also be mailed to Jimmy A. Beard, Assistant to the Chief; Livestock and Grain Market News Branch, Livestock and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture; STOP 0252; Room 2619–S; 1400 Independence Avenue, SW.; Washington, DC 20250–0252. All comments should reference docket number AMS–LS–10–0085 and note the date and page number of this issue of the **Federal Register**.

Submitted comments will be available for public inspection at *http://regulations.gov* or at the above address during regular business hours. Comments submitted in response to this Notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jimmy A. Beard, Assistant to the Chief, Livestock and Grain Market News Branch, AMS, USDA, by telephone on 202/720–8054, or e-mail at: *jimmy.beard@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Livestock and Meat Market Reports.

OMB Number: 0581–0154.

Expiration Date of Approval: 04–29–2011.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes the collection and dissemination of marketing information including adequate outlook information, on a market area basis, for the purpose of anticipating and meeting consumer requirements aiding in the maintenance of farm income and to bring about a balance between production and utilization.

Under this market news program, AMS issues market news reports covering the livestock and meat trade, which encompasses a wide range of industry contacts, including packers, processors, producers, brokers, and retailers. These reports are compiled on a voluntary basis, in cooperation with the livestock and meat industry. The information provided by respondents initiates market news reporting, which must be timely, accurate, unbiased, and continuous if it is to be meaningful to the industry. The livestock and meat industry requested that AMS issue livestock and meat market reports in order to assist them in making informed production and marketing decisions. In addition, several Government agencies that purchase meat for various Federal programs use this data in making their purchasing decisions. The information must be collected, compiled, and disseminated by an impartial third-party, in a manner which protects the confidentiality of the reporting entity. AMS is in the best position to provide this service.

Estimate of Burden: Public reporting burden for this collection of information is estimated at .0833 hours per response.

Respondents: Business or other for-profit, individuals or households, farms, and the Federal Government.

Estimated Number of Respondents: 990.

Estimated Total Annual Responses: 124,740.

Estimated Number of Responses per Respondent: 126.

Estimated Total Annual Burden on Respondents: 10,391 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 2, 2010.

David R. Shipman,

Acting Administrator.

[FR Doc. 2010–28043 Filed 11–4–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–DA–10–0070; DA–10–06]

Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments; correction.

SUMMARY: The Agricultural Marketing Service published a document in the **Federal Register** of October 1, 2010, concerning a request for approval from the Office of Management and Budget for an extension of and revision to a currently approved information collection for the National Research, Promotion, and Consumer Information Programs. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Whitney A. Rick, 202–720–6909.

Correction:

In the **Federal Register** of October 1, 2010, in FR Doc. 2010–24627, on page 60712, in the second column, correct the "Title" caption in the **SUPPLEMENTARY INFORMATION** to read:

SUPPLEMENTARY INFORMATION:

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date, as approved by OMB: 3/31/2011.

Dated: November 2, 2010.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–28047 Filed 11–4–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Special Nutrition Program Operations Study (SNPOS)

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the the general public and other public agencies to comment on this proposed information collection. This collection is a new information collection for the Special Nutrition Program Operations Study.

DATES: Written comments on this notice must be received by January 4, 2011.

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 shall 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 that were 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: John Endahl, Senior Program Analyst, Office of Research and Analysis, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of John Endahl at 703–305–2576 or via e-mail to *john.endahl@fns.usda.gov*. 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 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: To request more information on the proposed project or to obtain a copy of the data collection plans, contact John Endahl, Senior Program Analyst, Office

of Research and Analysis, Food and Nutrition Service/USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302; Fax: 703–305–2576; E-mail: *john.endahl@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Special Nutrition Program Operations Study.

OMB Number: 0584–NEW.

Expiration Date of Approval: Not yet determined.

Type of Information Collection Request: New information collection.

Abstract: The objective of the Special Nutrition Program Operations Study (SNPOS) is to collect timely data on policies, administrative, and operational issues on the Child Nutrition Programs. The ultimate goal is to analyze these data and provide input for new legislation on Child Nutrition Programs as well as to provide pertinent technical assistance and training to program implementation staff.

The SNPOS will help the Food and Nutrition Service (FNS) better understand and address current policy issues related to Special Nutrition Programs (SNP) operations. The policy and operational issues include, but are not limited to, the preparation of the program budget, development and implementation of program policy and regulations, and identification of areas for technical assistance and training. Specifically, this study will help FNS obtain:

- General descriptive data on the Child Nutrition (CN) program characteristics to help FNS respond to questions about the nutrition programs in schools;
- Data related to program administration for designing and revising program regulations, managing resources, and reporting requirements; and
- Data related to program operations to help FNS develop and provide training and technical assistance for School Food Authorities (SFAs) and State Agencies responsible for administering the CN programs.

The activities to be undertaken subject to this notice include:

- Conducting a multi-modal (*e.g.* paper, Web, and telephone) survey of approximately 1,500 SFA Directors.
- Conducting a paper survey of all 56 State Agency CN Directors.

Affected Public: State, Local and Tribal Governments.

Type of Respondents: 1,500 SFA Directors and 56 State CN Program Directors.

Estimated Total Number of Respondents: 1,556.

Frequency of Response: Once annually.

Estimated Annual Responses: 1,556.

Estimate of Time per Respondent and Annual Burden: Public reporting burden for this collection of information is estimated to average sixty (60) minutes per Self Administered Survey for the SFA Directors and the State Agency Child Nutrition Directors (this includes 30 minutes for data gathering and 30 minutes to respond to the questionnaire). Respondents in the SNOPS include 1,500 School Food Service Directors and 56 State Child Nutrition Program Directors. The annual reporting burden is estimated at 1,556 hours (*see* table below).

Data collection activity	Respondents	Estimated number of respondents	Frequency of response	Total annual responses	Average burden hours per response	Total annual burden estimate (hours)
Self Administered/Web/Telephone Survey.	School Food Authority (SFA) Directors.	1,500	1	1,500	1	1,500
Self Administered/Telephone Survey.	State Agency Child Nutrition Directors.	56	1	56	1	56
Total	.....	1,556	.....	1,556	1	1,556

Dated: November 1, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–28037 Filed 11–4–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Evaluation of the Summer Electronic Benefits for Children Household-Based Demonstrations on Food Insecurity

AGENCY: Food and Nutrition Service (FNS), 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 collection is a new collection for the purpose of conducting The Evaluation of the Impact of the Summer Electronic Benefits for Children Household-Based Demonstrations on Food Insecurity.

DATES: Written comments must be received on or before January 4, 2011.

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 shall 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 that were 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: Steven Carlson, Director, Office of Research and Analysis, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at 703–305–2576 or via e-mail to *Steven.Carlson@fns.usda.gov*. 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 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 this information collection should be directed to Steven Carlson at 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of the Impact of the Summer Electronic Benefits for Children Household-Based Demonstrations on Food Insecurity.

Form Number: Not yet assigned.

OMB Number: Not yet assigned.

Expiration Date: Not yet assigned.

Type of Request: New Collection of Information.

Abstract: The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010 (Pub. L. 111–80), Section 749(g), directed that the Secretary of Agriculture shall carry out demonstration projects to develop and test methods of providing access to food for children in urban and rural areas during the summer months when schools are not in regular session to reduce or eliminate the food insecurity and hunger of children and to improve the nutritional status of children. The Summer Electronic Benefits for Children Household-Based Demonstrations will carry out the demonstration projects Congress directed USDA to perform in this section.[1] In addition, the Act directed the Secretary of Agriculture to provide for an independent evaluation of the demonstration projects using rigorous methodologies. The Evaluation of the Impact of the Summer Electronic Benefits for Children Household-Based Demonstrations on Food Insecurity will carry out these provisions of the Act.

The evaluation of these projects is intended to provide policymakers with clear, rigorous and timely findings to make decisions about potential changes to Federal summer feeding programs during the next Child Nutrition reauthorization cycle. Primarily, the evaluation of the Summer Electronic Benefit Transfer for Children (SEBTC) demonstrations will examine how the provision of summer food benefits to the households of children certified for free or reduced-price school meals impacts the prevalence of very low food security among children certified for free or reduced-price meals as well as their nutritional status. Nutritional status will be examined with relatively simple measures of food choices, nutritional behaviors and Body Mass Index (BMI). Other effects, such as perceptions of parents and changes in household food supply and food expenditures will also be considered. In addition to impact measures, the evaluation will document the process and challenges of implementing the SEBTC demonstrations and the costs of operating the demonstrations. The results will provide valuable information to States considering applying for additional demonstrations as well as if the demonstrations lead to policy changes. The evaluation will gather data from up to 5 demonstration areas in 2011. Each demonstration area will consist of contiguous school districts that, collectively, have 10,000 children certified for free or reduced-price school meals. The evaluation will gather data from up to 15 demonstration areas in 2012. The 2012 demonstration areas will also consist of contiguous school districts that, collectively, have 10,000 children certified for free or reduced-price meals. In the demonstration areas households with children certified for free or reduced-price school meals will be divided into treatment and control groups.

Affected Public: Individuals/Households; State, Local and Tribal Government; Business (for-profit).

Respondent Type: Individual school-aged children and their parents/guardians in each demonstration area; Electronic Benefits Transfer (EBT) processors and retail grocery vendors who operate in the demonstration areas; agencies that administer either the National School Lunch and School Breakfast, WIC,[2] or SNAP[3] programs in the States with a demonstration area; the agency that administers education programs in the States with a demonstration area; and, local school food authorities and schools in each demonstration area.

Estimated Number of Respondents: The total estimated number of respondents is 98,565 (32,731 in 2011 and 65,834 in 2012). Over both years this includes: 22,059 treatment and 22,059 control parents/guardians; 8,823 attempted but incomplete parent/guardian interviews; 22,059 treatment and 22,059 control students (1 per interviewed household); 400 State agency officials from about 35 State agencies, 400 officials from about 35 local school food authorities; 700 food retailers and 6 EBT processors. These sample sizes are large because the key outcome of interest—very low food security—is a relatively rare event; these sample sizes are needed in order to meet the Congressional requirement to detect statistically significant differences in very low food security between treatment and control households.

Estimated Number of Responses per Respondent: there will be one interview per parent/guardian, one per student, 2 per food retailer, 2 per EBT processor, and 3 per State or local official.

Estimated Total Annual Responses: 21,313.

Estimated Time per Response: The estimated average response time is 61.2 minutes (1.02 hours). The estimated time of response varies from 15 to 180 minutes depending on respondent group, as shown in the table below, with an average estimated time of 6 minutes for non-responders to the participant survey.

Estimated Total Annual Burden on Respondents: The total estimated response time is 20,654.6 hours in 2011 and 43,284.2 in 2012. See the table below for estimated total annual burden for each type of respondent.

Type of respondent	Respondent type	Type of instrument	Number of respondents	Frequency of response	Estimated annual responses	Time per respondent	Annual burden hours
Individual/Households.	Parent-Guardian	interviews	44,118	1	44,118	1	44,118.00
	Parent-Guardian (non-response rate).	interviews	8,823	1	8,823	0.1002	884.06
	Children	interviews	44,118	1	44,118	0.25	11,029.50
State, Local, ITO	State Agency Official.	interviews	400	3	1,200	3	3,600.00

[1] USDA is also conducting demonstrations of enhancements to the existing Summer Food Service Program. Those demonstrations are not part of this Information Collection.

[2] Special Supplemental Nutrition Program for Women, Infants, and Children.

[3] Supplemental Nutrition Assistance Program (formerly the Food Stamp Program).

Type of respondent	Respondent type	Type of instrument	Number of respondents	Frequency of response	Estimated annual responses	Time per respondent	Annual burden hours
	Local School Food Authority.	interviews	400	3	1,200	3	3,600.00
Business	Food Retailer	interviews	700	2	1,400	0.5	700.00
	EBT Processors	interviews	6	2	12	1	12.00
Total Annual Cost to Respondents			98,565	.....	100,871	.....	63,943.56

Note: Children are included in the parents non-response rate.

Dated: November 1, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–28039 Filed 11–4–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Paulina Ranger District; Ochoco National Forest; Crook and Wheeler Counties, OR; Jackson Vegetation Management Project EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service is proposing to prepare an environmental impact statement (EIS) on a proposed action to improve forest health and fuel conditions within the approximate 55,430-acre Jackson project area. The project area is located approximately 60 miles to the east of Prineville, Oregon and is bounded by Forest System Roads 2630, 12, and 42 to the north, east and south respectively, and by the western watershed divide between Crazy Creek (east) and Porter, Looney, and Stupid Creeks (west). The project area encompasses National Forest system lands and private lands within these watersheds.

An analysis has been initiated that takes a landscape approach to managing the vegetation to meet objectives for fuels and fire behavior and to create a more resilient forest while addressing and considering other resources. Methods that would be used to reduce tree density and hazardous fuels are: non-commercial and commercial thinning, and prescribed burning. The alternatives will include the proposed action, no action, and, if necessary, additional alternatives that respond to issues generated through the scoping process. The agency will give notice of the full environmental analysis and decision-making process so that interested and affected public may participate and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received by 30 days following the date that this notice appears in the **Federal Register**.

ADDRESSES: Send written comments to Sandra Henning, District Ranger, Paulina Ranger District, Ochoco National Forest 3160 NE. 3rd Street, Prineville, OR 97754.

FOR FURTHER INFORMATION CONTACT: Kathy Roche, Environmental Coordinator, Ochoco National Forest, Paulina Ranger District, 3160 N.E. 3rd Street, Prineville, OR 97754, phone (541) 416–6436.

Responsible Official: The responsible official is Jeff Walter, Forest Supervisor, Ochoco National Forest, 3160 NE 3rd Street, Prineville, OR 97754.

SUPPLEMENTARY INFORMATION:

Background. The Paulina Ranger District has demonstrated that there is a need for fuels and vegetation management activities in the project area by comparing the existing condition to the desired conditions described in the Ochoco National Forest Land and Resource Management Plan. The existing condition of the Deep watershed was evaluated in 2010 and documented in the Deep Watershed Analysis.

Purpose and Need. This project is needed to maintain the project area in a healthy condition as described by the Ochoco National Forest Land and Resource Management Plan of 1989 as amended by the Revised Interim Management Direction Establishing Riparian, Ecosystem and Wildlife Standards for Timber Sales (Eastside Screens). The Watershed Analysis identified that there is a shortage of large trees, late and old structure forest; Stream temperatures are too high and there is a shortage of large woody debris and hardwood plant species within Riparian Habitat Conservation Areas; there is encroachment of western juniper into forest, grasslands and shrublands; there is an increasing presence of insects and diseases in forest stands; aspen clones are declining in vigor and contain decadent overstory trees and few to no seedlings, there are varying amounts of conifers present and the aspen sprout/seedling component is unable to grow above the browse line; about 42% of the watershed is in Fire Regime Condition Class of 2 or 3 where fire has been absent for more than 15 years and there is an increasing amount of departure from the natural fire regime with areas where juniper and pine have encroached on shrub and grass communities from fire exclusion; stand density and forest fuels adjacent to arterial Forest roads do not provide conditions for safe ingress and egress for public and fire fighter access in the event of wildfire; the forest stands in the project area have the potential to provide wood products.

This project is needed to maintain the vegetation within the project area in a condition as described by the Ochoco National Forest Land and Resource Management Plan of 1989 as amended by the Revised Interim Management Direction Establishing Riparian, Ecosystem and Wildlife Standards for Timber Sales (Eastside Screens). This project is needed to promote the development of large trees and old structure forest by reducing stand density; promote the development of large trees for eventual woody debris recruitment into streams by reducing conifer stand densities mechanically and by fire and promote the development of stream shading vegetation, such as willow by reducing conifers, mechanically and by fire, and increase willow and other hardwood vegetation by planting with Riparian Habitat Conservation Areas (RHCAs); reduce juniper encroachment into forest, shrub and grass communities by mechanical and fire treatments; restore and enhance aspen stands by reducing conifer competition and encroachment, fencing and planting; reduce the risk of bark beetles and impacts of mistletoe by reducing stand density and tree canopy layers through mechanical treatments; change stand structure and tree canopy

closure to create conditions that support low intensity, frequent fire regimes, reduce suppression costs, and provide for fire fighter safety through mechanical and fire treatments; reduce stand density and forest fuels adjacent to arterial Forest roads to increase safe ingress and egress for public and fire fighter access in the event of wildfire both mechanically and through fire treatments; reintroduce fire to reduce the departure from the natural fire regime and to reduce juniper and pine where they have encroached on shrub and grass communities and provide wood products for public needs and for the health of local and regional economies.

Proposed Action. To meet the project need, the Paulina Ranger District is proposing to thin approximately 6,700 acres through commercial timber harvest methods and 3,200 acres through non-commercial means. Commercial harvest methods would include the use of tractors on most units (approximately 5,300 acres). Areas identified as tractor logging are areas where equipment, such as tractors/skidders, would be used to remove a commercial product. Logging systems are still to be determined for approximately 1,500 acres. Providing wood products will include removing some standing dead wood (snags) as firewood. This will focus on stands of lodgepole pine with existing mortality from insect infestation.

Excessive fuel from management activities in this project and past projects would be reduced on approximately 7,800 acres through the use of prescribed fire. Fire would also be used to maintain low intensity fuel levels and reduce juniper on approximately 7,900 acres. Other areas of juniper encroachment are proposed for mechanical removal. An area of reduced stand density and fuel would be created in forest stands and other areas along each side of Forest system roads 12, 30, 42 and 2630 to provide for public and firefighter safety in the event of wildfire in this area.

It is anticipated that some additional roads would be needed to complete management activities. Whether any of these roads will be system roads and whether any will remain open after the project is completed will be determined during the analysis of the proposed action and any alternatives that are developed. Similarly, whether any roads reopened during this project will remain open will be determined during the analysis. The project proposes to use and enlarge a rock pit near Younger Springs. The rock would be used in construction, reconstruction and maintenance for roads associated with implementation of proposed management actions and to increase attainment of riparian of management objectives for inland native fish. The need for other road construction, reconstruction and maintenance will be determined in the further development of proposed action and in any alternatives. Project design elements and site-specific mitigation measures will be developed during the analysis of individual activity areas for each alternative. The project design features and/or mitigation measures may include operating restrictions, mechanical reduction of soil density (subsoiling) on ground based logging units after harvest, weed control and monitoring. Within the Jackson project area, other projects are being implemented or are in the planning stage. The Deep Creek Watershed Restoration Environmental Assessment (2004) is presently being implemented. This project includes a variety of activities, including stream headcut repair, culvert replacement, and road closure and decommissioning. The Ochoco Summit PHV Trail Analysis Area is presently in the planning stage. As a part of that OHV project, designated motorized trails would be provided throughout the project area.

Issues. Issues will be identified based on public comments.

Comment. Public comments regarding this proposal are requested in order to assist in identifying issues, determine how to best manage the resources, and to focus the analysis. Comments received to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision in accordance with 36 CFR parts 215 and 217.

A draft EIS will be filed with the Environmental Protection Agency (EPA) and is scheduled to be available for public review by May 2011. The EPA will publish a Notice of Availability (NOA) of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the Federal Register. The final EIS is scheduled to be available August 2011.

Dated: October 29, 2010.

Jeff Walter,

Forest Supervisor, Ochoco National Forest.

[FR Doc. 2010–27976 Filed 11–4–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Custer County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Custer County Resource Advisory Committee will meet in Custer, South Dakota. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is review of project proposals to be implemented in 2011.

DATES: The meeting will be held November 16, 2010 at 5:30 p.m.

ADDRESSES: The meeting will be held at 1019 N 5th Street at the Office of the Forest Supervisor. Written comments should be sent to 330 MT Rushmore Rd., Custer, South Dakota 57730. Comments may also be sent via e-mail to *lkolund@fs.fed.us,* or via facsimile to 605–673–5461.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 330 MT Rushmore Rd., Custer, SD. Visitors are encouraged to call ahead to 605–673–4853 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lynn Kolund, District Ranger, Hell Canyon Ranger District, 605–673–4853,*lkolund@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: Review of Project Proposals for implementation in 2011. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by November 12, 2010 will have the opportunity to address the Comittee at those sessions.

Dated: November 1, 2010.

Lynn D. Kolund,

District Ranger.

[FR Doc. 2010–27988 Filed 11–4–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

November 1, 2010

ACTION: Notice of Public Meeting, Cherokee National Forest Resource Advisory Committee.

SUMMARY: In accordance with the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393), [as reauthonized as part of Public Law 110–343] and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of Agriculture, Forest Service, Cherokee National Forest Resource Advisory Committee (RAC) will meet as indicated below.

DATES: The Cherokee National Forest RAC meeting will be conducted on Wednesday, December 8, 2010 from 12:30 p.m.–4:30 p.m.

ADDRESSES: McGhee Tyson Airport, 2055 Alcoa Highway, Alcoa, TN 37701. Meeting visitors should park in the main airport parking garage and bring their parking ticket to the meeting for validation. Take the centrally located elevator in the passenger terminal to the 3rd floor and see the receptionist for directions to the meeting room.

FOR FURTHER INFORMATION CONTACT: Terry Bowerman, Designated Federal Official, Cherokee National Forest, 4900 Asheville Hwy SR 70, Greeneville, TN 37743: Telephone: 423–638–4109, e-mail: *tbowerman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Cherokee National Forest Resource Advisory Committee (RAC) proposes projects and funding to the the Secretary of Agriculture under Section 203 of the Secure Rural Schools and Community Self Determination Act of 2000, (as reauthorized as part of Pub. L. 110–343). The Cherokee National Forest RAC consists of 15 people selected to serve on the committee by Secretary of Agriculture Tom Vilsack. Two Tennessee counties, Cocke and Monroe, are setting aside a percentage of their Secure Rural Schools Act payment under Title II of the Act to be used for projects on federal land. The RAC will ultimately review and recommend projects to be funded from this money. Projects approved must benefit National Forests lands. Projects can maintain infrastructure, improve the health of watersheds and ecosystems, protect communities, and strengthen local economies. The agenda for the December 8th meeting of the Cherokee National Forest RAC will focus on review and consideration of any proposed projects. RAC meetings are open to the public.

H. Thomas Speaks, Jr,

Forest Supervisor, Cherokee National Forest.

[FR Doc. 2010–27999 Filed 11–4–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000, as amended, (Pub. L. 110–343), the Boise, Payette, and Sawtooth National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting. The meeting is open to the public.

DATES: Tuesday November 9, 2010, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Kim Pierson, Designated Federal Official, at (208) 347–0301 or e-mail *kpierson@fs.fed.us.*

Dated: October 29, 2010.

Suzanne C. Rainville,

Forest Supervisor, Payette National Forest.

[FR Doc. 2010–27997 Filed 11–4–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0044]

Forage Genetics International; Supplemental Request for Partial Deregulation of Roundup Ready Alfalfa

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Animal and Plant Inspection Service has received a supplemental request for "partial deregulation" from Forage Genetics International for the planting, harvesting, and movement interstate of Roundup Ready® alfalfa under measures designed to ensure any risks posed by cultivation are mitigated. This notice seeks to inform interested or affected persons of the availability of the documents submitted to the Agency from Forage Genetics International requesting a "partial deregulation."

ADDRESSES: You may view the request for "partial deregulation" on the Regulations.gov Web site (*see http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0044*) or on the APHIS Web site (*see http://www.aphis.usda.gov/brs/aphisdocs/04_11001p_pea2.pdf*). Copies may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Rick Coker, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 146, Riverdale, MD 20737–1236; (301) 734–5720. To obtain copies of the supplemental request for "partial deregulation," contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

On November 24, 2004, APHIS published a notice in the **Federal Register** (69 FR 68300–68301, Docket No. 04–085–1) announcing receipt of a petition from the Monsanto Company (Monsanto) and Forage Genetics International (FGI) requesting a determination of nonregulated status under 7 CFR part 340 for alfalfa (*Medicago sativa* L.) designated as

events J101 and J163, which have been genetically engineered for tolerance to the herbicide glyphosate. The petition stated that this article should not be regulated by APHIS because it is unlikely to pose a plant pest risk. APHIS also announced in that notice the availability of a draft environmental assessment (EA) examining the potential environmental impacts of the proposed action in accordance with National Environmental Policy Act requirements for the proposed determination of nonregulated status. Following review of public comments and completion of the EA, we published another notice in the **Federal Register** on June 27, 2005 (70 FR 36917–36919, Docket No. 04–085–3), advising the public of our determination, effective June 14, 2005, that the Monsanto/FGI alfalfa events J101 and J163 were no longer considered regulated articles under APHIS regulations in 7 CFR part 340.

On February 13, 2007, the U.S. District Court for the Northern District of California issued a ruling in a lawsuit filed by the Center for Food Safety—along with several other nonprofit organizations and alfalfa growers—challenging our decision to deregulate alfalfa events J101 and J163 (referred to in the lawsuit as Roundup Ready® alfalfa, or "RRA"), pursuant to the Plant Protection Act (PPA), as amended, and in compliance with the Administrative Procedure Act and the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*). Under the provisions of NEPA, agencies must examine the potential environmental impacts of proposed major Federal actions, and the District Court ruled that APHIS' EA failed to consider certain environmental and interrelated economic impacts. As a result, the Court ruled that APHIS is required to prepare an environmental impact statement (EIS).

On March 12, 2007, the Court vacated the deregulation determination, returning RRA to regulated status under 7 CFR part 340, and issued an injunction which enjoined the Agency from taking any further action related to RRA until an EIS was completed by APHIS. Accordingly, APHIS published a notice [1] of intent to prepare an EIS in the **Federal Register** on January 7, 2008 (73 FR 1198–1200, Docket No. APHIS–2007–0044) soliciting comments on the scope and nature of issues the Agency should consider in preparing the EIS. After reviewing the comments, we published (*see* footnote 1) a notice of availability of a draft EIS in the **Federal Register** on January 12, 2010 (75 FR 1585–1586, Docket No. APHIS–2007–0044) soliciting comments on the draft EIS.

Subsequently, on June 21, 2010, the U.S. Supreme Court reversed the decision of the lower court which had mandated an injunction of any further planting of RRA or any other regulatory action by APHIS related to RRA until completion of an EIS. The U.S. Supreme Court remanded the case back to the 9th Circuit Court of Appeals which further remanded the case back to the U.S. District Court for the Northern District of California.

Following the U.S. Supreme Court decision, FGI submitted a supplemental request for "partial deregulation" or similar administrative action for RRA, along with an accompanying "Environmental Report," to allow the future planting, harvesting, and interstate movement of RRA crops under conditions designed to ensure any risks posed by the introduction of RRA into the environment are thoroughly mitigated.

APHIS is evaluating this supplemental request and will be making a decision on it in the future. Meanwhile, the Agency is working to complete and publish the final EIS and record of decision for RRA. APHIS is notifying the public that its receipt of this supplemental request for "partial deregulation" and this notice to the public regarding it in no way indicates that the Agency agrees with the petitioners' description, application, or implementation of a "partial deregulation." Such matters and related issues are solely determined by APHIS pursuant to its PPA statutory authority and its biotechnology regulations in 7 CFR part 340.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, November 1, 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–27985 Filed 11–4–10; 8:45 am]

BILLING CODE 3410–34–P

[1] The notice, as well as comments received and supporting and related materials, can be viewed at *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0044.*

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: Alaska Crab Reports.

OMB Control Number: 0648–0570.

Form Number(s): NA.

Type of Request: Regular submission (renewal of an existing information collection).

Number of Respondents: 16.

Average Hours Per Response: Eligible crab community organization annual report, 40 hours; registered crab receiver ex-vessel volume and value report, 2 hours.

Burden Hours: 100.

Needs and Uses: Fishery Management Plans (FMP) are developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) The FMP for Bering Sea and Aleutian Islands (BSAI) Crab includes the Crab Rationalization (CR) Program, a limited access system that allocates BSAI Management Area Crab resources among harvesters, processors, and coastal communities. The intent of the CR Program Crab Reports is to monitor crab landings in the BSAI crab fisheries submitted to the National Marine Fisheries Service.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

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 *OIRA_Submission@omb.eop.gov.*

Dated: November 2, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–27984 Filed 11–4–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 101025512–0512–02]

Annual Surveys in the Manufacturing Area

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of Determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2010 Annual Surveys in the Manufacturing Area. The 2010 Annual Surveys consist of the Current Industrial Reports surveys, the Annual Survey of Manufactures, the Business R&D and Innovation Survey, and the Manufacturers' Unfilled Orders Survey. We have determined that annual data collected from these surveys are needed to aid the efficient performance of essential governmental functions, and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Mendel D. Gayle, Chief, Manufacturing and Construction Division at (301) 763–4587 or via the Internet at *mendel.d.gayle@census.gov.*

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct mandatory surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, sections 61, 81, 131, 182, 193, 224, and 225.

These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The data collected in the surveys will be within the general scope and nature of those inquiries covered in the economic census. The next economic census will be conducted for the year 2012.

Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production, stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all, or a sample of, establishments engaged in the production of the items covered by the following list of annual surveys:

Survey Title

MA311D Confectionery
MA314Q Carpets and Rugs
MA321T Lumber Production and Mill Stocks
MA325F Paints and Allied Products
MA325G Pharmaceutical Preparations, except Biologicals
MA327C Refractories
MA327E Consumer, Scientific, Technical, and Industrial Glassware
MA331B Steel Mill Products
MA332Q Antifriction Bearings
MA333A Farm Machinery and Lawn and Garden Equipment
MA333D Construction Machinery
MA333F Mining Machinery and Mineral Processing Equipment
MA333M Refrigeration, Air-conditioning, and Warm Air Heating Equipment
MA333N Fluid Power Products for Motion Control (Including Aerospace)
MA333P Pumps and Compressors
MA334A Electromedical Equipment and Analytical Instruments
MA334C Control Instruments
MA334D Defense, Navigational and Aerospace Electronics
MA334M Consumer Electronics
MA334Q Semiconductors, Electronics Components, and Semiconductor Manufacturing Equipment
MA334T Meters and Test Devices
MA335E Electric Housewares and Fans
MA335F Major Household Appliances
MA335J Insulated Wire and Cable
MA335K Wiring Devices and Supplies
MA336G Civil Aircraft and Aircraft Engines and Aerospace Industry (Orders, Sales and Backlog)

The following list of surveys represents annual counterparts of monthly and quarterly surveys. These surveys will cover only those establishments that are not canvassed, or do not report, in the more frequent surveys. Accordingly, there will be no duplication in reporting.

The content of these annual reports (listed below) will be identical to that of the monthly and quarterly reports:

Survey Title

M311C Corn (Wet & Dry Producers of Ethanol)
M311H Animal and Vegetable Fats and Oils (Warehouse Stocks)
M311J Oilseeds, Beans, and Nuts (Primary Producers)
M311K Fats and Oils (Renderers)
M311L Fats and Oils
M311M Animal and Vegetable Fats and Oils (Consumption and Stocks)
M311N Animal and Vegetable Fats and Oils (Production, Consumption and Stocks)
M313N Cotton and Raw Linters in Public Storage
M313P Consumption on the Cotton System and Stocks
M336G Civil Aircraft and Aircraft Engines
MQ311A Flour Milling Products
MQ313A Textiles
MQ315A Apparel
MQ315B Socks Production
MQ325A Inorganic Chemicals
MQ325B Fertilizers and Related Chemicals
MQ325F Paint, Varnish, and Lacquer
MQ327D Clay Construction Products
MQ333W Metalworking Machinery
MQ334P Telecommunications
MQ334R Computers and Peripheral Equipment

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics, such as total value of shipments, employment, payroll, workers' hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey is conducted on a sample basis, and covers all manufacturing industries, including data on plants under construction but not yet in operation.

Business R&D and Innovation Survey

The Business R&D and Innovation Survey (BRDIS) measures spending on research and development activities by United States businesses. This survey replaced the Survey of Industrial Research and Development that had been collected since the 1950's. The BRDIS collects global as well as domestic spending information, more detailed information about the R&D workforce, and information regarding innovation and intellectual property from U.S. businesses. The Census Bureau collects and compiles this information in accordance with a joint project agreement between the National Science Foundation (NSF) and the Census Bureau. The NSF publishes the results in its publication series. All data items are collected on a mandatory basis under the authority of Title 13, United States Code.

Manufacturers' Unfilled Orders Survey

The Manufacturers' Unfilled Orders Survey collects data on sales and unfilled orders in order to provide annual benchmarks for unfilled orders for the monthly Manufacturers' Shipments, Inventories, and Orders (M3) survey. The Annual Survey of Manufactures (ASM) provides annual benchmarks for the shipments and inventory data in this monthly survey. The survey data will also be used to determine whether it is necessary to collect unfilled orders data for specific industries on a monthly basis; some industries are not requested to provide unfilled orders data on the M3 Survey.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a

collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 45, OMB approved the Annual Surveys under the following OMB control numbers: Current Industrial Reports—0607–0476, Annual Survey of Manufactures—0607–0449, Business R&D and Innovation Survey—0607–0912, Manufacturers' Unfilled Orders Survey—0607–0561.

Based upon the foregoing, I have directed that the Annual Surveys in the Manufacturing Area be conducted for the purpose of collecting these data.

Dated: November 1, 2010.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2010–28085 Filed 11–4–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–702, A–580–813, A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings From Japan, South Korea and Taiwan; Final Results of Sunset Reviews and Revocation of Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 1, 2010, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on certain stainless steel butt-weld pipe fittings from Japan, South Korea and Taiwan. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 53664 (September 1, 2010) (*Initiation Notice*). Because no interested domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking the antidumping duty orders on certain stainless steel butt-weld pipe fittings from Japan, South Korea and Taiwan.

DATES: *Effective Date:* October 20, 2010.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein, AD/CVD Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1391.

SUPPLEMENTARY INFORMATION:

Scope of the Orders

Japan

The products covered by this order include certain stainless steel butt-weld pipe fittings. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste-treatment facilities, semiconductor equipment applications, nuclear power plants and other areas. This merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7307.23.00. Although the HTSUS subheading is provided for convenience and for customs purposes, the written product description remains dispositive as to the scope of the order.

South Korea

The products subject to this order are certain welded stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches in inside diameter. The pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise can be used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; (5) high pressures are contained within the system.

Stainless steel butt-weld pipe fittings come in a variety of shapes, and the following five are the most basic: "elbows," "tees," "reducers," "stub ends," and "caps." The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from the order. The pipe fittings subject to this order are classifiable under the HTSUS subheading 7307.23.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Taiwan

The products subject to the order are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches in inside diameter. The pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

Stainless steel butt-weld pipe fittings come in a variety of shapes, with the following five shapes the most basic: "elbows," "tees," "reducers," "stub ends," and "caps." The edges of finished fittings are beveled. Threaded, grooved, and bolted fittings are excluded from the order. The pipe fittings subject to the order are currently classifiable under subheading 7307.23.00 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Stainless steel butt-weld pipe fittings manufactured to the American Society of Testing and Materials specification A774 are included in the scope of this order.

Background

The Department published its antidumping duty order on certain stainless steel butt-weld pipe fittings from Japan on March 25, 1988. *See Antidumping Duty Order of Sales at Less Than Fair Value; Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan,* 53 FR 9787 (March 25, 1988). The Department published its antidumping duty order on certain stainless steel butt-weld pipe fittings from South Korea on February 23, 1993. *See Antidumping Duty Order: Certain Welded Stainless Steel Butt-Weld Pipe Fittings from Korea,* 58 FR 11029 (February 23, 1993). The Department published its antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan on June 16, 1993. *See Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Butt-Weld Pipe Fittings From Taiwan,* 58 FR 33250 (June 16, 1993).

The Department determined that a continuation of the orders was warranted in two earlier rounds of sunset reviews. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Japan, South Korea, and Taiwan; Continuation of Antidumping Duty Orders,* 70 FR 61119 (October 20, 2005); *Final Results of Expedited Sunset Reviews: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan, South Korea, and Taiwan,* 65 FR 5604 (February 4, 2000).

On September 1, 2010, the Department initiated the current sunset reviews pursuant to section 751(c) of the

Tariff Act of 1930, as amended (the Act), and 19 CFR part 351, in general. *See Initiation Notice.* We received no response from the domestic industry by the deadline date. *See* 19 CFR 351.218(d)(1)(i). As a result, the Department has determined that no domestic party intends to participate in the sunset reviews. *See* 19 CFR 351.218(d)(1)(iii)(A). On September 21, 2010, the Department notified the International Trade Commission in writing that we intended to issue a revocation of the antidumping duty orders. *See* 19 CFR 351.218(d)(1)(iii)(B)(2).

Revocation

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested parties respond to a notice of initiation, the Department shall, within 90 days after the initiation of the review, revoke the order. Because no domestic interested party filed a notice of intent to participate in any of the reviews, the Department finds that no domestic interested party is participating in the reviews. Thus, we are revoking the orders on certain stainless steel butt-weld pipe fittings from Japan, South Korea and Taiwan.

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(c)(6)(A)(iii) of the Act, and 19 CFR 351.222(i)(2)(i), the Department will instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after October 20, 2010, the fifth anniversary of the date of publication of the last continuation notice. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping and deposit requirements. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately-filed requests for review.

This five-year ("sunset") review and this notice are in accordance with section 751(c) and 777(i)(1) of the Act.

Dated: November 1, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–28025 Filed 11–4–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA006

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Public Workshops

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

ACTION: Notice of workshop.

SUMMARY: NMFS, Alaska Region, will present a workshop on seaLandings, a consolidated electronic means of reporting landings and production of commercial groundfish to multiple management agencies for Federal and State fisheries off Alaska, and 2011 recordkeeping and reporting requirements for the Alaska groundfish fisheries and Individual Fishing Quota fisheries.

DATES: The workshop will be held on November 29, 2010, 9 a.m. to 4 p.m., Pacific Standard Time.

ADDRESSES: The workshop will be held at the Swedish Cultural Center located at 1920 Dexter Ave., N. Seattle, WA, in the Svea Room located on the Main level.

FOR FURTHER INFORMATION CONTACT: Susan Hall, 907–586–7462.

SUPPLEMENTARY INFORMATION: The workshop will include a discussion of 2011 recordkeeping and reporting requirements for Alaska groundfish fisheries and Individual Fishing Quota fisheries, and instructions for completing and submitting required reports and logbooks using seaLandings.

NMFS will provide a demonstration of the new version of seaLandings for at-sea catcher/processors and motherships, and training on how to submit daily production reports, and landing reports with and without Individual Fishing Quota.

Beginning in 2011, new regulations implementing Amendment 91 to the Fishery Management Plan for groundfish of the Bering Sea and Aleutian Islands Area require American Fisheries Act catcher/processors and any catcher/processor harvesting Community Development Quota pollock to use a NMFS approved electronic logbook in lieu of using the NMFS catcher/processor trawl gear Daily Fishing Logbook. At this workshop, NMFS will provide a demonstration of the trawl catcher/processor electronic logbook in seaLandings.

Special Accommodations

These workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Susan Hall, 907–586–7462, at least 5 working days prior to the meeting date.

Dated: November 2, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–28065 Filed 11–4–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[ITA–2010–0006]

Government Programs to Assist Businesses Protect Their Intellectual Property Rights (IPR) in Foreign Markets; Notice of Extension of Comment Period

AGENCY: Office of Intellectual Property Rights, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Comment Period.

SUMMARY: The International Trade Administration (ITA) of the U.S. Department of Commerce issued a request for written submissions in the **Federal Register** of September 30, 2010 (ITA–2010–0006) concerning government programs for protecting the intellectual property rights of U.S. businesses in foreign markets. *See* 75 FR 60408, Sep. 30, 2010. The agency is conducting a comprehensive review of existing U.S. efforts and seeks public input. This document extends the comment period from October 29, 2010 to November 29, 2010. Comments may be submitted as instructed in the original Federal Register Notice. *See* **ADDRESSES.** ITA is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submissions must be received on or before Monday, November 29, 2010.

ADDRESSES: All comments should be submitted via the Federal eRulemaking Portal, *http://www.regulations.gov,* docket number ITA–2010–0006. To submit comments to *http://www.regulations.gov,* find the docket by entering the number ITA–2010–0006 in the "Enter Keyword or ID" window at the *http://www.regulations.gov* home page and click "Search." The site will provide a search-results page listing all

documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a comment." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page).

The *http://www.regulations.gov* site provides the option of submitting comments by filling in a "Type comment & Upload file" field, or by attaching a document. Attached documents are preferable. If a document is attached, please type "IPR Assistance Review" in the "Type comment & Upload file" field. Submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) are preferred. If the submission is in an application other than those two, please indicate the name of the application in the "Comments" field. Submissions must be in English.

FOR FURTHER INFORMATION CONTACT: For questions on the submission of comments, please contact Christine Peterson at (202) 482–1432 or Andrea Cornwell at (202) 482–0998.

Publication and Confidential Information: Submissions filed in response to this request will be made available to the public by posting them on the Internet. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you have confidential business information that would support your recommendation or that you believe would help the U.S. Government formulate an effective enforcement strategy, please let us know, and we may request that additional information.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 30, 2010, ITA published a notice for request for comments with a 30-day comment period. The Agency received and considered requests for an extension of the comment period and extended the comment period for 30 days until November 29, 2010. The text of the original notice appears below.

The Department of Commerce invites public input and participation in shaping government programs for protecting the intellectual property rights of U.S. businesses, including Small- and Medium-Sized Enterprises (SMEs), in foreign markets. As evidenced by the launch of the President's National Export Initiative, improving U.S. Government support for U.S. business in overseas markets is an Administration priority. Unfortunately, American exporters face various barriers to entry in overseas markets including barriers related to intellectual property rights.

In coordination with the Intellectual Property Enforcement Coordinator ("IPEC") and to implement certain action items in the 2010 Joint Strategic Plan on Intellectual Property Enforcement submitted to Congress by the IPEC, the Department of Commerce is conducting a comprehensive review of existing U.S. Government efforts to educate, guide, and provide resources to U.S. businesses that are:

1. Acquiring intellectual property rights in foreign markets;

2. Contemplating exporting intellectual property-based products or choosing markets for export;

3. Actively entering foreign markets or facing difficulties entering foreign markets; or

4. Encountering difficulties enforcing their intellectual property rights in foreign markets.

The goal of the review is to improve efforts to support U.S. businesses facing barriers related to intellectual property rights protection and enforcement in overseas markets.

The Department of Commerce is hereby requesting written submissions from the public. In responding, please consider the questions and information requests posed below, but do not limit comments to these areas.

1. Describe your level of familiarity with intellectual property rights in general and intellectual property rights in foreign markets in particular.

2. Identify specific challenges businesses, including SMEs, face in protecting their intellectual property rights abroad.

3. In what countries or regions do businesses need the most assistance protecting their intellectual property rights? In responding please prioritize any countries identified.

4. Which specific types of intellectual property (copyrights, trademarks, patents, trade secrets) present the most challenges to SMEs? Should U.S. government programs focus on specific areas of intellectual property protection?

5. Suggest particular outreach, programs or assistance that the government can provide that would help U.S. businesses overcome those challenges.

6. Describe your familiarity with or use of current U.S. Government services and tools related to IPR protection and enforcement in foreign markets, and assess their usefulness and/or gaps.

7. Assess the adequacy of the intellectual property resources, tools, services and programs that the U.S. government currently provides to SMEs.

8. What specific outreach formats (*e.g.,* conferences, webinars, publications, podcasts) work best for educating U.S. businesses on how to protect their IPR abroad?

9. Identify specific existing programs provided by the U.S. Government or governments of other countries that have been particularly effective at assisting U.S. businesses with protecting their intellectual property rights in foreign markets (including, if possible, specific examples illustrating the effectiveness of those methods).

10. Identify specific existing programs involving cooperation between stakeholders and the U.S. Government (or between stakeholders and other governments) that have been particularly effective at assisting SMEs with the protection of their IP in foreign markets.

11. What additional role(s) should the government play in assisting businesses with the protection of their intellectual property rights abroad?

12. Identify additional resources and tools the U.S. Government could provide to support SMEs as they enforce their intellectual property rights in foreign markets.

13. Identify the most effective and efficient ways to inform U.S. businesses of new and existing government offerings that support U.S. businesses in their efforts to protect their intellectual property abroad.

14. In a recent report by the International Trade Commission, combining resources through trade associations or through less formal groups was one strategy SMEs suggested to reduce trade barriers. Describe ways the government can support SMEs as they pool resources to combat infringement abroad.

It is difficult to overstate the value of intellectual property rights (IPR) to innovation, investment and economic development for U.S. businesses. Intellectual property rights are also critical to our small and medium-sized enterprises (SMEs). The U.S. Chamber of Commerce [1] estimates that IP-intensive industries employ 18 million Americans, and the Small Business Administration has estimated that SMEs alone employ half of Americans and account for 65 percent [2] of new jobs.

[1] Global Intellectual Property Center, *Intellectual Property: Creating Jobs, Saving Lives, Improving the World,* 2009.

[2] Karen Mills, Administrator of the U.S. Small Business Administration (SBA), speech at "*Jobs on*

The theft of IP from SMEs is a serious matter, as it stifles innovation, slows economic growth, weakens the competitiveness of U.S. employers, and threatens American jobs. Intellectual property theft at the hands of foreign companies, consumers, and even governments, has an adverse impact on all IP-based innovation and economic success. SMEs are particularly vulnerable because they are at a distinct disadvantage when confronting these difficulties in foreign markets. The Department of Commerce's priorities include ensuring that intellectual property remains a viable driver or innovation, and that our IP-based industries can compete effectively in the international marketplace. Commerce Bureaus, namely the U.S. Patent and Trademark Office (USPTO) and the International Trade Administration (ITA), work alongside the IPEC and the agencies involved in intellectual property rights enforcement to help businesses secure and enforce intellectual property rights at home and abroad.

To educate and assist all businesses, and SMEs in particular, the Department of Commerce has developed a number of IPR tools and resources. ITA, on behalf of U.S. intellectual property agencies, launched a Web site in 2004 (*http://www.stopfakes.gov*) to provide updates and links to Executive Branch IPR programs. On the Web site, there are additional resources for businesses such as an online IPR tutorial, which is available in three languages, country-specific IPR toolkits and links to other resources such as the American Bar Association's International IP Advisory Program. The site also allows businesses to file complaints about IPR-related trade problems, which are answered by a trade specialist from ITA. The Department of Commerce also established the 1–866–999–HALT hotline answered by PTO IPR experts, who work with ITA's Office of Intellectual Property Rights (OIPR) to help businesses secure and enforce their IPR through international treaties. Though this list is non-exhaustive, U.S. agencies recognize that there may be additional government tools and support on IPR protection and enforcement that could assist U.S. exporters.

Main Street, Customers Around the World" event hosted by USTR 01–21–10.

Dated: Monday, November 1, 2010.

Skip Jones,

Deputy Assistant Secretary, Trade Agreements and Compliance, Market Access and Compliance, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2010–27942 Filed 11–4–10; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India: Rescission 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 (the Department) initiated an administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. The period of review is May 1, 2009, through April 30, 2010. As a result of withdrawal of the requests for review, the Department is rescinding this review.

DATES: *Effective Date:* November 5, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Romani or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0198 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2010, and in accordance with 19 CFR 351.213(g) and 19 CFR 351.221(b)(1), we published a notice of initiation of an administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). Based on various requests for review, we initiated reviews of Lloyds Group and all affiliates (including but not limited to Lloyds Metals & Engineers Ltd. and Lloyds Steel Industries Ltd.) (collectively, Lloyds) and Ushdev International Ltd.

Rescission of Review

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review, "in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so." On October 14, 2010, the U.S. Steel Corporation withdrew its request for a review of the order with respect to Lloyds and Ushdev International Ltd. Lloyds withdrew its request for review on October 18, 2010. Although the parties submitted letters withdrawing their review requests after the 90-day regulatory deadline, the Department finds it is reasonable to extend the deadline for withdrawing review requests because it has not yet devoted significant time or resources to the review.

Because we received no other requests for review of Lloyds, we are rescinding the administrative review of the order with respect to Lloyds Group and all affiliates, Lloyds Metals & Engineers Ltd., and Lloyds Steel Industries Ltd. Because we received no other requests for review of Ushdev International Ltd., we are also rescinding the review with respect to Ushdev International Ltd. This rescission is in accordance with 19 CFR 351.213(d)(1). The Department intends to issue appropriate assessment instructions to U.S. Customs and Border Protection 15 days after publication of this notice.

Notifications

This notice serves as a final 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

and terms of an APO is a violation which is subject to sanction.

This notice is published in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: November 1, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–28055 Filed 11–4–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period January 1 through June 30, 2010.

DATES: Comments must be submitted on or before December 6, 2010.

ADDRESSES: Written comments (original and six copies) should be sent to the Secretary of Commerce, *Attn:* James Terpstra, Import Administration, APO/Dockets Unit, Room 7043, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2008, Section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

The Department submitted its last subsidy report on June 15, 2010. As part of its newest report, the Department intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

Request for Comment

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period January 1 through June 30, 2010. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that exports of softwood lumber from Canada and Chile each account for at least one percent of U.S. imports of softwood lumber products during that time period. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period July 1 through December 31, 2010, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where a government authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred. See section 771(5)(B) of the Tariff Act of 1930, as amended.

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief (3–4 sentence) description of the subsidy program; and (4) the government body or authority that provided the subsidy.

Submission of Comment

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department also requests submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on CD–ROM with the paper copies or by e-mail to the Webmaster below.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Import Administration Web site at the following address: *http://ia.ita.doc.gov.* Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, *e-mail address: webmaster-support@ita.doc.gov.*

All comments and submissions should be mailed to James Terpstra, Import Administration; Subject: Softwood Lumber Subsidies Bi-Annual Report: Request for Comment; Room 7043, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, by no later than 5 p.m., on the above-referenced deadline date.

Dated: October 29, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–27890 Filed 11–4–10; 8:45 am]

BILLING CODE 3510–DS–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to the Procurement List.

SUMMARY: The Committee is proposing to add a service to the Procurement List that will be provided by nonprofit agency employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: 12/6/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Barry S. Lineback,

Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the service listed below from nonprofit agency employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the service to the Government.

2. If approved, the action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List that will be provided by the nonprofit agency listed:

Service:

Service Type/Location: Custodial Service, U.S. Federal Courthouse, Buffalo, NY.

NPA: Phoenix Frontier, Inc., Buffalo, NY.

Contracting Activity: GSA/Upstate New York Service District, Syracuse, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–28012 Filed 11–4–10; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, November 10, 2010; 10 a.m.–11 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: November 2, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–28164 Filed 11–3–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Audit Advisory Committee (DAAC)

AGENCY: Under Secretary of Defense (Comptroller), DoD.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Defense Audit Advisory Committee will be held.

DATES: Monday, November 22, 2010 beginning at 3 p.m. and ending at 5 p.m.

ADDRESSES: Pentagon, Room 3E754, Washington DC (escort required, see below).

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer (DFO) is Sandra Gregory, Office of the Under Secretary of Defense (Comptroller) (OUSD (C)), 1100 Defense Pentagon, Room 3D150, Washington, DC 20301–1100, *sandra.gregory@osd.mil,* (703) 614–3310. For meeting information please contact Christopher Hamrick, OUSD(C), 1100 Defense Pentagon, Room 3D150, Washington, DC 20301–1100, *Christopher.Hamrick@osd.mil,* (703) 614–4819.

SUPPLEMENTARY INFORMATION:

(a) Purpose

The mission of the DAAC is to provide the Secretary of Defense, through the Under Secretary of Defense (Comptroller)/Chief Financial Officer, independent advice and recommendations on DoD financial management to include financial reporting processes, systems of internal controls, audit processes, and processes for monitoring compliance with relevant laws and regulations.

(b) Agenda

3 Opening Remarks
3:15 FIAR Plan Status Report
3:45 Congressional Interest Items
4:15 Alternative Methods to Value Assets
4:45 Conclusion

(c) Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. Members of the public who wish to attend the meeting must contact Mr. Hamrick at the number listed in this FR notice no later than noon on Wednesday, November 18, 2010, to arrange a Pentagon escort. Public attendees are required to arrive at the Pentagon Metro Entrance by 2 p.m. and complete security screening by 2:15 p.m. Security screening requires two forms of identification: (1) A government-issued photo I.D., and (2) any type of secondary I.D. which verifies the individual's name (*i.e.* debit card, credit card, work badge, social security card). Special Accommodations: Individuals requiring special accommodation to access the public meeting should contact Mr. Hamrick at least five business days prior to the meeting to ensure appropriate arrangements can be made.

(d) Procedures for Providing Written Comments

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public session.

Written comments are accepted until the date of the meeting, however, written comments should be received by the Designated Federal Officer at least five business days prior to the meeting date so that the comments may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted to the Designated Federal Officer listed in this notice. E-mail submissions should be in one of the following formats (Adobe Acrobat, WordPerfect, or Word format).

Please note: since the committee operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection, up to and including being posted on the OUSD(C) Web site.

Dated: November 2, 2010.

Morgan F. Park,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2010–27961 Filed 11–4–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Closed Meeting of the Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology and Logistics.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces the following Federal advisory committee meeting of the Threat Reduction Advisory Committee (Hereafter referred to as "the Committee").

DATES: Monday, November 22, 2010 from 9 a.m. to 5 p.m. From 8 a.m. until 9 a.m. on Monday, November 22, 2010, the TRAC will hold an administrative meeting.

ADDRESSES: Heritage Conference Center, Yorktown Conference Room, 4803 Stonecroft Boulevard, Chantilly, VA 20151.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Eric Wright, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. E-mail: *eric.wright@dtra.mil.* Phone: (703) 767–4759. Fax: (703) 767–5701.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate classified information related to the Committee's mission to advise on technology security, combating weapons of mass destruction (WMD), chemical and biological defense, the future of the Cooperative Threat Reduction program, and other matters related to the Department of Defense's mission.

Agenda: From 8 a.m. until 9 a.m. on Monday, November 22, 2010, the TRAC will hold an administrative meeting under 41 CFR 102–3.160(b) to swear in its members and provide them with administrative information from a Federal officer or agency.

Beginning at 9 a.m. through the end of the meeting, the committee will receive secret level briefings on WMD threats, the Defense Threat Reduction Agency, and the status of the Cooperative Threat Reduction program. The TRAC will hold classified discussions on these and related national security matters.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense for Acquisition, Technology and Logistics, in consultation with the Office of the DoD FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of Title 5, United States Code, 552b(c)(1) and are inextricably intertwined with the unclassified material that they cannot reasonably be segregated into separate discussions without disclosing secret or classified material.

Committee's Designated Federal Officer or Point of Contact: Mr. Eric Wright, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. E-mail: *eric.wright@dtra.mil.* Phone: (703) 767–4759. Fax: (703) 767–5701.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: November 2, 2010.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–27963 Filed 11–4–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Occupational Safety and Drug-Free Work Force (OMB Control Number 0704–0272)

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 use of the combined requirements for three years, through November 30, 2013.

DATES: DoD will consider all comments received by January 4, 2011.

ADDRESSES: You may submit comments, identified by OMB Control Number

0704–0272, using any of the following methods:

o *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "OMB Control Number 0704–0272" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "OMB Control Number 0704–0272". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "OMB Control Number 0704–0272" on your attached document.

○ *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0272 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Jennifer Abi-Najm, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Abi-Najm, (703) 602–0131. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.regulations.gov.* Paper copies are available from Ms. Jennifer Abi-Najm, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 223, Occupational Safety and Drug-Free Work Force, and related clauses in DFARS 252.223; OMB Control Number 0704–0272.

Needs and Uses: This information collection requires that an offeror or contractor submit information to DoD in response to DFARS solicitation provisions and contract clauses relating to occupational safety. DoD contracting officers use this information to—

○ Verify compliance with requirements for labeling of hazardous materials;

○ Ensure contractor compliance and monitor subcontractor compliance with DoD 4145.26–M, DoD Contractors' Safety Manual for Ammunition and Explosives, and minimize risk of mishaps;

○ Identify the place of performance of all ammunition and explosives work; and

○ Ensure contractor compliance and monitor subcontractor compliance with DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

In addition, this information collection requires DoD contractors to maintain records regarding drug-free work force programs provided to contractor employees. The information is used to ensure reasonable efforts to eliminate the unlawful use of controlled substances by contractor employees.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 989,544 (9,448 response + 980,096 recordkeeping).

Number of Respondents: 1,519.

Responses per Respondent: Approximately 9.

Annual Responses: 13,507.

Average Burden per Response: .7 hours.

Frequency: On occasion.

Number of recordkeepers: 18,012.

Average Annual Burden per Recordkeeper: 54.4 hours.

Summary of Information Collection

This information collection includes the following requirements:

1. *DFARS 252.223–7001, Hazard Warning Labels.* Paragraph (c) requires all offerors to list which hazardous materials will be labeled in accordance with certain statutory requirements instead of the Hazard Communication Standard. Paragraph (d) requires only the apparently successful offeror to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of the clause.

2. *DFARS 252.223–7002, Safety Precautions for Ammunition and Explosives.* Paragraph (c)(2) requires the contractor, within 30 days of notification of noncompliance with DoD 4145.26–M, to notify the contracting officer of actions taken to correct the noncompliance. Paragraph (d)(1) requires the contractor to notify the contracting officer immediately of any mishaps involving ammunition or explosives. Paragraph (d)(3) requires the contractor to submit a written report of the investigation of the mishap to the contracting officer. Paragraph (g)(4) requires the contractor to notify the contracting officer before placing a subcontract for ammunition or explosives.

3. *DFARS 252.223–7003, Changes in Place of Performance—Ammunition and Explosives.* Paragraph (a) requires the offeror to identify, in the "Place of Performance" provision of the solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of the solicitation. Paragraphs (b) and (c) require the offeror or contractor to obtain written permission from the contracting officer before changing the place of performance after the date set for receipt of offers or after contract award.

4. *DFARS 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.* Paragraph (e) requires the contractor to notify the cognizant Defense Security Service field office within 10 days after award of any subcontract involving sensitive conventional arms, ammunition, and explosives within the scope of DoD 5100.76–M.

5. *DFARS Section 223.570, Drug-free work force, and the associated clause at DFARS 252.223–7004, Drug-Free Work Force,* require that DoD contractors institute and maintain programs for achieving the objective of a drug-free work force, but do not require contractors to submit information to the Government. This information collection requirement reflects the public burden of maintaining records related to a drug-free work force program.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–28024 Filed 11–4–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DFARS Part 247, Transportation (OMB Control Number 0704–0245)

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 under Control Number 0704–0245 for use through April 30, 2011. Also included in this submission is the related requirement previously approved under OMB Control Number 0704–0445 that expires on December 31, 2011. DoD proposes that OMB extend its approval for both requirements under Control Number 0704–0245 for use for three additional years.

DATES: DoD will consider all comments received by January 4, 2011.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0245, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "OMB Control Number 0704–0245" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "OMB Control Number 0704–0245". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "OMB Control Number 0704–0245" on your attached document.

○ *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0245 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

○ Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *http://www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, 703–602–0311. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 247, Transportation, and related clauses at DFARS 252.247; OMB Control Number 0704–0245.

Needs and Uses: DoD contracting officers use this information to verify that prospective contractors have adequate insurance prior to award of stevedoring contracts; to provide appropriate price adjustments to stevedoring contracts; and to assist the Maritime Administration in monitoring compliance with requirements for use of U.S.-flag vessels in accordance with the Cargo Preference Act of 1904 (10 U.S.C. 2631).

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 150,136.

Number of Respondents: 60,415.

Responses per Respondent: Approximately 8.

Annual Responses: 465,857.

Average Burden per Response: .32 hours.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.247–7000, Hardship Conditions, is prescribed at DFARS 247.270–4(a) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (a) of the clause requires the contractor to notify the contracting officer of unusual conditions associated with loading or unloading a particular cargo, for potential adjustment of contract labor rates; and to submit any associated request for price adjustment to the contracting officer within 10 working days of the vessel sailing time.

The clause at DFARS 252.247–7001, Price Adjustment, is prescribed at DFARS 247.270–4(b) for use in solicitations and contracts when using sealed bidding to acquire stevedoring services. Paragraphs (b) and (c) of the clause require the contractor to notify the contracting officer of certain changes in the wage rates or benefits that apply to its direct labor employees. Paragraph (g) of the clause requires the contractor to include with its final invoice a statement that the contractor has experienced no decreases in rates of pay for labor or has notified the contracting officer of all such decreases.

The clause at DFARS 252.247–7002, Revision of Prices, is prescribed at DFARS 247.270–4(c) for use in solicitations and contracts when using negotiation to acquire stevedoring services. Paragraph (c) of the clause provides that, at any time, either the contracting officer or the contractor may deliver to the other a written demand that the parties negotiate to revise the prices under the contract. Paragraph (d) of the clause requires that, if either party makes such a demand, the contractor must submit relevant data upon which to base negotiations.

The clause at DFARS 252.247–7007, Liability and Insurance, is prescribed at DFARS 247.270–4(g) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (f) of the clause requires the contractor to furnish the contracting officer with satisfactory evidence of insurance.

The provision at DFARS 252.247–7022, Representation of Extent of Transportation by Sea, is prescribed at DFARS 247.574(a) for use in all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold. Paragraph (b) of the provision requires the offeror to represent whether or not it anticipates that supplies will be transported by sea in the performance of any contract or subcontract resulting from the solicitation.

The clause at DFARS 252.247–7023, Transportation of Supplies by Sea, is prescribed at DFARS 247.574(b) for use in all solicitations and contracts except those for direct purchase of ocean transportation services. The clause is used with its Alternate III in solicitations and contracts with an anticipated value at or below the simplified acquisition threshold. Paragraph (d) of the clause requires the contractor to submit any requests for use of other than U.S.-flag vessels in writing to the contracting officer. Paragraph (e) of the clause requires the contractor to submit one copy of the rated on board vessel operating carrier's ocean bill of lading. Paragraph (f) of the clause requires the contractor to represent, with its final invoice, that: (1) No ocean transportation was used in the performance of the contract; (2) only U.S.-flag vessels were used for all ocean shipments under the contract; (3) the contractor had the written consent of the contracting officer for all non-U.S.-flag ocean transportation; or (4) shipments were made on non-U.S.-flag vessels without the written consent of the contracting officer. Contractors must flow down these requirements to noncommercial subcontracts and certain types of commercial subcontracts.

Subcontracts at or below the simplified acquisition threshold are excluded from the requirements of paragraph (f) of the clause.

The clause at DFARS 252.247–7024, Notification of Transportation of Supplies by Sea, is prescribed at DFARS 247.574(c) for use in all contracts, for which the offeror represented, by completion of the provision at DFARS 252.247–7022, that it did not anticipate transporting any supplies by sea in performance of the contract. Paragraph (a) of the clause requires the contractor to notify the contracting officer if the contractor learns after award of the contract that supplies will be transported by sea.

The clause at DFARS 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, is prescribed at DFARS 247.574(e) in solicitations that require a covered vessel for carriage of cargo for DoD. Paragraph (c) of the clause requires the offeror to provide information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–28032 Filed 11–4–10; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DFARS Appendix F, Material Inspection and Receiving Report (OMB Control Number 0704–0248)

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 April 30, 2011. DoD proposes that OMB extend its approval for three additional years.

DATES: DoD will consider all comments received by January 4, 2011.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0248, using any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "OMB Control Number 0704–0248" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "OMB Control Number 0704–0248". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "OMB Control Number 0704–0248" on your attached document.
- *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0248 in the subject line of the message.
- *Fax:* 703–602–0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, 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. To confirm receipt of your comment, please check *http://www.regulations.gov* approximately two to three days after submission to verify posting, except allow 30 days for posting of comments submitted by mail.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Overstreet, 703–602–0311. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.regulations.gov.*

Paper copies are available from Ms. Mary Overstreet, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Appendix F, Material Inspection and Receiving Report; DD Form 250, DD Form 250c, DD form 250–1; OMB Control Number 0704–0248.

Needs and Uses: The collection of this information is necessary to process the shipping and receipt of materials and payment to contractors under DoD contracts.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 166,528.

Number of Respondents: 21,220.

Responses per Respondent: Approximately 190.

Annual Responses: 4,036,000.

Average Burden per Response: About 2.5 minutes.

Frequency: On occasion.

Summary of Information Collection

This information collection includes the requirements of DFARS Appendix F, Material Inspection and Receiving Report; the related clause at DFARS 252.246–7000, Material Inspection and Receiving Report; and DD Forms 250, 250c, and 250–1. The clause at DFARS 252.246–7000 is used in contracts that require separate and distinct deliverables. The clause requires the contractor to prepare and furnish to the Government a material inspection and receiving report (DD Form 250) in a manner and to the extent required by DFARS Appendix F. The contractor submits the information by using the Wide Area WorkFlow electronic form. The information is required for material inspection and acceptance, shipping, and payment.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2010–28030 Filed 11–4–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

DEPARTMENT OF THE ARMY

Notice of Availability of a Draft Programmatic Environmental Impact Statement (PEIS) for the Growth, Realignment, and Stationing of Army Aviation Assets

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the Draft

PEIS for the proposed growth, realignment, and stationing of new and existing Army aviation assets. The proposed action includes the consolidation and reorganization of existing aviation units, and the potential establishment of one or more Combat Aviation Brigades (CABs). The proposed action will increase the availability of helicopter assets to meet current and future national security requirements and will allow the Army better to organize existing aviation assets to promote more effective training and force management. The Draft PEIS evaluates the environmental impacts associated with the proposed action, which also includes the construction and renovation of garrison facilities, as well as additional training needed to support the aviation units. Land acquisition is not being considered as part of this action.

The Draft PEIS considers the following alternatives: Alternative 1—Realign and Station Existing Aviation Elements of Up to a Full CAB or Activate and Station a New CAB at Fort Carson, Colorado. Under this alternative, the Army either will consolidate existing aviation units not currently assigned to a CAB into a standard CAB structure at Fort Carson or activate a new CAB at Fort Carson. As part of this alternative, aviation units will conduct training on existing land at Pinon Canyon Maneuver Site (PCMS), Colorado, in order to maintain training proficiency and support integrated training with ground units. Land acquisition is not being considered as part of this action. Alternative 2—Realign and Station Existing Aviation elements of Up to a Full CAB or Grow, Station and Activate a CAB at Joint Base Lewis-McChord (JBLM) Washington. Under this alternative, the Army either will consolidate existing aviation units not currently assigned to a CAB into a standard CAB structure at JBLM or activate a new CAB at JBLM. As part of this alternative, aviation units will conduct training on existing training land at Yakima Training Center (YTC), Washington, in order to maintain training proficiency and support integrated training with ground units. Land acquisition is not being considered as part of this action. Alternative 3—Implement Alternatives 1 and 2 (preferred alternative). Under this alternative, the Army will implement both alternatives. Under this alternative, the consolidated units forming a CAB would be stationed at one installation, and the new CAB would be activated and stationed at the other installation. Fort Carson and JBLM would each gain up to one CAB. As part of this alternative, aviation units would conduct training on existing training land at the installation's training maneuver area (PCMS for Fort Carson and YTC for JBLM) in order to maintain training proficiency and support integrated training with ground units. Alternative 4—No Action Alternative. Under this alternative, the Army would retain its aviation force structure at its current levels, configurations, and locations.

Fort Carson and JBLM are the only stationing alternatives that meet all of the Army's stationing requirements for new CAB stationing. These locations have existing runways and airfields, provide adequate maneuver and airspace for CAB operations, and are equipped with existing training ranges that can support CAB training. Most importantly, Fort Carson and JBLM are the only major installations that have three or more Brigade Combat Teams but no CAB dedicated to provide aviation support for training. The proposed action would allow the Army to maximize integrated air-ground training. Land acquisition is not being considered as part of this action.

DATES: The public comment period will end 45 days after the publication of a notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments may be sent to: Public Affairs Office, U.S. Army Environmental Command, Attention: IMPA–AE, 1835 Army Boulevard, Basement (Building 2000), Fort Sam Houston, TX 78234–2686.

FOR FURTHER INFORMATION CONTACT: Public Affairs Office at (210) 221–0882; fax (410) 436–1693; or e-mail at *APGR–USAECNEPA@conus.army.mil.*

SUPPLEMENTARY INFORMATION: A CAB consists of approximately 120 helicopters, 600 wheeled vehicles, and 2,700 Soldiers. The CAB is organized into five battalions and a headquarters unit. CAB units include combat, reconnaissance, and logistics support aircraft.

The Draft PEIS assesses, considers, and compares the direct, indirect, and cumulative environmental effects of proposed CAB growth and realignment for each alternative. The primary environmental issues evaluated include impacts to air quality, soil, airspace, cultural resources, natural resources, and noise. In addition, the Army considers those issues identified by the public and other organizations during the public scoping period (10 September–10 October 2010).

Environmental impacts associated with the implementation of the proposed action include significant impacts to transportation on the Interstate 5 corridor near JBLM and to fish and water quality in Puget Sound. There are potentially significant impacts to biological resources at YTC from increased potential for wildfire and habitat degradation associated with aviation training. Impacts will also include significant but mitigable impacts to soils at Fort Carson, PCMS, and YTC as well as significant but mitigable impacts to water resources at YTC. At PCMS, cumulative impacts to soils are predicted to be manageable with current dust control mitigation techniques. Impacts to cultural resources, air quality, noise impacts, public land use, and socioeconomic impacts were all determined to be less than significant.

Members of the public, including native communities and federally recognized Native American Tribes, and Federal, State, and local agencies are invited to submit written comments on environmental issues, concerns and opportunities analyzed in the Draft PEIS.

A copy of the Draft PEIS is available at *http://aec.army.mil/usaec/nepa/topics00.html.*

Dated: October 25, 2010.

Hershell E. Wolfe,

Acting Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

[FR Doc. 2010–28035 Filed 11–4–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision (ROD) for Training Range and Garrison Support Facilities Construction and Operation at Fort Stewart, GA

AGENCY: Department of the Army, DoD.

ACTION: Record of Decision.

SUMMARY: The Department of the Army announces the availability of the ROD for the construction and operation of up to twelve range projects and two garrison support facilities at Fort Stewart. The Army, through the ROD, selects Alternative B for implementation. Alternative B includes sites for projects that predominantly utilize footprints of existing ranges, limits construction and restrictions on existing maneuver terrain, are located in relative close proximity to the cantonment area to reduce unit transit

time, and have less overall environmental impacts. The decision sites ranges and support facilities in locations that reflect the proper balance of initiatives for the protection of the environment, mission needs, and Soldier and Family quality of life considerations.

ADDRESSES: To request a copy of the ROD, please contact Mr. Charles Walden, Project Manager, Directorate of Public Works, Prevention and Compliance Branch, Environmental Division, 1550 Frank Cochran Drive, Building 1137–A, Fort Stewart, Georgia 31314–4928 or e-mail *Charles.Walden4@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Larson, Public Affairs Office, at (912) 435–9879 during normal business hours.

SUPPLEMENTARY INFORMATION: The decision to proceed with the implementation of Alternative B allows the Army to better accomplish its sustainability goals on Fort Stewart because the sites are optimal for design, lessen environmental impacts, and are more land-use compatible. Minor to negligible impacts have been identified for cultural resources and consultation with the Georgia State Historic Preservation Office is complete. Moderate adverse impacts have been identified for soils, water quality, protected species, timber resources, wildland fire, and noise as part of implementing the decision. There are no practicable alternatives to locating the projects in wetlands or floodplains, but the selected alternative minimizes floodplain and wetland impacts. There will be moderate adverse impacts to protected species (red-cockaded woodpecker and frosted flatwood salamander). Formal consultation with the U.S. Fish and Wildlife Service is complete and all practicable mitigation measures and best management practices will be implemented to offset environmental impacts. The action will not jeopardize the continued existence of these species. The Known Distance Range, a Qualification Training Range, an Infantry Squad Battle Course, a Fire and Movement Range, and a 25 Meter Zero Range were analyzed as part of the proposed action in the Environmental Impact Statement, but have been deferred due to funding. These five ranges have been included in the ROD because they may be funded in the future. Mitigation associated with these ranges will be implemented in the event the ranges are constructed. The No Action Alternative would not provide enough ranges and support facilities needed to adequately accomplish the mission. Alternative C, with different range and support facility sitings than Alternative B, would result in greater adverse environmental impacts and is not preferred operationally.

The Final EIS and ROD may be accessed at *http://www.fortstewart-mmp-eis.com.*

Dated: 25 October 2010.

Hershell E. Wolfe,

Acting Deputy Assistant Secretary of the Army, Environment, Safety and Occupational Health.

[FR Doc. 2010–28036 Filed 11–4–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 4, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 1, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Vocational and Adult Education

Type of Review: Extension.

Title of Collection: Measuring Educational Gain in the National Reporting System for Adult Education.

OMB Control Number: 1830–0567.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit.

Total Estimated Number of Annual Responses: 15.

Total Estimated Number of Annual Burden Hours: 600.

Abstract: The Secretary has amended title 34 of the Code of Federal Regulations by adding a new part 462 that establish procedures the Secretary uses when considering the suitability of tests for use in the National Reporting System (NRS) for adult education. The regulations further the Department's implementation of section 212 of the Adult Education and Family Literacy Act (AEFLA). These regulations also include procedures that States and Local eligible providers would follow when using suitable tests. The AEFLA makes accountability for results a central focus of the law. It sets out performance accountability requirements for States and Local programs that measure program effectiveness on the basis of student academic achievement and other outcomes.

Educational gain is the key outcome measure in the NRS, which describes students' improvement in literacy skills during instruction. States are required to have their local programs assessments

gained by administering standardized pre-post assessments to students, following valid administration procedures. The NRS Guidelines allow states to select the assessments most appropriate for their state, which may be published standardized tests or performance-based assessments. If the state uses performance-based assessments, NRS guidelines require the assessment to have standardized procedures and scoring rubrics that meet accepted psychometric standards.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4422. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number 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. 2010–27981 Filed 11–4–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 4, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 2, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title of Collection: TEACH Grant Supplementary Data Collection.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Biennially.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 488.

Total Estimated Number of Annual Burden Hours: 488.

Abstract: The Secretary of Education is required to report to Congress about the TEACH Grant Program, including the student's: (1) Eligible field of study and (2) cost of education. The Secretary includes these data elements as part of a report submitted to congressional authorizing committees with respect to schools and students served by Teach Grant recipient schools. This report is required by Section 420P of the Higher Education Act, as amended by the Higher Education Opportunity Act of 2008.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4430. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number 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. 2010–28051 Filed 11–4–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9169–003]

Oregon Parks and Recreation Department; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

October 29, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of Exemption.

b. *Project No.:* 9169–003.

c. *Date Filed:* August 30, 2010.

d. *Applicant:* Oregon Parks and Recreation Department.

e. *Name of Project:* Thompson's Mills Hydroelectric Project.

f. *Location:* The project is located on the Calapooia River in Linn County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. MG Devereux, Oregon Parks and Recreation

Department, 725 Summer Street, NE., Suite C, Salem, Oregon 97301, (503) 986–0735

i. *FERC Contact:* Linda Stewart, telephone (202) 502–6680, and e-mail address *linda.stewart@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* November 29, 2010.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–9619–003) on any comments, motions, or recommendations filed.

k. *Description of Request:* The applicant's proposed surrender would include the removal of Shearer and Sodom Dams and the restoration of each site. Additionally, the mill would be preserved in its historical condition as a grain mill.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title "COMMENTS", "PROTEST", "MOTION TO INTERVENE", or "RECOMMENDATIONS" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, recommendations, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, recommendations, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27990 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 26, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC11–12–000.

Applicants: Agri Beef Co., E. Robert Mooney, Mendata LP, Brookfield Power US Holding America Co.

Description: Application of Brookfield Power US Holding America Co., *et al.*

Filed Date: 10/22/2010.

Accession Number: 20101022–5181.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: EC11–13–000.

Applicants: Cadillac Renewable Energy LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Cadillac Renewable Energy LLC.

Filed Date: 10/25/2010.

Accession Number: 20101025–5305.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–1232–027; ER07–1113–014; ER09–335–009.

Applicants: J.P. Morgan Ventures Energy Corporation, BE CA LLC

Description: The MBR Companies submit Supplement to Updated Market Power Analysis and Order No. 697.

Filed Date: 10/22/2010.

Accession Number: 20101022–5164.

Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER07–1356–017; ER07–1112–015; ER07–1113–016; ER07–1116–014; ER07–1117–017; ER07–1118–016; ER07–1358–019; ER00–2885–033; ER01–2765–032; ER09–609–008; ER09–1141–012; ER05–1232–031; ER02–2102–032; ER03–1283–025.

Applicants: J.P. Morgan Ventures Energy Corporation, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Rayle LLC, BE Alabama LLC, BE Louisiana LLC, Cedar Brakes I, L.L.C., Utility Contract Funding, L.L.C., Central Power & Lime LLC, Cedar Brakes II, L.L.C., J.P. Morgan. Commodities Canada Corporation, Vineland Energy LLC

Description: JPMorgan Sellers submit Notice of Non-Material Change in Status.

Filed Date: 10/25/2010.
Accession Number: 20101025–5141.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER09–1481–003.
Applicants: Meadow Lake Wind Farm II LLC.
Description: Meadow Lake Wind Farm II LLC, Notice of Non-Material Change in Status.
Filed Date: 10/25/2010.
Accession Number: 20101025–5160.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER10–2220–002.
Applicants: New York Independent System Operator, Inc.
Description: New York Independent System Operator, Inc. submits tariff filing per 35: Filing in Compliance with 10/12/10 Order on Proposed Mitigation Measures to be effective 12/27/2010.
Filed Date: 10/26/2010.
Accession Number: 20101026–5119.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: ER10–3266–001.
Applicants: SU FERC, L.L.C.
Description: SU FERC, L.L.C. submits tariff filing per 35: Baseline Compliance to be effective 9/30/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5274.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–22–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits an unexecuted Generator Interconnection Agreement with Michigan Electric Transmission Company, LLC, to be effective 10/5/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5153.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER10–1894–003.
Applicants: Wisconsin Public Service Corporation.
Description: Wisconsin Public Service Corporation submits tariff filing per 35: Compliance Filing to Correct Attachments to be effective 7/23/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5149.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1825–001.
Applicants: Cleco Evangeline LLC.
Description: Cleco Evangeline LLC submits tariff filing per 35: Evangeline MBR revised to be effective 10/1/2010.
Filed Date: 10/01/2010.
Accession Number: 20101001–5086.
Comment Date: 5 p.m. Eastern Time on Friday, November 05, 2010.

Docket Numbers: ER11–1826–001.
Applicants: Acadia Power Partners, L.L.C.
Description: Acadia Power Partners, L.L.C. submits tariff filing per 35: Acadia MBR Revised to be effective 10/1/2010.
Filed Date: 10/01/2010.
Accession Number: 20101001–5088.
Comment Date: 5 p.m. Eastern Time on Friday, November 05, 2010.

Docket Numbers: ER11–1827–001.
Applicants: Cleco Power LLC.
Description: Cleco Power LLC submits tariff filing per 35: Cleco Power MBR revised to be effective 10/1/2010.
Filed Date: 10/01/2010.
Accession Number: 20101001–5083.
Comment Date: 5 p.m. Eastern Time on Friday, November 05, 2010.

Docket Numbers: ER11–1874–000.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35: PNM Section 23 OATT Compliance Filing to be effective 10/1/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5142.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1875–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits tariff filing per 35: 2010–10–22 CAISO's Non Generator Resource Compliance Filing to be effective 9/10/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5143.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1876–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): PG&E WD Tariff Service Agreement No. 57, Energy 2001 to be effective 12/21/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5147.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1877–000.
Applicants: Alabama Power Company.
Description: Alabama Power Company submits tariff filing per 35: APCo MUN 1—REA 1 Initial Tariff Filing to be effective 10/22/2010.
Filed Date: 10/22/2010.
Accession Number: 20101022–5148.
Comment Date: 5 p.m. Eastern Time on Friday, November 12, 2010.

Docket Numbers: ER11–1878–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc. submits an Interconnection & Interchange Agreement with Nebraska Public Power District to be effective 9/1/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5001.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1879–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Wholesale Distribution Service Agreement No. 2658—Virginia Electric and Power to be effective 9/23/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5056.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1880–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Sub First Rev ISA No. 1767, Queue P–06—Calpine NJ Gen and ACEC to be effective 9/17/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5060.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1881–000.
Applicants: Burley Butte Wind Park, LLC.
Description: Burley Butte Wind Park, LLC submits tariff filing per 35.12: Burley Butte Wind Park Market Based Rate Application to be effective 10/25/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5065.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1882–000.
Applicants: Golden Valley Wind Park, LLC.
Description: Golden Valley Wind Park, LLC's Consolidated Application for Expedited Acceptance of Initial Tariffs, Market Based Rate Authority, Certain Waivers & Authorization & Approval of Category 1 Status, effective 10/25/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5070.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1883–000.
Applicants: Milner Dam Wind Park, LLC.
Description: Milner Dam Wind Park, LLC submits tariff filing per 35.12: Milner Dam Wind Park Market Based

Rate Application to be effective 10/25/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5072.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1884–000.

Applicants: Public Service Company of Colorado.

Description: Public Service Company of Colorado submits tariff filing per 35: 2010–10–25_Order739_LiftPriceCap_CompFiling to be effective 10/1/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5074.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1885–000.

Applicants: Oregon Trail Wind Park, LLC.

Description: Oregon Trail Wind Park, LLC submits tariff filing per 35.12: Oregon Trail Wind Park Market Based Rate Application to be effective 10/25/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5076.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1886–000.

Applicants: Pilgrim Stage Station Wind Park, LLC.

Description: Pilgrim Stage Station Wind Park, LLC submits tariff filing per 35.12: Pilgrim Stage Station Wind Park Market Based Rate Application to be effective 10/25/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5081.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1887–000.

Applicants: Thousand Springs Wind Park, LLC.

Description: Thousand Springs Wind Park, LLC submits tariff filing per 35.12: Thousand Springs Wind Park Market Based Rate Application to be effective 10/25/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5092.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1888–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Service Agreement No. 1160 Niagara Mohawk and Sithe Independence Power Partners to be effective 10/26/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5099.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1889–000.

Applicants: Tuana Gulch Wind Park, LLC.

Description: Tuana Gulch Wind Park, LLC submits tariff filing per 35.12: Tuana Gulch Wind Park Market Based Rate Application to be effective 10/25/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5100.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1890–000.

Applicants: Camp Reed Wind Park, LLC.

Description: Camp Reed Wind Park, LLC submits tariff filing per 35.12: Camp Reed Wind Park Market Based Rate Application to be effective 10/25/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5107.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1890–000.

Applicants: Camp Reed Wind Park, LLC.

Description: Camp Reed Wind Park, LLC submits tariff filing per 35.12: Camp Reed Wind Park Market Based Rate Application to be effective 10/25/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5107.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1891–000.

Applicants: Safe Harbor Water Power Corporation.

Description: Safe Harbor Water Power Corporation submits tariff filing per 35.12: Baseline Filing MBR to be effective 3/1/2008.

Filed Date: 10/25/2010.

Accession Number: 20101025–5108.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1892–000.

Applicants: Payne's Ferry Wind Park, LLC.

Description: Payne's Ferry Wind Park, LLC submits tariff filing per 35.12: Payne's Ferry Wind Park Market Based Rate Application to be effective 10/25/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5115.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1893–000.

Applicants: Salmon Falls Wind Park, LLC.

Description: Salmon Falls Wind Park, LLC submits tariff filing per 35.12: Salmon Falls Wind Park Market Based Rate Application to be effective 10/25/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5118.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1894–000.

Applicants: Yahoo Creek Wind Park, LLC.

Description: Yahoo Creek Wind Park, LLC submits tariff filing per 35.12: Yahoo Creek Wind Park Market Based Rate Application to be effective 10/25/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5121.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1895–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Order 739 to Remove Price Cap Language to be effective 10/1/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5139.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1896–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revisions to its Open Access Transmission Tariff pursuant to Order No. 739 Compliance Filing, to be effective 9/24/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5151.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1897–000.

Applicants: Ameren Illinois Company.

Description: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii): Amendment to Services Tariff to be effective 10/1/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5187.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1898–000.

Applicants: Illinois Power Company.

Description: Illinois Power Company submits tariff filing per 35.15: Cancellation of Illinois Power Services Tariff to be effective 10/1/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5189.

Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1899–000.

Applicants: Maine Public Service Company.

Description: Maine Public Service Company submits tariff filing per 35: Order No. 739 Compliance to be effective 10/1/2010.

Filed Date: 10/25/2010.

Accession Number: 20101025–5237.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1900–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits tariff filing per 35.13(a)(2)(iii): PacifiCorp Facilities Maintenance Agreement (Dunlap Ranch I) to be effective 10/4/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5251.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1901–000.
Applicants: Commercial Energy of Montana.
Description: Commercial Energy of Montana submits tariff filing per 35.15: Commercial Energy of Montana Request for Cancellation to be effective 10/26/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5253.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1902–000.
Applicants: KCP&L Greater Missouri Operations Company.
Description: KCP&L Greater Missouri Operations Company submits tariff filing per 35: Attachment L Compliance Filing to be effective 10/25/2010.
Filed Date: 10/25/2010.
Accession Number: 20101025–5279.
Comment Date: 5 p.m. Eastern Time on Monday, November 15, 2010.

Docket Numbers: ER11–1903–000.
Applicants: Central Illinois Light Company.
Description: Central Illinois Light Company submits notice of cancellation of their Power Sales Tariff for Sale of Energy, Capacity and Ancillary Services at Market-Based Rate, Volume No 5, to be effective 10/1/2010.
Filed Date: 10/26/2010.
Accession Number: 20101026–5001.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: ER11–1904–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company submits tariff filing per 35.13(a)(2)(iii): RTSA Populus Amendment to be effective 10/29/2010.
Filed Date: 10/26/2010.
Accession Number: 20101026–5019.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010

Docket Numbers: ER11–1905–000.
Applicants: Idaho Power Company.
Description: Idaho Power Company submits tariff filing per 35.13(a)(2)(iii): Hemingway JOOA Amendment to be effective 10/25/2010.
Filed Date: 10/26/2010.
Accession Number: 20101026–5026.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: ER11–1906–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): WMPA 2652, Queue No. W1–100, PSE&G and PSE&G to be effective 9/27/2010.
Filed Date: 10/26/2010.
Accession Number: 20101026–5088.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: ER11–1907–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): WMPA No. 2650, Queue W1–098, PSE&G and PSE&G to be effective 9/27/2010.
Filed Date: 10/26/2010.
Accession Number: 20101026–5107.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: ER11–1908–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): PJM Tariff Section DD–1 to parallel RAA Schedule 6 as filed in Docket ER10–366 to be effective 9/17/2010.
Filed Date: 10/26/2010.
Accession Number: 20101026–5117.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: ER11–1909–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Clarification of Energy Efficiency Resources at End-User Customer's Retail Site to be effective 12/27/2010.
Filed Date: 10/26/2010.
Accession Number: 20101026–5135.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27949 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

October 28, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–780–030; ER00–3240–020; ER01–1633–017.
Applicants: Southern Company Services, Inc.; Oleander Power Project, LP; Southern Company—Florida LLC.
Description: Report of Non-Material Change in Estimated Coal Reserves of Southern Company Services, Inc.
Filed Date: 10/27/2010.
Accession Number: 20101027–5057.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER03–198–016.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company Notice of Non-Material Change in Status.

Filed Date: 10/28/2010.

Accession Number: 20101028–5120.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER07–312–006; EL10–74–000.

Applicants: Dogwood Energy LLC.

Description: Response of Dogwood Energy LLC to Show Cause Order.

Filed Date: 10/12/2010.

Accession Number: 20101012–5310.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER10–895–007.

Applicants: The Detroit Edison Company.

Description: Amendment to Request for Delay in Effectiveness of the Notice of Cancellation of The Detroit Edison Company.

Filed Date: 10/27/2010.

Accession Number: 20101027–5164.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER10–2032–001.

Applicants: Duke Energy Kentucky, Inc.

Description: Duke Energy Kentucky, Inc. submits a Certificate of Concurrence and Compliance Filing, to be effective 7/29/2010.

Filed Date: 10/28/2010.

Accession Number: 20101028–5034.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER10–2033–001.

Applicants: Duke Energy Ohio, Inc.

Description: Duke Energy Ohio, Inc. submits tariff filing per 35: Compliance Filing to be effective 7/29/2010.

Filed Date: 10/28/2010.

Accession Number: 20101028–5035.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER10–2393–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.17(b): 10–28–10 Amendment to be effective 2/2/2011.

Filed Date: 10/28/2010.

Accession Number: 20101028–5097.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER10–2552–001.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.17(b): Resubmission Amendment to IFA with City of Riverside Wilderness Substation to be effective 11/8/2010.

Filed Date: 10/26/2010.

Accession Number: 20101026–5163.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 09, 2010.

Docket Numbers: ER10–2746–002.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35: PJM Interregional Agreements Baseline Errata re: ER10–2746–000 to be effective 9/17/2010.

Filed Date: 10/26/2010.

Accession Number: 20101026–5150.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: ER11–1910–000.

Applicants: Illinois Power Company.

Description: Illinois Power Company submits tariff filing per 35.15: Cancel Illinois Power Tariff ID to be effective 10/1/2010.

Filed Date: 10/26/2010.

Accession Number: 20101026–5143.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: ER11–1911–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits tariff filing per 35: RM10–22 Compliance filing to be effective 10/26/2010.

Filed Date: 10/26/2010.

Accession Number: 20101026–5149.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: ER11–1912–000.

Applicants: Nevada Power Company.

Description: Nevada Power Company submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 120 Amended & Restated Interconnection to be effective 10/25/2010.

Filed Date: 10/26/2010.

Accession Number: 20101026–5162.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 16, 2010.

Docket Numbers: ER11–1913–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): 2011 NESCOE Budget to be effective 1/1/2011.

Filed Date: 10/27/2010.

Accession Number: 20101027–5026.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1914–000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Various Revisions to FCM Rules to be effective 1/1/2011.

Filed Date: 10/27/2010.

Accession Number: 20101027–5056.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1915–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35.13(a)(1): PNM Notice of Transmission Rate Changes—Part 1 of 3 to be effective 1/1/2011.

Filed Date: 10/27/2010.

Accession Number: 20101027–5079.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1916–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35.13(a)(1): PNM Notice of Transmission Rate Changes—Part 2 of 3 to be effective 1/1/2011.

Filed Date: 10/27/2010.

Accession Number: 20101027–5080.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1917–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits tariff filing per 35.13(a)(1): PNM Notice of Transmission Rate Changes—Part 3 of 3 to be effective 1/1/2011.

Filed Date: 10/27/2010.

Accession Number: 20101027–5081.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1918–000.

Applicants: ISO New England Inc., New England Power Company.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): RI Genco LGIA—Original Service Agreement No. LGIA–ISONE/NEP–10–03 to be effective 10/21/2010.

Filed Date: 10/27/2010.

Accession Number: 20101027–5099.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1919–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): WMPA No. 2653, Queue W1–101, PSE&G and PSE&G to be effective 9/27/2010.

Filed Date: 10/27/2010.

Accession Number: 20101027–5102.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1920–000.

Applicants: New York Independent System Operator, Inc.

Description: Request of the New York Independent System Operator Inc. for Waivers of North American Energy Standards Board Wholesale Electric Quadrant Standards.

Filed Date: 10/27/2010.

Accession Number: 20101027–5125.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1921–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): WMPA No. 2651, Queue W1–099, PSE&G and PSE&G to be effective 9/27/2010.

Filed Date: 10/27/2010.

Accession Number: 20101027–5130.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1922–000.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii): Revised Rate Schedule 187 of Carolina Power and Light Co. to be effective 12/27/2010.

Filed Date: 10/27/2010.

Accession Number: 20101027–5131.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1923–000.

Applicants: Entergy Texas, Inc., Entergy Arkansas, Inc., Entergy Gulf States Louisiana, LLC, Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc.

Description: Entergy Texas, Inc. submits tariff filing per 35.13(a)(2)(iii): Attachment X to the Entergy Operating Companies' OATT to be effective 12/26/2010.

Filed Date: 10/27/2010.

Accession Number: 20101027–5132.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1924–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii): Amended and Restated Managing Non-Firm Parallel Flow Agreement to be effective 12/27/2010.

Filed Date: 10/27/2010.

Accession Number: 20101027–5141.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1925–000.

Applicants: Pacific Gas and Electric Company.

Description: Notice of Termination of Midway-Sunset SFA of Pacific Gas and Electric Company.

Filed Date: 10/27/2010.

Accession Number: 20101027–5157.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Docket Numbers: ER11–1926–000.

Applicants: California Power Exchange Corporation.

Description: California Power Exchange Corporation submits tariff filing per 35.12: Notice of Tariff Identifier for New eTariff Database to be effective 10/28/2010.

Filed Date: 10/28/2010.

Accession Number: 20101028–5037.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER11–1927–000.

Applicants: Wisconsin Public Service Corporation.

Description: Notice of Cancellation of Service Agreement of Wisconsin Public Service Corporation.

Filed Date: 10/28/2010.

Accession Number: 20101028–5054.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER11–1928–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Ministerial Filing to Reflect Tariff Language Accepted in ER10–1014 and –001 to be effective 8/15/2010.

Filed Date: 10/28/2010.

Accession Number: 20101028–5071.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER11–1929–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc. submits tariff filing per 35.12: Entergy Services, Inc. Fourth Rev. Rate Schedule No. 435 to be effective 1/1/2011.

Filed Date: 10/28/2010.

Accession Number: 20101028–5078.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER11–1930–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Energy Imbalance Market Offer Cap Update Filing to be effective 1/1/2011.

Filed Date: 10/28/2010.

Accession Number: 20101028–5079.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER11–1931–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(1): 2011 TRBAA Update Filing to be effective 1/1/2011.

Filed Date: 10/28/2010.

Accession Number: 20101028–5081.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER11–1932–000.

Applicants: Xcel Energy Services Inc.

Description: Notice of Termination of Various Service Agreements filed by Xcel Energy Services Inc. on behalf of Public Service Company of Colorado and Southwestern Public Service Company.

Filed Date: 10/28/2010.

Accession Number: 20101028–5090.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER11–1933–000.

Applicants: Green Mountain Power Corporation.

Description: Green Mountain Power Corporation submits tariff filing per 35.12: GMP Refile Tariff to be effective 10/28/2010.

Filed Date: 10/28/2010.

Accession Number: 20101028–5101.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Docket Numbers: ER11–1934–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(1): 2011 RSBAA Update Filing to be effective 1/1/2011.

Filed Date: 10/28/2010.

Accession Number: 20101028–5102.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11–1–001.

Applicants: Oklahoma Gas and Electric Company.

Description: Amendment to Application of Oklahoma Gas and Electric Company.

Filed Date: 10/27/2010.

Accession Number: 20101027–5022.

Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: ES11–3–000.

Applicants: MDU Resources Group, Inc.

Description: MDU Resources Group, Inc. Application for authority to issue MDU Resources short-term notes and commercial paper 2010–2012.

Filed Date: 10/28/2010.

Accession Number: 20101028–5121.

Comment Date: 5 p.m. Eastern Time on Thursday, November 18, 2010.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH11–1–000.

Applicants: Valener Inc.

Description: Valener Inc. submits notification for a waiver of the

accounting, record-retention, and filing requirements.

Filed Date: 10/27/2010.

Accession Number: 20101028–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 17, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27950 Filed 11–4–10; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

November 1, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–773–001.

Applicants: Tuscarora Gas Transmission Company.

Description: Tuscarora Gas Transmission Company submits tariff filing per 154.203: RP10–773 Compliance to be effective 5/27/2010.

Filed Date: 10/28/2010.

Accession Number: 20101028–5124.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: RP10–892–001.

Applicants: Great Lakes Gas Transmission Limited Partnership.

Description: Great Lakes Gas Transmission Limited Partnership submits tariff filing per 154.203: RP10–892 Compliance to be effective 6/29/2010.

Filed Date: 10/28/2010.

Accession Number: 20101028–5132.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: RP11–15–001.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.205(b): HK to Sequent Contract Correction to be effective 10/1/2010.

Filed Date: 10/28/2010.

Accession Number: 20101028–5084.

Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: RP95–112–029.

Applicants: Tennessee Gas Pipeline Company.

Description: Petition of Tennessee Gas Pipeline Company to Amend Stipulation and Agreement under RP95–112.

Filed Date: 10/28/2010.

Accession Number: 20101028–5069.

Comment Date: 5 p.m. Eastern Time on Friday, November 5, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–28026 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

November 1, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1438–000.

Applicants: Sabine Pipe Line LLC.

Description: Sabine Pipe Line LLC submits tariff filing per 154.204: Imbalance Cash Outs to be effective 12/1/2010.

Filed Date: 10/28/2010.
Accession Number: 20101028–5056.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: RP11–1439–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits tariff filing per 154.204: Non-Conforming & Negotiated Rate Agreement Filing to be effective 11/1/2010.
Filed Date: 10/28/2010.
Accession Number: 20101028–5080.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: RP11–1440–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Negotiated Rate Agreement Filing for PSNC to be effective 11/1/2010.
Filed Date: 10/28/2010.
Accession Number: 20101028–5100.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: RP11–1441–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Trailblazer Pipeline Company LLC submits tariff filing per 154.204: Negotiated Rate Filing to be effective 11/1/2010.
Filed Date: 10/28/2010.
Accession Number: 20101028–5126.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: RP11–1442–000.
Applicants: Horizon Pipeline Company, L.L.C.
Description: Horizon Pipeline Company, L.L.C. submits tariff filing per 154.204: Negotiated Rate Filing to be effective 11/1/2010.
Filed Date: 10/28/2010.
Accession Number: 20101028–5134.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: RP11–1443–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Enerquest-Trans Louisiana CR to be effective 11/1/2010.
Filed Date: 10/28/2010.
Accession Number: 20101028–5138.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: RP11–1444–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits tariff filing per 154.204: Operational Purchases and Sales to be effective 11/28/2010.
Filed Date: 10/28/2010.
Accession Number: 20101028–5143.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 9, 2010.

Docket Numbers: RP11–1445–000.
Applicants: Southern LNG Company, L.L.C.
Description: Southern LNG Company, L.L.C. submits tariff filing per 154.204: SLNG Electric Power Cost Adjustment to be effective 12/1/2010.
Filed Date: 10/29/2010.
Accession Number: 20101029–5034.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1446–000.
Applicants: Midwestern Gas Transmission Company.
Description: Midwestern Gas Transmission Company Annual Cash Out Report for 2010.
Filed Date: 10/29/2010.
Accession Number: 20101029–5036.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1447–000.
Applicants: National Fuel Gas Supply Corporation.
Description: National Fuel Gas Supply Corporation submits tariff filing per 154.203: IG Rate—November 2010 to be effective 11/1/2010.
Filed Date: 10/29/2010.
Accession Number: 20101029–5040.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1448–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: HK–Texla Capacity Release to be effective 11/1/2010.
Filed Date: 10/29/2010.
Accession Number: 20101029–5079.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1449–000.
Applicants: Freebird Gas Storage, L.L.C.
Description: Freebird Gas Storage, L.L.C. submits tariff filing per 154.203: Freebird Gas Storage Order No. 587–U Compliance Filing to be effective 11/1/2010.
Filed Date: 10/29/2010.
Accession Number: 20101029–5105.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1450–000.
Applicants: Kinder Morgan Interstate Gas Transmission LLC.
Description: Kinder Morgan Interstate Gas Transmission LLC submits tariff filing per 154.204: Negotiated Rate 2010–10–29 Concord to be effective 11/1/2010.
Filed Date: 10/29/2010.
Accession Number: 20101029–5109.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1451–000.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits tariff filing per 154.204: Re-Designation Update to be effective 11/29/2010.
Filed Date: 10/29/2010.
Accession Number: 20101029–5113.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1452–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Agreement 11–1–2010—J Aron to be effective 11/1/2010.
Filed Date: 10/29/2010.
Accession Number: 20101029–5115.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1453–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Agreements 11–1–2010—BG Energy to be effective 11/1/2010.
Filed Date: 10/29/2010.
Accession Number: 20101029–5116.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1454–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Agreement 11–1–2010—BP Energy to be effective 11/1/2010.
Filed Date: 10/29/2010.
Accession Number: 20101029–5117.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1455–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Agreement 11–1–2010—Emera to be effective 11/1/2010.
Filed Date: 10/29/2010.
Accession Number: 20101029–5119.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1456–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing

per 154.204: Negotiated Rate Agreement 11–1–2010—Hess to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5121.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1457–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Agreement 11–1–2010—Tenaska to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5122.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1458–000.

Applicants: MarkWest Pioneer, L.L.C.

Description: MarkWest Pioneer, L.L.C. submits tariff filing per 154.403(d)(2): Interim Fuel Adjustment Filing to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5126.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1459–000.

Applicants: Midwestern Gas Transmission Company.

Description: Midwestern Gas Transmission Company submits tariff filing per 154.204: Non Conforming Agreement—Chevron to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5133.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1460–000.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company, LLC submits tariff filing per 154.203: Annual Interruptible Storage Rev. Credit Surcharge Adjustment to be effective N/A.

Filed Date: 10/29/2010.

Accession Number: 20101029–5163.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1461–000.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Wyoming Interstate Company, L.L.C. submits tariff filing per 154.403(d)(2): Quarterly FL&U Filing to be effective 12/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5169.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1462–000.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company, LLC submits tariff filing per 154.204: Negotiated Rates Filing—2, to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5177.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1463–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits tariff filing per 154.204: Fuel Tracker Filing to be effective 12/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5185.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1465–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Negotiated Rate Filing to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5196.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1466–000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff filing per 154.403: PCB TETLP DEC 2010 FILING to be effective 12/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5200.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1467–000.

Applicants: Trunkline LNG Company, LLC.

Description: Trunkline LNG Company, LLC submits tariff filing per 154.204: Housekeeping to be effective 12/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5201.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1468–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 10/29/10 Negotiated Rates—Hess to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5203.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1469–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 10/29/10 Negotiated Rates—Iberdrola to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5204.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1470–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 10/29/10 Negotiated Rates—NextEra to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5206.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1471–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits tariff filing per 154.204: 20101029 Negotiated Rates to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5209.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1472–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Iroquois Gas Transmission System, L.P. submits tariff filing per 154.204: 10/29/10 Negotiated Rates—Sempra to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5214.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1473–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits tariff filing per 154.204: Raton Expansion Non Conforming Agreement Filing to be effective 12/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5215.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1474–000.

Applicants: ANR Pipeline Company.

Description: ANR Pipeline Company submits tariff filing per 154.601: ANR Fall Negotiated Rates to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5216.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1475–000.

Applicants: Empire Pipeline, Inc.

Description: Empire Pipeline, Inc. submits tariff filing per 154.204: Open

Season Addition to be effective 11/28/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5221.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Docket Numbers: RP11–1476–000.

Applicants: Steckman Ridge, LP.

Description: Steckman Ridge, LP submits tariff filing per 154.204: SR–ConocoPhillips K 920036–R1 to be effective 11/1/2010.

Filed Date: 10/29/2010.

Accession Number: 20101029–5226.

Comment Date: 5 p.m. Eastern Time on Wednesday, November 10, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–28029 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

October 28, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP08–426–015.

Applicants: El Paso Natural Gas Company.

Description: Refund Report pursuant to the Stipulation and Agreement and Annual Penalty Crediting Report of El Paso Natural Gas Company.

Filed Date: 10/26/2010.

Accession Number: 20101026–5106.

Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: RP10–1411–001.

Applicants: UGI LNG Inc.

Description: UGI LNG Inc. submits tariff filing per 154.203: UGI LNG Inc. to be effective 9/30/2010.

Filed Date: 10/26/2010.

Accession Number: 20101026–5148.

Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: RP10–1163–001.

Applicants: Great Lakes Gas Transmission Limited Partnership.

Description: Great Lakes Gas Transmission Limited Partnership submits tariff filing per 154.203: RP10–1163 Compliance NAESB 1.9 to be effective 11/1/2010.

Filed Date: 10/27/2010.

Accession Number: 20101027–5112.

Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: RP10–1164–001.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits tariff filing per 154.203: NAESB 1.9 Compliance RP10–1164 to be effective 11/1/2010.

Filed Date: 10/27/2010.

Accession Number: 20101027–5025.

Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: RP10–1167–001.

Applicants: Tuscarora Gas Transmission Company.

Description: Tuscarora Gas Transmission Company submits tariff filing per 154.203: RP10–1167 Compliance NAESB 1.9 to be effective 11/1/2010.

Filed Date: 10/27/2010.

Accession Number: 20101027–5115.

Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Docket Numbers: RP10–1300–001.

Applicants: Garden Banks Gas Pipeline, LLC.

Description: Garden Banks Gas Pipeline, LLC submits tariff filing per 154.203: eTariff Baseline Resubmittal per Staff Instructions to be effective 8/15/2010.

Filed Date: 10/27/2010.

Accession Number: 20101027–5140.

Comment Date: 5 p.m. Eastern Time on Monday, November 8, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–28028 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

October 28, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1434–000.
Applicants: Alliance Pipeline LP.
Description: Alliance Pipeline LP submits tariff filing per 154.204: Nov March Auction to be effective 11/1/2010.
Filed Date: 10/27/2010.
Accession Number: 20101027–5054.
Comment Date: 5 p.m. Eastern Time on Monday, November 08, 2010.

Docket Numbers: RP11–1435–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Company submits tariff filing per 154.312: Rate Case—Case-In-Chief to be effective 12/1/2010.
Filed Date: 10/28/2010.
Accession Number: 20101028–5026.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 09, 2010.

Docket Numbers: RP11–1436–000.
Applicants: Great Lakes Gas Transmission Limited Partnership.
Description: Great Lakes Gas Transmission Limited Partnership submits tariff filing per 154.601: Section 8—Negotiated Rates to be effective 11/1/2010.
Filed Date: 10/28/2010.
Accession Number: 20101028–5039.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 09, 2010.

Docket Numbers: RP11–1437–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits tariff filing per 154.204: Negotiated Rate 2010–10–28 Enserco, Concord to be effective 11/1/2010.
Filed Date: 10/28/2010.
Accession Number: 20101028–5047.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 09, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–28027 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF10–24–000]

Sabine Pass Liquefaction LLC, and Sabine Pass LNG, L.P.; Notice of Intent To Prepare an Environmental Assessment for the Planned Sabine Pass Liquefaction Project and Request for Comments on Environmental Issues

October 29, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Sabine Pass Liquefaction Project (Project) involving construction and operation of facilities by Sabine Pass Liquefaction LLC, and Sabine Pass LNG, L.P. (collectively referred to as Sabine Pass) in Cameron County, Louisiana. This EA will be used by the Commission in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input during the scoping process will help the Commission staff determine what issues need to be evaluated in the EA. The Commission staff will also use the scoping process to help determine whether preparation of an environmental impact statement (EIS) is more appropriate for this Project based upon the potential significance of the anticipated levels of impact. Please note that the scoping period will close on November 29, 2010. This is not your only public input opportunity; please refer to the Environmental Review Process flow chart in Appendix 1.[1]

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives are asked to notify their constituents of this planned Project and encourage them to comment on their areas of concern.

Involvement of U.S. Department of Energy

The FERC is the lead federal agency in preparation of an EA that will satisfy the requirements of the National Environmental Policy Act (NEPA). The U.S. Department of Energy, Office of Fossil Energy (DOE) has agreed to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities. DOE proposes to authorize Sabine Pass Liquefaction, LLC to export liquefied natural gas (LNG) from the Sabine Pass LNG Terminal (SPLNG Terminal) if DOE determines that such export is in the public interest.

The DOE must meet its obligation under section 3 of the Natural Gas Act of 1938, as amended (NGA), to authorize the import and export of natural gas,

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

including LNG, unless it finds that the proposed import or export will not be consistent with the public interest. The purpose and need for DOE action is to respond to the September 7, 2010, application filed with DOE (FE Docket No. 10–111–LNG) by Sabine Pass Liquefaction, LLC, in conjunction with the Sabine Pass Liquefaction Project. Sabine Pass Liquefaction, LLC has applied to DOE for blanket authorization to export up to 16 million metric tons per annum (mtpa) of domestic natural gas as LNG for a 20-year period, commencing the earlier of the date of first export or five years from the date of issuance of the requested authorization, from the Sabine Pass LNG Terminal to any country: (1) With which the United States does not have a free trade agreement requiring the national treatment for trade in natural gas and LNG; (2) that has, or in the future develops, the capacity to import LNG; and (3) with which trade is not prohibited by U.S. law or policy.

Summary of the Planned Project Before FERC

Sabine Pass plans to add natural gas liquefaction and exportation capabilities to the existing Sabine Pass LNG Import Terminal in Cameron Parish, Louisiana. The Sabine Pass Liquefaction Project would consist of the construction and installation of facilities to be used for the liquefaction and exportation of natural gas. All Project facilities would be constructed and operated within the existing 853-acre SPLNG Terminal Site. Sabine Pass plans to construct the Project in two stages, with anticipated in-service starting in January 2015.

The Project would be capable of processing an average of approximately 2.6 billion cubic feet per day (Bcf/d) of pipeline quality natural gas from the Creole Trail Pipeline, which interconnects with the SPLNG Terminal. Sabine Pass would liquefy the natural gas, store the LNG, and export approximately 16 mtpa of LNG via LNG carriers.

According to Sabine Pass, its Project would improve the outlook for domestic natural gas production, owing to drilling productivity gains that have enabled rapid growth in supplies from unconventional, and particularly shale, gas-bearing formations in the United States. The exportation of LNG would provide a market solution to allow the further deliberate development of these sources of natural gas.

More specifically, the Project would consist of the following facilities:

- Four LNG liquefaction trains (each train contains gas treatment facilities, six gas turbine-driven refrigerant compressors, waste heat recovery systems, induced draft air coolers, fire and gas detection and safety systems, control systems, and associated infrastructure);
- Additional power generation (including up to two gas turbine-driven generators, transformers, and other electrical accessories to supplement existing onsite power generation);
- Other infrastructure and modifications (including storage tanks for propane and ethylene refrigerants and the amine make up, replacement of in-tank LNG pumps and piping modifications to increase flow capacity and facilitate loading of LNG carriers, impoundments for the liquefaction trains, flares, recycle boil-off gas compressors, potable water, service water, and demineralized water systems); and
- New and remodeled buildings.

In addition, a LNG storage tank and impoundment that were previously authorized under FERC Docket CP05–396–000 but not built would be constructed to provide additional LNG storage for the Project.

The general location of the Project facilities is shown in Appendix 2.

Land Requirements for Construction

Construction of the planned facilities would disturb about 243 acres of land. Following construction, about 203 acres would be maintained for permanent operation of the Project's facilities; the remaining acreage would be restored and allowed to revert to former uses. All planned activities would occur within the existing 853-acre SPLNG Terminal site.

The EA Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned Project under these general headings:

- Geology and soils;
- water resources and fisheries;
- floodplains and wetlands;
- vegetation and wildlife;
- endangered and threatened species;
- socioeconomics;
- land use;
- cultural resources;
- air quality and noise; and
- public safety.

We will also evaluate possible alternatives to the planned Project or portions of the Project, including the no action alternative, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's Pre-filing Process. The purpose of the Pre-filing Process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA. In addition, representatives from FERC participated in the public open house sponsored by Sabine Pass in the Project area in September 2010 to explain the Environmental Review Process to interested stakeholders.

Our independent analysis of the issues will be presented in the EA. If the Commission staff determines the preparation of an EA is appropriate, the EA will be placed in the public record and be published and distributed to the public. A comment period will be allotted when the EA is noticed. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 6.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the DOE has expressed its intention to participate as a cooperating agency in the preparation of the EA to

[2] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

satisfy its NEPA responsibilities related to this Project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO(s) as the Project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Sabine Pass. This preliminary list of issues may be changed based on your comments and our analysis.

- Floodplains;
- Socioeconomics;
- Air quality; and
- Public safety.

Notice of Floodplain Involvement

Because the proposed Project may involve actions in floodplains, in accordance with Title 10 of the Code of Federal Regulations, Part 1022, *Compliance with Floodplain and Wetland Environmental Review Requirements,* the EA will include a floodplain assessment as appropriate, and a floodplain statement of findings will be included in any DOE finding of no significant impact.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before November 29, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number PF10–24–000 with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "*eRegister*." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may mail a paper copy of your comments to the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned Project.

When an EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 3).

Becoming an Intervenor

Once Sabine Pass files its application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until a formal application for the Project is filed with the Commission.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF10–24). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Sabine Pass has established a Web site for this Project at *http://www.cheniere.com.* The Web site includes a Project overview, timeline, environmental information, and answers to frequently asked questions. You can also request additional information by contacting Patricia Outtrim at Sabine Pass via e-mail at *pat.outtrim@cheniere.com* or by calling (713) 375–5212.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27991 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6422–000]

Fischer, Thomas J.; Notice of Filing

October 29, 2010.

Take notice that on October 29, 2010, Thomas J. Fischer filed an Application for Authorization to Hold Interlocking Positions as Director of Wisconsin Electric Power Company, Director of Actuant Corporation, and Director of Regal-Beloit Corporation, pursuant to section 305(b) of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any *FERC Online service, please e-mail FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 19, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–27989 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–1881–000]

Burley Butte Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Burley Butte Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27951 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–1885–000]

Oregon Trail Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Oregon Trail Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27954 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–1887–000]

Thousand Springs Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Thousand Springs Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27956 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–1890–000]

Camp Reed Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Camp Reed Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27958 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–1893–000]

Salmon Falls Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Salmon Falls Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27960 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–1894–000]

Yahoo Creek Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Yahoo Creek Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27948 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–1892–000]

Payne's Ferry Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Payne's Ferry Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27959 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–1889–000]

Tuana Gulch Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Tuana Gulch Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27957 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–1886–000]

Pilgrim Stage Station Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Pilgrim Stage Station Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27955 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–1883–000]

Milner Dam Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Milner Dam Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is November 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27953 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–1882–000]

Golden Valley Wind Park, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 28, 2010.

This is a supplemental notice in the above-referenced proceeding of Golden Valley Wind Park, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 18, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–27952 Filed 11–4–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9221–8]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1717.07; NESHAP for Off-Site Waste and Recovery Operations; 40 CFR part 63, subparts A and DD; was approved on 10/01/2010; OMB Number 2060–0313; expires on 10/31/2013; Approved without change.

EPA ICR Number 1781.05; NESHAP for Pharmaceutical Production; 40 CFR part 63, subparts A and GGG; was approved on 10/01/2010; OMB Number 2060–0358; expires on 10/31/2013; Approved without change.

EPA ICR Number 1869.06; NESHAP for the Manufacture of Amino/Phenolic Resins; 40 CFR part 63, subparts A and OOO; was approved on 10/01/2010; OMB Number 2060–0434; expires on 10/31/2013; Approved without change.

EPA ICR Number 2079.04; NESHAP for Metal Can Manufacturing Surface Coating; 40 CFR part 63, subparts A and KKKK; was approved on 10/01/2010; OMB Number 2060–0541; expires on 10/31/2013; Approved without change.

EPA ICR Number 1765.06; National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings (Renewal); 40 CFR part 59, subpart B; was approved on 10/01/2010; OMB Number 2060–0353; expires on 10/31/2013; Approved without change.

EPA ICR Number 1611.07; NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; 40 CFR part 63, subparts A and N; was approved on 10/01/2010; OMB Number 2060–0327; expires on 10/31/2013; Approved without change.

EPA ICR Number 1966.04; NESHAP for Boat Manufacturing; 40 CFR part 63, subparts A and VVVV; was approved on 10/01/2010; OMB Number 2060–0546; expires on 10/31/2013; Approved without change.

EPA ICR Number 1604.09; NSPS for Secondary Brass/Bronze Production, Primary Copper/Zinc/Lead Smelters, Primary Aluminum Reduction Plants and Ferroalloy Production Facilities; 40 CFR part 60, subparts A, M, P, Q, R, S, and Z, was approved on 10/01/2010; OMB Number 2060–0110; expires on 10/31/2013; Approved without change.

EPA ICR Number 1664.07; National Oil and Hazardous Substances Pollution Contingency Plans (Renewal); 40 CFR 300.900; was approved on 10/01/2010; OMB Number 2050–0141; expires on 10/31/2013; Approved without change.

EPA ICR Number 1984.04; NESHAP for Plywood and Composite Wood Products; 40 CFR part 63, subparts A and DDDD; was approved on 10/01/2010; OMB Number 2060–0552; expires on 10/31/2013; Approved without change.

EPA ICR Number 2387.01; Certification and In-Use Testing of Motor Vehicles: Revisions to Reduce Emissions of Greenhouse Gases (Final Rule); 40 CFR 86.1845 to 86.1848; 40 CFR parts 85 and 86; was approved on 10/04/2010; OMB Number 2060–0644; expires on 10/31/2013; Approved without change.

EPA ICR Number 1801.09; NESHAP for the Portland Cement Manufacturing Industry; 40 CFR part 63, subparts A and LLL; was approved on 10/04/2010; OMB Number 2060–0416; expires on 10/31/2013; Approved without change.

EPA ICR Number 2307.02; NSPS for Portland Cement Plants; 40 CFR part 60, subparts A and F; was approved on 10/04/2010; OMB Number 2060–0614; expires on 10/31/2013; Approved without change.

EPA ICR Number 1361.15; Withdrawing the Comparable Fuels Exclusion under RCRA (Final Rule); 40 CFR 261.38; was approved on 10/04/2010; OMB Number 2050–0073; expires on 10/31/2013; Approved without change.

EPA ICR Number 1774.05; Mobile Air Conditioner Retrofitting Program (Renewal); 40 CFR part 82, subpart G; was approved on 10/13/2010; OMB Number 2060–0350; expires on 10/31/2013; Approved without change.

EPA ICR Number 0282.15; Engine Emission Defect Information Reports and Voluntary Emission Recall Reports (Renewal); 40 CFR parts 85, 89, 90, 91, 92, 94, 1048, 1068 and 1051; was approved on 10/19/2010; OMB Number 2060–0048; expires on 10/31/2013; Approved without change.

EPA ICR Number 2363.01; Exhaust Emissions of Light-duty Vehicles in Metropolitan Detroit (New Collection); was approved on 10/19/2010; OMB Number 2060–0645; expires on 10/31/2013; Approved without change.

Comment Filed

EPA ICR Number 2381.01; Proposed ICR Amendment for Rulemaking entitled "Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program; Proposed Rule"; in 40 CFR part 745; OMB filed comment on 10/04/2010.

EPA ICR Number 2398.01; Regulation of Fuels and Fuel Additives: 2011 Renewable Fuel Standards—Petition for International Aggregate Compliance Approach; in 40 CFR 80.1457; OMB filed comment on 10/18/2010.

EPA ICR Number 0783.55; Motor Vehicle Emissions: Revisions to Certification of Alternative Fuels Conversions; in 40 CFR 85.1901–85.1908; 40 CFR parts 85, 86 and 600; 40 CFR 86.412 and 86.1845; OMB filed comment on 10/19/2010.

Short Term Extensions of Expiration Date

EPA ICR Number 2147.05; Pesticide Registration Fee Waivers; OMB Number 2070–0167; expires on 01/31/2011; a short term extension was approved on 10/18/2010.

EPA ICR Number 1214.09; Pesticide Product Registration Maintenance Fee; OMB Number 2070–0100; expires on 03/31/2011; a short term extension was approved on 10/18/2010.

Dated: November 1, 2010.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2010–28016 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8993–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed 10/25/2010 Through 10/29/2010

Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100430, Draft EIS, FHWA, AL, Helena Bypass Project, Proposal to Construct a Bypass from County Road 51 in Helena to State Route 261 near Bearden Road, Shelby County, AL,

Comment Period Ends: 12/20/2010, Contact: Lynne Urquhart 334–274–6371.

EIS No. 20100431, Final EIS, USFS, WA, Dosewallips Road Washout Project, To Reestablish Road Access to both Forest Service Road (FSR) 2610 and Dosewallips Road, Hood Canal Ranger District Olympic National Forest, Olympic National Park, Jefferson County, WA, Wait Period Ends: 12/06/2010, Contact: Tim Davis 360–965–2375.

EIS No. 20100432, Draft Supplement, TVA, TN, Sequoyah Nuclear Plants Units 1 and 2, Application for License Renewal, Implementation, Hamilton County, TN, Comment Period Ends: 12/20/2010, Contact: Amy Henry 865–632–4045.

EIS No. 20100433, Final EIS, USFS, CA, Plumas National Forest Public Motorized Travel Management, Implementation, Plumas National Forest, Plumas, Lassen, Yuba, Butte and Sierra Counties, CA, Wait Period Ends: 12/06/2010, Contact: Peter Hochrein 530–283–7718.

EIS No. 20100434, Draft EIS, BR, WA, Odessa Subarea Special Study, To Replace Groundwater Currently Used for Irrigation, Grant, Adams, Walla Walla and Franklin Counties, WA, Comment Period Ends: 12/31/2010, Contact: Charles Carnohan 509–575–5848 Ext 370.

EIS No. 20100435, Draft EIS, BR, CA, Suisun Marsh Habitat Management, Preservation, and Restoration Plan, Implementation, CA, Comment Period Ends: 12/20/2010, Contact: Doug Kleinsmith 916–978–5034.

EIS No. 20100436, Draft Supplement, USACE, FL, Martin County, Florida Hurricane and Storm Damage Reduction Project, Beach Nourishment Project Authorizes Construction of a Protective and Recreational Beach Along 4 Miles of Shorefront, Hutchinson Island, Martin County, FL, Comment Period Ends: 01/07/2011, Contact: Paul DeMarco 904–232–1897.

EIS No. 20100437, Draft EIS, FHWA, NM, I–25/Paseo del Norte Interchange Project, To Reduce Congestion and to Improve Safety, Albuquerque, Bernalillo County, NM, Comment Period Ends: 12/20/2010, Contact: Gregory L. Heitmann 505–820–2027.

EIS No. 20100438, Draft EIS, USACE, CO, Programmatic—Growth, Realignment, and Stationing of Army Aviation Assets, To Reduce Congestion and to Improve Safety, Right-of-Way Acquisition, Fort Carson, CO, Comment Period Ends: 12/20/2010, Contact: Mike Ackerman 210–295–2273.

Dated: November 2, 2010.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–28018 Filed 11–4–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Emergency Review and Approval, Comments Requested

October 29, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; 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; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

DATES: Written Paperwork Reductions (PRA) comments on this information collection should be submitted on or before November 22, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via e-mail at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams, Federal Communications Commission via e-mail at *Cathy.Williams@fcc.gov* or by telephone at (202) 418–2918.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission is requesting emergency OMB processing of the information collection requirement(s) contained in this notice and has requested OMB approval 17 days after the collection is received at OMB.

OMB Control Number: 3060–XXXX.

Title: Consumer survey.

Form Number: Not applicable.

Type of Review: New Collection.

Respondents: Individuals or households.

Number of Respondents/Responses: 5,000 respondents, 5,000 responses.

Estimated Time per Response: .25 hours (15 minutes).

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 1,250 hours.

Nature of Response: Voluntary. The statutory authority for this collection of information is contained in Section 202(h) of the Telecommunications Act of 1996.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No personally identifying information will be transmitted to the Commission from the survey contractor as a matter of vendor policy.

Needs and Uses: The Commission is requesting emergency processing under 5 CFR 1320.13 so this information can be available for use to prepare one of the Commission's media ownership studies,

Consumer Valuation of Media as a Function of Local Market Structure. This information collection is critical to the development and completion of the media ownership rules proceeding required pursuant to Section 202(h) of the Telecommunications Act of 1996. Specifically, the Commission is required to review its media ownership rules quadrennially to determine whether its rules "are necessary in the public interest as the result of competition." The Commission is then required to repeal or modify any regulation it determines no longer to serve the public interest. With the Notice of Inquiry (NOI) released on May 25, 2010, the Commission launched its fifth proceeding pursuant to the statutory mandate requiring that the media ownership rules be reviewed. Subsequently, in June 2010, the Commission's Media Bureau sought Requests for Quotation (RFQ) for nine studies to be incorporated as part of the 2010 Quadrennial Review. The survey that is the subject of this review, the Consumer Survey, was included in the RFQ and a bid was selected on September 30, 2010. The consumer survey will be used in a determination to define a performance metric related to the public interest goals the Commission seeks to promote through its media ownership rules. The Consumer Survey will be used to examine the impact of local media market structure on consumer satisfaction with available broadcast radio and television service. The Consumer Survey will collect information regarding how much time people spend with various media and how people get news and information. The Survey will ask respondents to rate, on a numerical scale, their current satisfaction with the overall local media environment and with components such as broadcast television, broadcast radio, and newspapers. The Survey will also include questions asking respondents to rate their current satisfaction with the local news, local public affairs, and other locally oriented media content. This survey will be distributed via the Internet to a nationwide sample of consumers, and the Commission anticipates approximately 5,000 responses to the survey. Based on the results of the survey, the contractor will conduct a study to examine the impact of local media market structure on consumer satisfaction with available broadcast radio and television service. This collection of data and resulting survey will enable the Commission to adequately review the media ownership rules and determine whether the rules are necessary in the public interest as a result of competition, as required by Congress.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. 2010–28123 Filed 11–4–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 9 a.m. on Tuesday, November 9, 2010, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Interim Final Rule Amending Part 335 to Conform with Requirement of the Securities and Exchange Commission.

Memorandum and resolution re: Final Rule for Unlimited Coverage for Noninterest-Bearing Transaction Accounts.

Discussion Agenda:

Memorandum and resolution re: Proposal to Adopt a Notice of Proposed Rulemaking on the Implementation of the New Deposit Insurance Assessment Base, Adjustments to the New Deposit Insurance Assessment Base, Changes to Assessment Rate Adjustments and New Assessment Rate Schedules.

Memorandum and resolution re: Notice of Proposed Rulemaking on Risk-Based Assessment System for Large Insured Depository Institutions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Federal Deposit Insurance Corporation.

Dated: November 2, 2010.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–28106 Filed 11–3–10; 11:15 am]

BILLING CODE P

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 application 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.

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 December 2, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice

President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Bedison Bancshares, Inc., Platte City, Missouri; to become a bank holding company by acquiring 78.03 percent of the voting shares of The Citizens Bank of Oregon, Oregon, Missouri.

2. Wells Bancshares, Inc., Platte City, Missouri; to acquire 17.54 percent of the voting shares of Bedison Bancshares, Inc., Platte City, Missouri, and thereby indirectly acquire voting shares of The Citizens Bank of Oregon, Oregon, Missouri.

Board of Governors of the Federal Reserve System, November 2, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–28023 Filed 11–4–10; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Submission for OMB Review; Comment Request; Request; OMB No. 0925–0177 "Special Volunteer and Guest Researcher Assignment," Form 590

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 25, 2010, page 52351 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after July 31, 2005, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Special Volunteer and Guest Researcher Assignment for use in NIH facilities. *Type of Information Collection Request:* Reinstatement, OMB 0925–0177, Expiration Date July 31, 2005. *Need and Use of Information Collection Request: Form Number:* NIH–590. A single Form NIH–590 is completed by an NIH official for each Guest Researcher or Special Volunteer prior to his/her arrival at NIH. The information on the form is necessary for the approving official to reach a decision on whether to allow a Guest Researcher to use NIH facilities, or whether to accept volunteer services offered by a Special Volunteer. If the original assignment is extended, another form notating the extension is completed to update the file. *Frequency of Response:* once. *Affected Public:* Individuals *Type of Respondents:* Non-federal scientific professionals and/or individuals. The annual Reporting burden is as follows: *Estimated Number of Respondents:* 1660; *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response:* 0.1; and *Estimated Total Annual Burden Hours Requested:* 166. The estimated annualized cost to respondents is $2,275. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mrs. Wanda Darwin, Office of Human Resources, Office of The Director, NIH, Building 31, Room 1C31E, One Center Drive, Bethesda, MD 20892–2269, or call non-toll-free number 301–402–2820, or E-mail your request, including your address to: *darwinw@od.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: October 27, 2010.

Wanda R. Darwin,

Human Resources Specialist, Office of Human Resources, National Institutes of Health.

[FR Doc. 2010–28068 Filed 11–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day-11–11AN]

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 Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Making Health Care Providers Better Asthma Educators—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Currently, 16.4 million non-institutionalized adults in the U.S. have asthma. In addition, 7 million children

in this country have the disorder. Asthma accounts for 13.3 million health care visits and more than 3,400 deaths per year. Except for a few cases linked to occupational exposures, the causes of asthma remain unknown, and there exists no cure. In the absence of means to eliminate the disorder, treatment to minimize the frequency and intensity of asthmatic attacks is of paramount importance and patients must take action at appropriate times. Several treatment tools are available, including the use of corticosteroids and control of exposure to allergens and irritants. Thus, the education provided by health care providers to asthmatic patients forms a critical link in efforts to control asthma.

Anecdotal evidence suggests that there is substantial variability, in type and amount, in patient education. Some causes of this are suspected: Billing codes for asthma education are not universally present and the degree of health literacy among patients varies and is likely not universally sufficient. Nevertheless, in large part, the factors influencing asthma education by health care providers are unknown. To help address this situation, the Air Pollution and Respiratory Health Branch of CDC wishes to conduct a study to identify barriers to, and facilitators of, asthma education among health care providers. The target audiences for the study are primary care physicians who routinely provide an initial diagnosis of asthma and nurses who routinely provide asthma education to patients. The overall objectives of this study are to explore practices, barriers, and facilitators regarding provisions of control education to people diagnosed with asthma and to explore the practices, barriers, and facilitators to routine development and use of written asthma action plans.

The target audiences for the study are physicians and nurses. Up to eight physicians will be selected for individual 30-minute interviews per city. A total of three cities will be visited.

Data from the nurses will be collected by means of a 60-minute focus group session. Up to four participants will be selected for each focus group, and a total of two focus groups will be held in each city. A total of three cities will be visited.

There is no cost to the physicians and the nurses except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondent	Type of data collection	Number of respondents	Number of responses per respondent	Average burden per respondent (in hours)	Total burden (in hours)
Physicians	Interview	24	1	0.5	12
Nurses	Focus Group	24	1	1	24
Total					36

Dated: October 29, 2010.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–27931 Filed 11–4–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Medical Support Notice—NPRM.

OMB No.: 0970–0222.

Description: The information collected by State IV–D Child Support Enforcement agencies is used to complete the National Medical Support Notice NMSN), which is sent to employers of employee/obligors and used as a means of enforcing the healthcare coverage provision in a child support order. Primarily, the information the State Child Support enforcement agencies use to complete the NMSN is information regarding appropriate persons, which is necessary for the enrollment of the child in employment-related health care coverage, such as the employee/obligors name, address, and Social Security Number; the employer's name and address; the name and address of the alternate recipient (child); and the custodial parent's name and address. The employer forwards the second part of the NMSN to the group health plan administrator, which contains the same individual identifying information. The plan administrator requires this information to determine whether to enroll the alternate recipient in the group health plan. If necessary, the employer also initiates withholding from the employee's wages for the purpose of paying premiums to the group health plan for enrollment of the child.

Respondents: State and Territory agencies administering the child Support Enforcement program.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
National Medical Support Notice	54	97,775	0.17	897,574.50
Estimated Total Annual Burden Hours:				897,574.50

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Dated: November 2, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–28021 Filed 11–4–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-11–10GT]

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

Behavioral Assessment Component of the Behavioral Assessment and Rapid Testing (BART) Project—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This Behavioral Assessment and Rapid Testing project involves conducting behavioral assessments and rapid HIV testing at a variety of events serving groups at high risk for acquiring or transmitting HIV infection. Behavioral assessments will be conducted using one protocol and one research agenda but at events serving different minority and hard-to-reach populations. This project will address the increasing rates of HIV infection among African Americans (AAs) and men who have sex with men as well as the need for early detection and linkage to health care for HIV-infected persons. The behavioral assessment component will provide the opportunity to describe the risk profiles and prevalence of unrecognized infection among individuals reachable for HIV counseling and testing at these events. Collected data will be used to develop risk reduction interventions that are appropriate for the attendees of future events that attract persons who may be at high risk for HIV infection.

The purpose of the proposed data collection is to collect behavioral data at selected public events serving specific high-risk populations and to increase the proportion of at-risk persons who are aware of their HIV status. This project seeks to improve HIV prevention by collecting information from persons who do not access HIV testing in fixed testing venues or do not test as frequently as is recommended. The behavioral assessment component of the project addresses the need for increased behavioral data among some high-risk groups that are more difficult to access or represent increasingly greater proportions of the HIV epidemic.

A convenience sample will be used to select attendees at (1) Gay Pride; (2) Minority Gay Pride; (3) black spring break; and (4) cultural and social events attracting large numbers of African Americans.

Trained interviewers will select and approach event attendees. A screener questionnaire will be used to determine participation eligibility and obtain oral consent. Approximately 7,000 individuals will be approached and screened (through a 2-minute interview) for eligibility to participate each year. Approximately 5,600 individuals are expected to be eligible and participate in the 5- to 15-minute behavioral assessment interview each year. There is no cost to respondents other than their time. The estimated annual burden is 1,633 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondent	Form	No. of respondents	No. of responses per respondent	Average burden per response (hours)
Event attendees	Eligibility Screener	7,000	1	2/60
Event attendees	Behavioral Assessment	5,600	1	15/60

Dated: November 1, 2010.

Carol Walker,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–27982 Filed 11–4–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-11–0210]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Carol E. Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email 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

List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products—Extension—Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Cigarette smoking is the leading preventable cause of premature death and disability in the United States. Each year, more than 440,000 premature deaths occur as the result of diseases related to cigarette smoking. The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health (OSH) has the primary responsibility for the Department of Health and Human Services (HHS) smoking and health program. HHS's overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Smoking Education Act of 1984 (CSEA, 15 U.S.C. 1336 or Public Law 98–474) requires each person who manufactures, packages, or imports cigarettes to provide the Secretary of Health and Human Services (HHS) with a list of ingredients added to tobacco in the manufacture of cigarettes. The legislation also authorizes HHS to undertake research, and to report to the Congress (as deemed appropriate) discussing the health effects of these ingredients.

HHS has delegated responsibility for implementing the CSEA's ingredient reporting requirements to CDC's Office on Smoking and Health (OSH). OSH has collected ingredient reports on cigarette products since 1986. Respondents are commercial cigarette manufacturers, packagers, or importers, or their designated representatives. Respondents are not required to submit specific forms, however, they are required to submit a list of all ingredients used in their products. CDC requires the ingredient report to be submitted by chemical name and Chemical Abstract Service (CAS) Registration Number, consistent with accepted reporting practices for other companies currently required to report ingredients added to other consumer products. Typically, respondents submit a summary report to CDC with the ingredient information for multiple products, or a statement that there are no changes to their previously submitted ingredient report.

Ingredient reports for new products are due at the time of first importation. Thereafter, ingredient reports are due annually on March 31. Information is submitted to OSH by mailing a written report on the respondent's letterhead, by CD, three-inch floppy disk, or thumb drive. Electronic mail submissions are not accepted. Upon receipt and verification of the annual ingredient report, OSH issues a Certificate of Compliance to the respondent.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden hours
Cigarette Manufacturers, Packagers, and Importers	143	1	6.5	930

Dated: November 1, 2010.

Carol E. Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–27983 Filed 11–4–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0567]

Agency Information Collection Activities; Proposed Collection; Comment Request; Restaurant Menu and Vending Machine Labeling: Recordkeeping and Mandatory Third Party Disclosure Under Section 4205 of the Patient Protection and Affordable Care Act of 2010

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping and mandatory third party disclosure provisions of Section 4205 of the Patient Protection and Affordable Care Act of 2010 (ACA).

DATES: Submit either electronic or written comments on the collection of information by January 4, 2011.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3793.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or

requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Restaurant Menu and Vending Machine Labeling: Recordkeeping and Mandatory Third Party Disclosure Under Section 4205 of the Patient Protection and Affordable Care Act of 2010—(OMB Control Number 0910–0665)—Revision

On March 23, 2010, the President signed into law the ACA (Pub. L. 111–148). Section 4205 of the legislation, which principally amends sections 403 and 403A of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343 and 343–1), requires chain restaurants and similar retail food establishments (SRFE) with 20 or more locations doing business under the same name and offering for sale substantially the same menu items (hereinafter "chain retail food establishments"), as well as operators of 20 or more vending machines (hereinafter "chain vending machine operators"), to disclose certain nutrition information for certain food items offered for sale so that consumers can make more informed choices about the food they purchase. Section 4205 preempts State and local governments from establishing menu labeling requirements for chain retail food establishments and vending machine nutrition labeling requirements that are not "identical to" the section 4205 requirements.

Section 4205 became effective on the date the law was signed, March 23, 2010. The provisions that went into immediate effect are as follows:

For chain retail food establishments:

- Disclosing the number of calories in each standard menu item on menus and menu boards,
- Making additional written nutrition information available to consumers upon request,
- Providing a statement on menus and menu boards about the availability of the written nutrition information, and
- Providing calorie information (per serving or per food item) for self-service items and food on display, in a sign adjacent to each food item.

For chain vending machine operators:

- Providing a sign in close proximity to each article of food (or the selection button) that discloses the number of calories contained in the article, unless a prospective purchaser is able to examine the Nutrition Facts Panel before purchasing the article, or visible nutrition information is otherwise provided at the point of purchase.

Section 4205 of the legislation requires recordkeeping—for the calorie analysis—and a third party disclosure—for the menu and vending machine labeling.

In the **Federal Register** of August 25, 2010 (75 FR 52427), FDA published a notice of availability of the guidance document entitled "Guidance for Industry: Questions and Answers Regarding the Effect of Section 4205 of the Patient Protection and Affordable Care Act of 2010 on State and Local Menu and Vending Machine Labeling Laws." The guidance is intended to clarify section 4205's effect on State and local menu and vending machine labeling laws, and to ensure that industry and State and local government understand the immediate effects of the law. Persons with access to the Internet may obtain the guidance at the following Web site: *http://www.cfsan.fda.gov/~dms/guidance.html.* In addition, the information collection requirements were approved under the emergency processing provisions of the PRA and assigned OMB control number 0910–0665.

Menu and vending machine labeling will be used by consumers to assess the calorie content of their purchases. The purpose of the disclosure is to allow consumers to choose foods that are appropriate for their energy needs. Because consumers do not observe the preparation of food prepared by restaurants or similar retail food establishments, and because many of these foods were exempted from nutrition labeling requirements under the National Labeling Education Act (NLEA), consumers were not able to ascertain the calorie content of this food, and therefore could not make informed decisions about how that food fits their calorie requirements without the disclosure. The calorie information will be collected and recorded by the chain retail food establishments and chain vending machine operators that are required to disclose calorie information to their customers. The covered entities will use the records to ensure that calorie information that they disclose is accurate.

Description of Respondents: Respondents to this collection of information include chain retail food establishments and chain vending machine operators.

FDA estimates the burden of this collection of information as follows. The burden is described in the following paragraphs in two parts: A recordkeeping burden associated with discovering and recording the calorie count for each menu/vending item; and the third party disclosure burden associated with communicating that information to the consumer. The estimates are also separated for retail food service and vending operators. FDA estimates a total of 1,388,010 initial burden hours. This number has been divided by three in tables 1 and 2 of this document in order to avoid double counting in the Regulatory Information Service Center (RISC) and Office of Information and Regulatory Affairs (OIRA) Consolidated Information System to yield 141,222 initial hours for recordkeeping and 312,448 initial hours for third party disclosure, for a sum of 462,670 initial hours. FDA estimates a total of 14,068,808 recurring hours, with nearly all of these for vending machine operators, including 31,408 recurring hours for recordkeeping and 14,037,400 recurring hours for third party disclosure.

Recordkeeping Burdens for Chain Retail Food Establishments

The time burden for calorie analysis on chain retail food establishments is the time necessary for creating a record, managing the contracts for analysis, and communicating the results of the analysis to the outlets. FDA estimates the hourly burden of calorie analysis on these firms to be 4 hours per menu item.

FDA estimates that there are approximately 1,069 restaurant chains, with 231,000 outlets, will be required to disclose calorie information. On average, we estimate that a chain has 117 items on its menu, and that 48 percent of chain restaurants, or 516, do

not already have calorie information. The hourly burden for restaurant chains is 241,488 hours (= 516 chains × 117 items/chain × 4 hours/item).

FDA estimates that there are 570 covered grocery and convenience store chains with an average of 40 standard menu items per chain. The hourly burden for grocery store chains is 91,200 hours (= 570 chains × 40 items/chain × 4 hours/item).

FDA estimates that there are 420 other chains that will be covered by the proposed rule. With 40 menu items on average, the number of hours required to deal with calorie analysis at these other chains is 67,200 hours (= 420 chains × 40 items/chain × 4 hours/item).

FDA has estimated that each of the 1,506 covered chains, on average, introduces new items or reformulates existing items 4 times per year. The recurring hourly burden of recordkeeping for new items, as displayed in the sixth row of table 1 of this document, is 24,096 hours (= 1,506 chains × 4 items/chain × 4 hours/item).

FDA estimates that 30 chains will become newly covered under the requirements of the proposed rule each year. With an average number of menu items of 60 per chain, this would result in approximately 7,200 hours (= 30 chains × 60 items/chain × 4 hours/item). This amount is displayed in the seventh row of table 1 of this document.

The final column of table 1of this document gives the estimated capital costs associated with calorie and nutrition analysis. These are the costs of acquiring nutrition analyses. FDA has estimated that the average cost of a full analysis is $269 per menu item. These costs are calculated by multiplying this per item cost by the number of items in column three multiplied by the number of recordkeepers in column two.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN: CALORIE ANALYSIS AND RECORDING [1]

Type of respondent	Number of recordkeepers	Annual frequency per recordkeeper	Total annual records	Hours per record	Total hours	Total capital costs
Restaurant Chains	516	117	60,372	4	241,488	$16.2 million
Grocery and Convenience Store Chains	570	40	22,800	4	91,200	$6.1 million
Other Chains	420	40	16,800	4	67,200	$4.5 million
Vending Operators	600	20	12,000	2	24,000	$0,000
Total Initial Hours					423,888	$26.9 million
New/Reformulated Items	1,506	4	6,024	4	24,096	$1.6 million
New Chains	30	60	1,800	4	7,200	$0.5 million
New Vendors	3	20	60	2	120	$4,000
Total Recurring Hours					31,416	

[1] There are no operating and maintenance costs associated with this collection of information.

Third Party Disclosure Burdens for Chain Retail Food Establishments

The third party reporting burden for chain retail food establishments is the time necessary to display calorie information on menus, menu boards, displayed food and other required locations. In practice, this is the time necessary to change out redesigned menu boards, FDA estimates 2 hours of time per menu board change.

FDA estimates that limited service restaurant chains have an average of three menu boards or displays per establishment. With 135,705 outlets having these displays, the total hourly burden estimated for third party disclosure at restaurants is 814,230 hours (= 135,705 outlets × 3 displays/outlet × 2 hours/display).

For grocery and convenience store chains, FDA estimates an average of 1 major menu board or display per establishment. With 41,945 outlets, the total hourly burden is 83,890 hours (= 41,945 outlets × 1 displays/outlet × 2 hours/display).

For other covered chains, FDA estimates 33,114 covered outlets, each with an average of one major display or menu board. At 4 hours per disclosure, FDA estimates an hourly burden of 66,228 hours (= 33,114 outlets × 1 displays/outlet × 2 hours/display).

The most inexpensive technology available to vending machine operators for disclosing calorie content is using stickers. Because these do not require any initial investment and because they are not durable, all burden and costs will be on a recurring basis.

Recurring Disclosure Burdens for Chain Retail Food Establishments

FDA estimates that the annual number of newly covered chains will be 30. At 20 establishments per chain, there will be 600 establishments at newly covered chains each year that will need to disclose calorie content. Taking an average number of displays equal to 2, the total hourly burden for disclosure due to newly covered chains is 2,400 hours (= 600 outlets × 2 displays/outlet × 2 hours/display).

The final column of table 2 of this document gives the estimated capital costs associated with third party disclosure. These are the costs of acquiring new menu boards or displays. FDA has estimated that the average cost of menu board to be $550. These costs are calculated by multiplying this per menu board cost by the frequency of disclosures in column three multiplied by the number of respondents in column two.

TABLE 2—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN: CALORIE CONTENT [1]

Type of respondent	Number of respondents	Annual frequency per disclosure	Total annual disclosures	Hours per disclosure	Total hours
Restaurants	135,705	3	407,115	2	814,230
Grocery and Convenience Store Chains	41,945	1	41,945	2	83,890

TABLE 2—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN: CALORIE CONTENT [1]—Continued

Type of respondent	Number of respondents	Annual frequency per disclosure	Total annual disclosures	Hours per disclosure	Total hours
Other Chains	33,114	1	33,114	2	66,228
Total Initial Hours					964,348
New SRFE Outlets	600	2	1,200	2	2,400
Vending (Ongoing)	5,000	56,000	280,000,000	0.05	14,000,000
Vending (Growth)	5,000	140	700,000	0.05	35,000
Total Recurring Hours					14,037,400

[1]There are no operating and maintenance costs associated with this collection of information.

Burdens for Chain Vending Machine Operators

Because almost all vending machines sell food that is previously manufactured and packaged, calorie analysis and production of calorie analysis displays will be most efficiently done at the manufacturer level instead of the operator level. Furthermore, most vended foods are subject to NLEA, which means that calorie content is already collected. A likely scenario for response to vending machine labeling is that food manufacturers include a set of calorie label stickers in each case of product. This would be efficient both because most manufacturers will already have the calorie information available, and because economies of scale exist for the manufacturer. In this case, vending machine operators will not need to keep a record of calorie content. Instead, the burden for most operators will be limited to that of administering records and passing the existing information on to consumers.

FDA estimates that there are approximately 300,000 beverage machines that sell unpackaged products. The manufacturer of the ingredients to these foods (hot coffee drinks and sodas) would not necessarily have calorie information if the products were not subject to NLEA in some form. There are likely a limited number of manufacturers of the inputs to the beverage machines. For the purposes of this document, FDA estimates that there are 10 manufacturers serving these machines, and 20 drinks per manufacturer, so that approximately 200 drinks would need to have calorie analysis. The cost of this calorie analysis will be included in the capital costs in the following paragraphs. FDA estimates that the recordkeeping burden for these firms is half that for restaurants, or two hours per item. If there are 600 firms using beverage dispensers, then the hourly burden for recordkeeping is 24,000 hours (= 600 firms × 20 items/firm × 2 hours/item).

FDA believes that the set of items sold in these dispensary machines is approximately constant. If there is .5 percent growth in the number of firms, then approximately three new firms will become covered in this market in a given year. The burden associated with these three firms would be 120 hours (= 3 firms × 20 items/firm × 2 hours/item). This amount is given in eighth row of table 1 of this document.

The third party reporting for chain vending machine operators is the time necessary to install calorie displays on their vending machines. Because there is wide variation in the kinds of vending machines used—in materials, display, mechanism—there will likely be a variety of solutions. On the high end, a calorie display that is integrated with the graphics on the machine may cost several hundred dollars or more. On the low end, a set of calorie stickers affixed to the front of the machine would cost at most a few dollars per machine. Given the low margins in the vending machine industry, and given that nearly all of the regulated operators will be small businesses, FDA believes that almost all operators will, at least initially, choose the sticker option. In the long run, the manufacturers of vending machines, and the larger vending machine operators, such as the soft drink companies, may use the more integrated, and thus expensive, solution.

FDA tentatively estimates a recurring hourly burden of 1 hour per machine, 2 times per year to install the displays. If there are an average of 20 items per machine, then the burden per response is .05 hours (= 1 hours/machine/20 items/machine).This will be the time necessary to decide where to put the displays on the machine, and to sort, remove and affix calorie stickers. FDA expects the stickers to have a relatively short life, and the mix of product in a machine to change over time.

FDA estimates approximately 7 million machines are serviced by 5,000 operators, for an average number of machines per operator of 1,400 machines. If each machine has 20 items, then the average number of responses per operator is 28,000. Given that stickers will likely need to be replaced twice per year on average, this number of responses doubles, to 56,000 responses per operator. The total recurring hours needed for third party display is then 14 million hours (= 5000 firms × 1,400 machines/firm x 20 displays/machine × .05 hours/display × 2). This amount is recurring in every year, and is given in row 7 of table 2 of this document.

If growth in the vending machine industry is .5 percent, then each of the 5,000 respondents will have an average of 7 additional machines that would need to report calorie content each year. With an average number of items per machine of 20, the number of disclosures per respondent is 140. At .05 hours per response, the hours needed to disclose calorie content on new machines is 35,000 hours per year (= 5000 firms × 7 machines/firm × 20 items/machine × .05 hours/item). This amount is displayed in row 8 of table 2 of this document.

Dated: November 1, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–28014 Filed 11–4–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0275]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Full-Field Digital Mammography System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Full-Field Digital Mammography System." This guidance document describes a means by which a full-field digital mammography (FFDM) system may comply with special controls that apply to these class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to reclassify these device types from class III into class II (special controls).

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Class II Special Controls Guidance Document: Full-Field Digital Mammography System" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, Bldg. 66, rm. 4613, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to CDRH at 301–847–8149. *See* the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Mary Pastel, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. G304, Silver Spring, MD 20993–0002, 301–796–6887; or

Kyle J. Myers, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, rm. 3118, Silver Spring, MD 20993–0002, 301–796–2533.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 30, 2008 (73 FR 31040), FDA issued a proposed rule to reclassify an FFDM system from class III (premarket approval) into class II (special controls). Also, in the **Federal Register** of May 30, 2008 (73 FR 31128), FDA announced the availability of the draft guidance entitled "Class II Special Controls Guidance Document: Full-Field Digital Mammography System," which would serve as a special control for the device. The comment period on the proposed rule closed on August 28, 2008.

Following publication of the draft guidance, FDA received a number of comments. We are responding to comments concerning the guidance in this document. We are addressing comments concerning the classification regulation in the preamble to the final rule that is publishing elsewhere in this issue of the **Federal Register**.

We reviewed the comments and took their suggestions into consideration in revising this guidance. The general changes we made to the guidance in response to the comments included: (1) Changing the risk of "incorrect patient positioning" to "inadequate breast coverage"; (2) clarifying when different data are needed for integrated FFDM systems versus detector-only type FFDM systems; (3) revising the listed device description requirements for detector only systems; (4) revising the guidance to consistently use the term "legally marketed (predicate) FFDM device"; (5) revising the footnote referring to part 900 (21 CFR part 900), incorporating a tiered approach to reviewing FFDM devices; and (6) placing greater emphasis on laboratory testing. The changes we made to the clinical aspects of the guidance in response to the comments included: (1) Making the suggested measures less burdensome while providing reasonable assurance of safety and effectiveness and (2) removing, in some cases, suggested measures entirely when we believed that our concerns could be addressed by other measures that we had suggested. The changes we made to the technical aspects of the guidance in response to the comments included: (1) Removing the request for description and specifications of the display from the device description section; (2) removing the request for the life of the detector and the criteria for replacement and recognizing, in the section on "Repeated Exposure Test," international standards (International Electrotechnical Commission) IEC 62220–1–2 and (Final Draft International Standard) FDIS IEC 61223–3–2 in addition to the test recommended in Addendum on Digital Mammography: The European Protocol for the Quality Control of the Physical and Technical Aspects of Mammography Screening, version 1.0, November 2003; (3) removing the clause "whether their [the detector defects] location overlaps the imaged breast" and graphical map recommendation and replacing it in the section now called "Flat Field Correction and Pixel Defects" with the following components: "the number, spatial distribution (single pixels, lines, blocks), and types (dead pixel, sensitivity or offset out of acceptable range) of pixel defects allowed and the rationale for selecting these criteria; and the methods of compensation for these defects"; (4) rewording the "Automatic Exposure Control Performance" section to ask for data based on tissue thickness only rather than preselected kilovolt peak, making it clear that the sponsor should only provide evaluation results for each available Automatic Exposure Control mode, and removing contrast testing; (5) replacing the request for "Bucky factor" with a request for grid ratio, primary transmission, selectivity, and contrast improvement factor; (6) revising section 8 entitled "Physical Laboratory Testing, Breast Compression System" to follow the Mammography Quality Standards Act (MQSA) guidance for compression force, requesting the manufacturer to specify the minimum and maximum powered compressive force for their device and the reasons for choosing the limits, and removing references to accuracy and limits; (7) revising the "Noise Analysis" and "Physical Measurements" portion of the guidance to reference International Standard IEC 62220–1–2, section 6.3.2; (8) revising the "Signal-to-Noise Ratio Transfer—DQE" to reference International Standard IEC 62220–1–2; (9) revising the introduction to the "Physical Laboratory Testing" section to allow greater latitude in choice and be less prescriptive; (10) removing references to MQSA qualifications from the "Phantom Testing" section; and (11) revising the section addressing patient radiation dose to remove reference to the "standard breast" and clarifying that FDA seeks phantom data only and reduce the range of breast sizes from 2 to 8 centimeters (cm) to 2 to 6 cm.

II. Significance of Special Controls Guidance

FDA believes that adherence to the recommendations described in this guidance document, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the FFDM system classified under § 892.1715 (21 CFR 892.1715). In order to be classified as a class II device under § 892.1715, a new FFDM system must comply with the

requirements of special controls; manufacturers must address the issues requiring special controls as identified in the guidance document, either by following the recommendations in the guidance document or by some other means that provides equivalent assurances of safety and effectiveness.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive "Class II Special Controls Guidance Document: Full-Field Digital Mammography System," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1616 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 900 have been approved under OMB control number 0910–0309.

V. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 2, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–28004 Filed 11–4–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Pharmacokinetic Research in Pediatric HIV/TB Co-Infection.

Date: December 2, 2010.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anne Krey, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01 Bethesda, MD 20892. 301–435–6908. *kreya@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 1, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28081 Filed 11–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development, Special Emphasis Panel, Williams Syndrome.

Date: November 30, 2010.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Blvd., Rockville, MD (Teleconference).

Contact Person: Norman Chang, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 1, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28079 Filed 11–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, DBS T32's.

Date: December 3, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marita R. Hopman, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *opmannm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 1, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28076 Filed 11–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Expanding Grants Administration in Rural Uganda.

Date: November 18, 2010.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Blvd., Bethesda, MD 20852 (Teleconference).

Contact Person: Michelle C. Hindi-Alexander, PhD, Scientific Review Officer, Division of Scientific Review, National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–8382, *hindialm@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. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 1, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28074 Filed 11–4–10; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hematology Small Business.

Date: November 11–12, 2010.

Time: 12 p.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: Delia Tang, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@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: October 29, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28072 Filed 11–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, E -Learning Hazmat and Emergency Response.

Date: December 7, 2010.

Time: 11:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Keystone Bldg., 530 Davis Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Janice B Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 29, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28070 Filed 11–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group, Heart, Lung, and Blood Program Project Review Committee.

Date: December 1, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey H Hurst, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892–7924, 301–435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 1, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–28069 Filed 11–4–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Recruitment of Sites for Assignment of Corps Personnel Obligated Under the National Health Service Corps Loan Repayment Program (FY 2011)

AGENCY: Health Resources and Services Administration, HHS.

ACTION: General notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that the listing of entities, and their Health Professional Shortage Area (HPSA) scores, that will receive priority for the assignment of National Health Service Corps (NHSC) Loan Repayors (Corps Personnel, Corps members) during the period October 1, 2010, through September 30, 2011, is posted on the HRSA Web site at *http://datawarehouse.hrsa.gov/HGDWReports/OneClickRptFilter.aspx?rptName=NHSCAppSiteList&rptFormat=HTML3.2.* This list specifies which entities are eligible to receive assignment of Corps members who are participating in the NHSC Loan Repayment Program (LRP), and Corps members who have become Corps members other than pursuant to contractual obligations under the LRP. Please note that not all vacancies associated with sites on this list will be for Corps members, but could be for individuals serving an obligation to the NHSC LRP through the Private Practice Option.

Eligible HPSAs and Entities

To be eligible to receive assignment of Corps personnel, entities must: (1) Have a current HPSA designation by the Office of Shortage Designation, Bureau of Health Professions, HRSA; (2) not deny requested health care services, or discriminate in the provision of services to an individual because the individual is unable to pay for the services or because payment for the services would be made under Medicare, Medicaid, or the Children's Health Insurance Program; (3) enter into an agreement with the State agency that administers Medicaid and the Children's Health Insurance Program, accept assignment under Medicare, see all patients regardless of their ability to pay, and use and post a discounted fee plan; and (4) be determined by the Secretary to have (a) A need and demand for health manpower in the area; (b) appropriately and efficiently used Corps members assigned to the entity in the past; (c) general community support for the assignment of Corps members; (d) made unsuccessful efforts to recruit; (e) a reasonable prospect for sound fiscal management by the entity with respect to Corps members assigned there; and (f) demonstrated a willingness to support and facilitate mentorship, professional development and training opportunities for Corps members. Priority in approving applications for assignment of Corps members goes to sites that (1) provide primary medical care, mental health, or oral health services to a primary medical care, mental health, or dental HPSA of greatest shortage, respectively; (2) are part of a system of care that provides a continuum of services, including comprehensive primary health care and appropriate referrals or arrangements for secondary and tertiary care; (3) have a documented record of sound fiscal management; and (4) will experience a negative impact on its capacity to provide primary health services if a Corps member is not assigned to the entity. In order for a site to be eligible for placement of NHSC personnel, it must be approved by the NHSC through the successful submission of a Site Application. The Site Application approval is good for a period of 3 years from the date of approval.

Entities that receive assignment of Corps personnel must assure that (1) the position will permit the full scope of practice and that the clinician meets the credentialing requirements of the State and site; and (2) the Corps member assigned to the entity is engaged in the requisite amount of clinical service, as defined below, to meet his or her service obligation:

Full-time clinical practice

"Full-time clinical practice" is defined as a minimum of 40 hours per week for at least 45 weeks per service year. The 40 hours per week may be compressed into no less than 4 work days per week, with no more than 12 hours of work to be performed in any 24-hour period. Time spent on-call does not count toward the full-time service obligation.

For all health professionals, except as noted below, at least 32 of the minimum 40 hours per week must be spent providing direct patient care or teaching in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s) during normally scheduled office hours. The remaining 8 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s),

providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Teaching activities at the approved service site shall not exceed 8 hours of the minimum 40 hours per week, unless the teaching takes place in a HRSA-approved Teaching Health Center. Teaching activities in a Teaching Health Center shall not exceed 20 hours of the minimum 40 hours per week.

For obstetrician/gynecologists, certified nurse midwives (CNMs), family medicine physicians who practice obstetrics on a regular basis, providers of geriatric services, pediatric dentists, and behavioral/mental health providers, at least 21 of the minimum 40 hours per week must be spent providing direct patient care or teaching in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 19 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s), providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. No more than 8 hours per week can be spent performing practice-related administrative activities. Teaching activities at the approved service site shall not exceed 8 hours of the minimum 40 hours per week, unless the teaching takes place in a HRSA-approved Teaching Health Center. Teaching activities in a Teaching Health Center shall not exceed 20 hours of the minimum 40 hours per week.

Half-Time Clinical Practice

"Half-time clinical practice" is defined as a minimum of 20 hours per week (not to exceed 39 hours per week), for at least 45 weeks per service year. The 20 hours per week may be compressed into no less than 2 work days per week, with no more than 12 hours of work to be performed in any 24-hour period. Time spent on-call does not count toward the half-time service obligation.

For all health professionals, except as noted below, at least 16 of the minimum 20 hours per week must be spent providing direct patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 4 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s), providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Teaching and practice-related administrative activities shall not exceed a total of 4 hours of the minimum 20 hours per week.

For obstetrician/gynecologists, certified nurse midwives (CNMs), family medicine physicians who practice obstetrics on a regular basis, providers of geriatric services, pediatric dentists, and behavioral/mental health providers, at least 11 of the minimum 20 hours per week must be spent providing direct patient care in the outpatient ambulatory care setting(s) at the NHSC-approved service site(s), during normally scheduled office hours. The remaining 9 hours per week must be spent providing clinical services for patients or teaching in the approved practice site(s), providing clinical services in alternative settings as directed by the approved practice site(s), or performing practice-related administrative activities. Teaching and practice-related administrative activities shall not exceed 4 hours of the minimum 20 hours per week.

In addition to utilizing NHSC assignees in accordance with their full-time or half-time service obligation (as defined above), sites receiving assignment of Corps personnel are expected to (1) Report to the NHSC all absences, including those in excess of the authorized number of days (up to 285 work hours per service year in the case of full-time service and up to 142 hours per service year in the case of half-time service); (2) report to the NHSC any change in the status of an NHSC clinician at the site; (3) provide the time and leave records, schedules, and any related personnel documents for the NHSC assignees (including documentation, if applicable, of the reason(s) for the termination of an NHSC clinician's employment at the site prior to his or her obligated service end date); and (4) submit a Uniform Data System (UDS) report. The UDS allows the site to assess the age, sex, race/ethnicity of, and provider encounter records for its user population. The UDS reports are site specific. Providers fulfilling NHSC commitments are assigned to a specific site or, in some cases, more than one site. The scope of activity to be reported in UDS includes all activity at the site(s) to which the Corps member is assigned.

Evaluation and Selection Process

In approving applications for the assignment of Corps members, the Secretary shall give priority to any such application that is made regarding the provision of primary health services to a HPSA with the greatest shortage. For assignments made under the NHSC LRP resulting from loan repayment awards made using FY 2011 funding from October 1, 2010, to September 30, 2011, HPSAs of greatest shortage for determination of priority for assignment of Corps personnel will be defined as follows: HPSAs (appropriate to each discipline) with scores of 10 and above are authorized for priority assignment of Corps members who are participating in the LRP. HPSAs with scores below 10 will be eligible to receive assignment of Corps personnel participating in the LRP only after assignments are made of those Corps members matching to HPSAs receiving priority for placement of Corps members through the LRP (i.e., HPSAs scoring 10 or above). Placement made through the Loan Repayment Program in HPSAs with scores below 10 will be made by decreasing HPSA score, and only to the extent that funding remains available. All sites on the list are eligible sites for "volunteers"—i.e., individuals wishing to serve in an underserved area but who are not contractually obligated under the NHSC Scholarship or Loan Repayment Programs. A listing of HPSAs and their scores is posted at *http://hpsafind.hrsa.gov/.*

In order to implement the statutory directive to place NHSC clinicians in the highest need areas and to assure appropriate geographic distribution of NHSC resources, the number of new NHSC LRP placements (full-time or half-time) allowed at any one site during FY 2011 is limited to the following:

HPSA Score: 0–9

Primary Medical Care

No more than 12 allopathic (MD) or osteopathic (DO) physicians; and no more than a combined total of 12 nurse practitioners (NPs), physician assistants (PAs), or CNMs.

Dental

No more than 12 dentists and 12 dental hygienists.

Mental Health

No more than 12 psychiatrists (MD or DO); and no more than a combined total of 12 health service psychologists (clinical or counseling psychologists), licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists.

HPSA Score: 10–13

Primary Medical Care

No more than 15 allopathic (MD) or osteopathic (DO) physicians; and no more than a combined total of 15 NPs, PAs, or CNMs.

Dental

No more than 15 dentists and 15 dental hygienists.

Mental Health

No more than 15 psychiatrists (MD or DO); and no more than a combined total of 15 health service psychologists (clinical or counseling psychologists), licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists.

HPSA Score: 14–26

Primary Medical Care

No more than 18 allopathic (MD) or osteopathic (DO) physicians; and no more than a combined total of 18 NPs, PAs, or CNMs.

Dental

No more than 18 dentists and 18 dental hygienists.

Mental Health

No more than 18 psychiatrists (MD or DO); and no more than a combined total of 18 health service psychologists (clinical or counseling psychologists), licensed clinical social workers, licensed professional counselors, marriage and family therapists, or psychiatric nurse specialists.

Application Requests, Dates, and Address

The list of HPSAs and entities that are eligible to receive priority for the placement of Corps personnel may be updated periodically. Entities that no longer meet eligibility criteria, including those sites whose NHSC 3-year approval has lapsed or whose HPSA designation is withdrawn, will be removed from the priority listing. New entities interested in being added to the high

priority list must submit a Site Application to: National Health Service Corps, 5600 Fishers Lane, Room 8A–30, Rockville, MD 20857, fax 301–594–2721. These applications must be postmarked on or before the submission deadline date of June 30, 2011. Applications submitted by clinicians for loan repayment will be processed as they are received. Applicants must be employed, or be starting employment within 30 days of their NHSC LRP application, at an entity with a currently approved Site Application, in order to be selected for an LRP award. Therefore, we strongly encourage all sites to have current NHSC-approved Site Applications and vacancies on file. Site applications submitted after June 30, 2011 will be considered for placement on the priority list in the following application cycle.

Entities interested in receiving application materials may do so by calling the HRSA call center at 1–800–221–9393. They may also get information and download application materials from: *http://nhsc.hrsa.gov/communities/apply.htm.*

Additional Information

Entities wishing to provide additional data and information in support of their inclusion on the proposed list of HPSAs and entities that would receive priority in assignment of Corps members, must do so in writing no later than [30 days after FRN publish date]. This information should be submitted to: Marty Bond, Chief, Site and Community Development Branch, Division of Site and Clinician Recruitment, Bureau of Clinician Recruitment and Service, 5600 Fishers Lane, Room 8A–55, Rockville, MD 20857. This information will be considered in preparing the final list of HPSAs and entities that are receiving priority for the assignment of Corps personnel.

Paperwork Reduction Act: The Site Application has been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0230 and expires September 30, 2011.

The program is not subject to the provisions of Executive order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: October 25, 2010.

Mary K. Wakefield,

Administrator.

[FR Doc. 2010–28083 Filed 11–4–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate

[Docket No. DHS–2010–0071]

Agency Information Collection Activities: Office of Infrastructure Protection; Chemical Security Awareness Training Program

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; extension of a currently approved Information Collection: 1670–0009.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Sector-Specific Agency Executive Management Office (SSA EMO), will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning the extension of a currently approved information collection request (ICR) for the Chemical Security Awareness Training Program. DHS previously published this ICR in the **Federal Register** on August 27, 2010 at 75 FR 52768, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until December 6, 2010. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties. Comments must be identified by DHS–2010–0071 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

OMB is particularly interested in comments that:

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 submissions of responses.

SUPPLEMENTARY INFORMATION: The Chemical Sector-Specific Agency, within the DHS/NPPD/IP/SSA EMO, provides an online voluntary training program to improve security in the chemical industry sector. Information is automatically collected in a computer database as result of individuals engaging in the training. Explicit reporting or recordkeeping is not required. The training is designed for the general chemical facility employee. U.S. chemical industry direct employment is about 850,000 (2009 per American Chemistry Council); approximately 400,000 employees are estimated as potential participants. Estimated duration in the first year to complete the registration, training, and survey is 60 minutes, and less if individuals complete refresher training in succeeding years. Minimal participation data is collected as trainees complete the online exercises. Upon completion, a Certificate of Completion is generated at the trainee's computer work station, printed, and optionally e-mailed to a facility supervisor. DHS will monitor program participation, success in training, and basic distribution variables submitted upon registration.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Sector-Specific Agency Executive Management Office.

Title: Chemical Security Awareness Training Program.

OMB Number: 1670–0009.

CSATP Registration

Frequency: Annually.

Affected Public: Private Sector.

Number of Respondents: 400,000.

Estimated Time per Respondent: .17 hours.

Total Burden Hours: 68,000 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $2,720,000.

CSATP Module

Frequency: Annually.

Affected Public: Private Sector.

Number of Respondents: 400,000.

Estimated Time per Respondent: .66 hours.

Total Burden Hours: 264,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $10,560,000.

CSATP Survey

Frequency: Annually.

Affected Public: Private Sector.

Number of Respondents: 400,000.

Estimated Time per Respondent: .17 hours.

Total Burden Hours: 68,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $2,720,000.

Dated: October 29, 2010.

David Epperson,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2010–28022 Filed 11–4–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection for Review; File No. OMB–6, Emergency Federal Law Enforcement Assistance; OMB Control No. 1653–0019.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will be submitting 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 January 4, 2011.

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: Office of the Chief Financial Officer/OAM/Records Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., STOP 5705, Washington, DC 20536–5705.

Comments are encouraged and will be accepted for sixty days until January 4, 2011. 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 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 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 currently approved information collection.

(2) *Title of the Form/Collection:* Emergency Federal Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number; (File No. OMB–6) U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. Section 404(b) of the Immigration and Naturalization Act provides for the reimbursement to States and localities for assistance provided in meeting an immigration emergency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be requested via e-mail to: *forms.ice@dhs.gov* with "IEF-Emergency Assistance" in the subject line.

Dated: October 21, 2010.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2010–27933 Filed 11–4–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-Day Notice of New Information Collection for Review; Bond Worksheet, OMB No. 1653–NEW.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit 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 August 12, 2010 Vol. 75 No. 155 pp. 48984, allowing for a 60 day public comment period. No comments were received on 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 for thirty days December 6, 2010.

Interested persons are invited to submit written comments on the proposed information collection 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:* New information collection.

(2) *Title of the Form/Collection:* Bond Worksheet.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form 71–022. 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 data collected on this worksheet is used by ICE for the purposes of ensuring the person or company posting a bond provides accurate written data for review and processing by ICE. It is a precursor for preparing the I–352 (Immigration Bond).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 15 minutes (0.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,250 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be sent via e-mail to *forms.ice@dhs.gov* with "ICE Form 71–022" in the subject line.

Dated: October 21, 2010.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2010–27934 Filed 11–4–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection for Review; Immigration Bond; OMB Control No. 1653–0022.

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 is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 4, 2011.

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., STOP 5705 Washington, DC 20536–5705.

Comments are encouraged and will be accepted for sixty days until January 4, 2011. 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 currently approved information collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* ICE Form I–352, 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 for-profit. The data collected on this collection instrument is used by U.S. Immigration and Customs Enforcement to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The collection instrument serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of bond. Sureties have the capability of accessing, completing and submitting a bond electronically through ICE's eBonds system which encompasses the I–352, while individuals are still required to complete the bond form manually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Office of the Chief Financial Officer/OAM/Records Branch, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., STOP 5705 Washington, DC 20536–5705.

Dated: October 28, 2010.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2010–27935 Filed 11–4–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1945–DR; Docket ID FEMA–2010–0002]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1945–DR), dated October 21, 2010, and related determinations.

DATES: *Effective Date:* October 21, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 21, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms, flooding, tornado, and straight-line winds during the period of September 13–14, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Stephen R. Thompson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Nebraska have been designated as adversely affected by this major disaster:

Cass, Johnson, Nemaha, Otoe, Pawnee, Richardson, and Saunders Counties for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–27941 Filed 11–4–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1946–DR; Docket ID FEMA–2010–0002]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–1946–DR), dated October 26, 2010, and related determinations.

DATES: *Effective Date:* October 26, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 26, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico resulting from severe storms, flooding, mudslides, and landslides associated with Tropical Storm Otto during the period of October 4–8, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Justo Hernández, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this major disaster:

The municipalities of Aibonito, Añasco, Guánica, Guayama, Jayuya, Lares, Las Marías, Maricao, Mayagüez, Patillas, Ponce, Sabana Grande, Salinas, San Germán, Utuado, Yabucoa, and Yauco for Public Assistance.

All counties within the Commonwealth of Puerto Rico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–27940 Filed 11–4–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1944–DR; Docket ID FEMA–2010–0002]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1944–DR), dated October 21, 2010, and related determinations.

DATES: *Effective Date:* October 21, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 21, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Wisconsin resulting from severe storms and flooding during the period of September 22 to October 9, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Paul J. Ricciuti, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Wisconsin have been designated as adversely affected by this major disaster:

Buffalo, Clark, Jackson, Juneau, Marathon, Portage, Taylor, Trempealeau, and Wood Counties for Public Assistance.

All counties within the State of Wisconsin are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–27939 Filed 11–4–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–43]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering and Construction Management, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586–5422; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mr. Albert Johnson, Director of Real Estate, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305 (These are not toll-free numbers).

Dated: October 28, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 11/05/2010

Suitable/Available Properties

Land

Texas

FAA Outermarker
Rt. 156/Rt. 407
Justin TX 76247
Landholding Agency: GSA
Property Number: 54201040002
Status: Surplus
GSA Number: 7–U–TX–1127
Comments: 0.38 acre, FAA restrictions

Unsuitable Properties

Building

California

4 Bldgs.
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77201040008
Status: Excess
Directions: 96, 318, 3462, 3486
Reasons: Secured Area

Unsuitable Properties

Building

California

4 Bldgs.
Marine Corps Air Station
Miramar CA
Landholding Agency: Navy
Property Number: 77201040009
Status: Unutilized
Directions: 2516, 2517, 2518, 2519
Reasons: Secured Area

Maryland

Bldg. C64 & 2 bus stops
NSA/Chesapeake Bay Detachment
Annapolis MD
Landholding Agency: Navy
Property Number: 77201040010
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

New Mexico

8 Bldgs.
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201040003
Status: Unutilized
Directions: 46–0195, 46–0204, 48–0056, 48–0057, 54–0062, 54–0439, 55–0007, 55–0264
Reasons: Secured Area

Unsuitable Properties

Building

Oregon

Bldgs. B023, B002
USCG Air Station
North Bend OR
Landholding Agency: Coast Guard
Property Number: 88201040002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Texas

Barrack
U.S. Coast Guard
Galveston TX 77553
Landholding Agency: Coast Guard
Property Number: 88201040003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Washington

Outlying Field Coupeville
SR–20
Coupeville WA 98278
Landholding Agency: GSA
Property Number: 54201040003
Status: Excess
GSA Number: 9–N–WA–1251
Reasons: Within airport runway clear zone, Within 2000 ft. of flammable or explosive material

[FR Doc. 2010–27681 Filed 11–4–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Performance Review Board Appointments

AGENCY: Department of the Interior.

ACTION: Notice of Performance Review Board Appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the Department of the Interior Performance Review Board.

DATES: These appointments are effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rosemary Downing, Acting Director, Office of Human Resources, Office of the Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Telephone Number: (202) 208–4321.

The members of the Department of the Interior Performance Review Board are as follows:

Amos, Adell L.
Archuleta, Deanna A.
Arroyo, Bryan
Ashe, Daniel M.
Baker, Karen D.
Bean, Michael J.
Beck, Richard T.
Birdwell, Stephanie E.
Black, Steven W.
Blanchard, Mary Josie
Broun, Laurence I.
Brown, Laura B.
Brown, Robert E.
Burckman, James N.
Burke, Marcilynn A.
Burzyk, Carla M.

Carter-Pfisterer, Carole
Cruickshank, Walter D.
Davis, Mark H.
Douglas, James C.
Eller, Sharon D.
Faeth, Lorraine V.
Farquhar, Edward P.
Fearn, Milton L.
Ferriter, Olivia B.
Finkler, Kira L.
Forrest, Vicki L.
Frazer, Gary D.
Frost, Herbert C.
Gary, Arthur E.
Gould, Gregory J.
Gould, Rowan W.
Gundersen, Linda C.
Henderson, John C.
Hildebrandt, Betsy J.
Iudicello, Fay S.
Jackson, J. Andrew
Jacobson, Rachel L.
Keable, Edward T.
Kimball, Suzette
Kinsinger, Anne E.
Koenigsberg, Melissa B.
Labelle, Robert P.
Lane, Kenneth L.
Laverdure, Donald E. Jr.
Malam, Pamela R.
Mazer, Bernard J.
Moss, Adrianne L.
More, Robert S.
Nedd, Michael D.
O'Dell, Margaret G.
Owens, Glenda Hudson
Payne, Grayford F.
Perez, Benito Arturo
Pletcher, Mary F.
Pool, Michael J.
Pula, Nikolao Iuli
Quint, Robert J.
Roberson, Edwin L.
Rountree, Carl D.
Russ, David P.
Russell, Lisa L.
Salotti, Christopher P.
Schmidt, Paul Rudolph
Screnar, Brian C.
Sheehan, Denise E.
Simpson, Jerry W.
Skibine, George T. C.
Smith, Michael R.
Sobeck, Eileen
Sonderman, Debra E.
Stevenson, Katherine H.
Stith, E. Melodee
Taylor, Ione L.
Taylor, Willie R.
Thomas, Pilar M.
Thorsen, Kimberley A.
Triebsch, George F.
Tsosie, Paul H.
Tubbs, John E.
Velasco, Janine M.
Wainman, Barbara W.
Wenk, Daniel N.
Whitesell, Stephen E.
Wolf, Robert W.
Woody, William C.

Rosemary Downing,

Acting Director, Office of Human Resources.

[FR Doc. 2010–27986 Filed 11–4–10; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0114

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to renew authority to collect information for a series of customer surveys to evaluate OSM's performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act (GPRA). The Office of Management and Budget (OMB) previously approved the collection and assigned it clearance number 1029–0114.

DATES: Comments on the proposed information collection must be received by January 4, 2011, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208–2783 or electronically at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies the information collection that OSM will be submitting to OMB for approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0114 and is on the forms along with the expiration date. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

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.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Technical Evaluations Series.

OMB Control Number: 1029–0114.

Summary: The series of surveys are needed to ensure that technical assistance activities, technology transfer activities and technical forums are useful for those who participate or receive the assistance. Specifically, representatives from State and Tribal regulatory and reclamation authorities, representatives of industry, environmental or citizen groups, or the public, are the recipients of the assistance or participants in these forums. These surveys will be the primary means through which OSM evaluates its performance in meeting the performance goals outlined in its annual plans developed pursuant to the Government Performance and Results Act.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: 26 State and Tribal governments, industry organizations and individuals who request information or assistance.

Total Annual Responses: 500.

Total Annual Burden Hours: 39.

Dated: October 28, 2010.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 2010–27914 Filed 11–4–10; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2010–N171; 30136–1265–0000–S3]

Tamarac National Wildlife Refuge, Becker County, and Tamarac Wetland Management District, Minnesota

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability: Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the FinalComprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA) for Tamarac National Wildlife Refuge (NWR) and Tamarac Wetland Management District (WMD). Goals and objectives in the CCP describe how the agency intends to manage the refuge over the next 15 years.

ADDRESSES: Copies of the Final CCP and FONSI/EA may be viewed at the Tamarac National Wildlife Refuge Officeor at public libraries near the refuge. You may also request a copy by any of the following methods.

1. *Agency Web site:* View or download a copy of the document at *http://www.fws.gov/midwest/planning/Tamarac/.*

2. *E-mail: r3planning@fws.gov.* Include "TamaracFinal CCP/EA" in the subject line of the message.

3. *Mail:* Tamarac National Wildlife Refuge, 35704 County Road 26, Rochert, Minnesota 56578.

A limited number of hardcopies will be available for distribution at the Refuge Headquarters.

FOR FURTHER INFORMATION CONTACT: Barbara Boyle, 218–847–2641.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we complete the CCP process for Tamarac NWR and WMD, which we began by publishing a notice of intent on (72 FR 27587, May 16, 2007). For more information about the initial process, see that notice. We released the draft CCP and EA to the public, announcing and requesting comments in a notice of availability on (75 FR 39038, July 7, 2010).

The 42,738-acre Tamarac NWR was established in 1938. The Refuge includes 2,180 Federally-designated wilderness acres. The Tamarac WMD consists of 8,577 acres of wetland easements distributed throughout five counties.

The Draft CCP and EA were officially released for public review on July 7, 2010; the 31-day comment period ended on August 6, 2010. Planning information was sent to approximately 220 individuals and organizations for review and announced through local media outlets, resulting in six comment submissions. During the comment period the Refuge also hosted an open house to receive public comments and feedback on the CCP and EA documents. Thirteen individuals attended this event. Because few changes to the preferred alternative were recommended by Refuge audiences during the public review period, only minor changes were made to the drafts in preparing the final CCP/EA documents.

Selected Alternative

Based on input and feedback during the planning process, Alternative A was selected as the preferred alternative.The preferred alternative for Tamarac NWR over the next 15 years directs management of habitats to focus on maintaining and using ecological processes that shaped these communities prior to European settlement and will allow for some emphasis of priority bird habitat. Wildlife-dependant recreation opportunities, biological surveys and monitoring activities, and native habitats would all increase under the preferred alternative.

Background

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 *et seq.*), requires the Service to develop a CCP for each National Wildlife Refuge and Wetland Management District. The purpose in developing a CCP is to provide 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 for conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and 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 of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Dated: August 23, 2010.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. 2010–27979 Filed 11–4–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA. The human remains and associated funerary objects were removed from Yolo County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Anthropological Studies Center professional staff in consultation with representatives of the Cortina Indian Rancheria of Wintun Indians of California and the Yocha Dehe Wintun Nation, California (formerly the Rumsey Indian Rancheria of Wintun Indians of California).

In 1983, human remains representing a minimum of two individuals were removed from CA–YOL–139, in Yolo County, CA, during an archeological site boundary testing project conducted by California Archaeological Consultants (Tremaine, Origer and Fredrickson 1986). No known individuals were identified. The 555 associated funerary objects are 8 obsidian tools, 183 obsidian flakes, 30 chert flakes, 4 basalt flakes, 1 basalt tool, 317 non-human bone fragments, 1 abalone shell fragment, 2 ash/soil samples, 1 groundstone, 1 quartz chunk, 3 abalone pendants and 4 olivella beads.

One of the burials identified was associated with an ash feature that was dated by C^{14} to 170 yrs BP ± 60 (Bramlette and Fredrickson 1987:113). This collection, curated under the accession number 83–08, represents results of the excavation of CA–YOL–139, near the town of Knoxville, Yolo County, CA. The collection has been housed at the Anthropological Studies Center since it was accessioned in 1983.

In the fall of 1984 and summer of 1985, human remains representing a minium of 14 individuals were removed from CA–YOL–139, Yolo County, CA, during a joint effort between Sonoma State University and Santa Rosa Junior College under the direction of David A. Fredrickson and Thomas M. Origer. The site was excavated by three consecutive archeological field schools directed by Tom Origer and Project Coordinator Kim Tremaine. Four burials were encountered during this excavation, but since all were located within units outside the area of potential effect, the excavation was halted, and the units were refilled immediately without removing the human remains. However, disassociated human bones contained within the site's matrix, representing these 14 individuals, were identified during laboratory analysis and subsequent NAGPRA inventory by an osteological technician. No known individuals were identified. The 54 associated funerary objects are 20 obsidian tools, 1 chert tool, 3 groundstones, 2 steatite beads, 1 abalone pendant, 2 clamshell disk beads, 23 olivella beads and 2 steatite pipes.

This collection, curated under accession number 84–19, represents results of the excavation of CA–YOL–139, near the town of Knoxville, Yolo County, CA. The collection has been housed at the Anthropological Studies Center since it was accessioned in 1984.

Ethnographic and historic evidence indicates CA–YOL–139 is located within the traditional Wintun (Patwin) territory. Cultural affiliation has been determined based on archeological evidence, long-term occupation, continuity of cultural materials, ethnographic accounts and consultation with the representatives for the Cortina Indian Rancheria of Wintun Indians of California and the Yocha Dehe Wintun Nation, California.

Officials of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, have determined, pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of 16 individuals of Native American ancestry. Officials of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, also have determined, pursuant to 25 U.S.C. 3001(3)(A), the 609 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, have determined, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cortina Indian Rancheria of Wintun Indians of California and the Yocha Dehe Wintun Nation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Erica Gibson, NAGPRA Coordinator, Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, Rohnert Park, CA 24928, telephone (707) 664–2015, before December 6, 2010. Repatriation of the human remains and associated funerary objects to the Cortina Indian Rancheria of Wintun Indians of California and the Yocha Dehe Wintun Nation, California, may proceed after that date if no additional claimants come forward.

The Anthropological Studies Center, Archaeological Collections Facility, Sonoma State University, is responsible for notifying the Cortina Indian Rancheria of Wintun Indians of California and the Yocha Dehe Wintun Nation, California, that this notice has been published.

Dated: October 29, 2010.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2010–27920 Filed 11–4–10; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2010–N232; 91100–3740–GRNT 7C]

Meeting Announcement: North American Wetlands Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public and interested persons may present oral or written statements.

DATES: *Council Meeting:* December 7, 2010, 1 p.m. to 4 p.m. If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than November 21, 2010.

ADDRESSES: The Council meeting will be held at the Five Rivers Delta Resource Center, 30945 Five Rivers Boulevard, Spanish Fort, AL 36527.

FOR FURTHER INFORMATION CONTACT: Michael J. Johnson, Council Coordinator, by phone at (703) 358–1784; by e-mail at *dbhc@fws.gov;* or by U.S. mail at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop MBSP 4075, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION: In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Project proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA/Standard/US/Overview.shtm.*

Proposals require a minimum of 50 percent non-Federal matching funds. The Council will consider Mexican and U.S. standard grant proposals at the meeting. The Commission will consider the Council's recommendation at its meeting tentatively scheduled for March 9, 2011.

If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than the date under **DATES**.

Dated: November 2, 2010.

Jerome Ford,

Acting Assistant Director, Migratory Birds.

[FR Doc. 2010–28049 Filed 11–4–10; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–743]

In the Matter of: Certain Video Game Systems and Controllers; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 1, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Motiva, LLC. of Dublin, Ohio. Motiva filed letters supplementing the Complaint on October 18 and 22, 2010. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain video game systems and controllers by reason of infringement of certain claims of U.S. Patent No. 7,292,151 ("the '151 patent") and U.S. Patent No. 7,492,268 ("the '268 patent"). The complaint further alleges that an industry in the United States exists or in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 1, 2010, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain video game systems and controllers that infringe one or more of claims 16, 27–32, 44, 57, 68, 81, and 84 of the 151 patent and claims 1–6 and 8–15 of the '268 patent, and whether an industry in the United States exists or in the process of being established as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Motiva, LLC, 8156 Campden Lakes Blvd., Dublin, Ohio 43106.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nintendo Co., Ltd., 11–1 Kamitoba hokotate-cho, Minami-ku, Kyoto 601–8501, Japan.

Nintendo of America, Inc., 4820 150th Avenue, NE., Redmond, Washington 98052.

(c) The Commission investigative attorney, party to this investigation, is David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 1, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27921 Filed 11–4–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–744]

In the Matter of: Certain Mobile Devices, Associated Software, and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 1, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Microsoft Corporation of Redmond, Washington. An amended complaint was filed on October 12, 2010. The amended complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States

after importation of certain mobile devices, associated software, and components thereof by reason of infringement of certain claims of U.S. Patent No. 5,579,517 ("the '517 patent"); U.S. Patent No. 5,758,352 ("the '352 patent"); U.S. Patent No. 6,621,746 ("the '746 patent"); U.S. Patent No. 6,826,762 ("the '762 patent"); U.S. Patent No. 6,909,910 ("the '910 patent"); U.S. Patent No. 7,644,376 ("the '376 patent"); U.S. Patent No. 5,664,133 ("the '133 patent"); U.S. Patent No. 6,578,054 ("the '054 patent"); and U.S. Patent No. 6,370,566 ("the '566 patent"). The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The amended complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on November 1, 2010, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile devices, associated software, and components thereof that infringe one or more of claims 1–4, 22, 26, 31, and 36 of the '517 patent; claims 1, 7, 12, and 20 of the '352 patent; claims 6, 10, 15, 16, 23, and 24 of the '746 patent; claims 1–9, 15, and 16 of the '762 patent; claims 1–3, 5–8 and 10 of the '910 patent; claims 10–13 of the '376 patent; claims 1, 2, 8, 18, 19, 25, and 35–37 of the '133 patent; claims 11 and 13–15 of the '054 patent; and claims 1, 2, 5, 6, and 9 of the '566 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Motorola, Inc., 1303 East Algonquin Road, Schaumburg, Illinois 60196.

Motorola Mobility, Inc., 600 North US Highway 45, Libertyville, Illinois 60048.

(c) The Commission investigative attorney, party to this investigation, is Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondents to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 1, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–27924 Filed 11–4–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; American Time Use Survey

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Bureau of Labor Statistics (BLS) sponsored information collection request (ICR), "American Time Use Survey," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before December 6, 2010.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *dol_pra_public@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7314/*Fax:* 202–395–7245

(these are not toll-free numbers), *e-mail: oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *dol_pra_public@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL is seeking OMB approval for a revision to the American Time Use Survey (ATUS). The ATUS is the Nation's first federally administered, continuous survey on time use in the United States. It measures, for example, time spent with children, working, sleeping, or doing leisure activities. In the United States, several existing Federal surveys collect income and wage data for individuals and families, and analysts often use such measures of material prosperity as proxies for quality of life. Time-use data substantially augment these quality-of-life measures. The data also can be used in conjunction with wage data to evaluate the contribution of non-market work to national economies. This enables comparisons of production between nations that have different mixes of market and non-market activities. The ATUS develops nationally representative estimates of how people spend their time. Respondents also report who was with them during activities, where they were, how long each activity lasted, and if they were paid. All of this information has numerous practical applications for sociologists, economists, educators, government policymakers, businesspersons, health researchers, and others.

The ATUS data are collected on an ongoing, monthly basis, allowing analysts to identify changes in how people spend their time. The survey sample is drawn from households completing their final month of interviews for the Current Population Survey (CPS). Households are selected to ensure a representative demographic sample, and one individual from each household is selected to take part in one Computer Assisted Telephone Interview. The interview asks respondents to report all of their activities for one pre-assigned 24-hour day, the day prior to the interview. A short series of summary questions and CPS updates follows the core time diary collection.

The ATUS is an information collection subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is currently approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provision of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0175. The current OMB approval is scheduled to expire on August 31, 2012. For additional information, *see* the related notice published in the **Federal Register** on June 30, 2010 (75 FR 37838).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference OMB Control Number 1220–0175. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title of Collection: American Time Use Survey.

Form Numbers: None.

OMB Control Number: 1220–0175.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 13,200.

Total Estimated Number of Responses: 13,200.

Total Estimated Annual Burden Hours: 4,345.

Total Estimated Annual Costs Burden: $0.

Dated: October 27, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–27965 Filed 11–4–10; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0042]

Gear Certification Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Gear Certification Standard (29 CFR part 1919).

DATES: Comments must be submitted (postmarked, sent, or received) by January 4, 2011.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0042, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0042). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.*

For further information on submitting comments see the "Public Participation" heading in the section of this notice titled "Supplementary Information."

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The ICR addresses the burden hours associated with gathering information to complete the OSHA 70 Form. The OSHA 70 Form is used by applicants seeking accreditation from OSHA to be able to test or examine certain equipment and material handling devices as required under the maritime regulations, part 1917 (Marine Terminals), and part 1918 (Longshoring). The OSHA 70 Form application for accreditation provides an easy means for companies to apply for accreditation. The collection of information needed to complete the OSHA 70 Form is necessary to provide an effective and efficient means of enabling employers and workers to determine if cargo gear, equipment and/or other material handling devices are safe to use. The information is collected every time a maritime material handling device is tested or examined. Proof-load examinations are conducted every four years, while visual examinations are conducted yearly.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Gear Certification (29 CFR part 1919). The Agency is requesting that it retain its current estimate of 190 burden hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Gear Certification Standard (29 CFR part 1919); OSHA 70 Form.

OMB Number: 1218–0003.

Affected Public: Business or other for-profits.

Number of Respondents: 50.

Total Responses: 450.

Estimated Time per Response: Varies from 5 minutes (.08 hour) for an employer to disclose the OSHA 70 Form to an OSHA Compliance Officer during an inspection to 45 minutes (.75 hour) for a prospective accredited agency to complete the form.

Total Burden Hours: 190.

Estimated Cost (Operation and Maintenance): $2,872,640.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0042). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority

for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on November 1, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–27946 Filed 11–4–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Hearing on Reasonable Contracts or Arrangements for Welfare Benefit Plans Under Section 408(b)(2)—Welfare Plan Fee Disclosure

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given that the Employee Benefits Security Administration will hold a hearing to consider issues relating to the disclosure of fee, conflict of interest and other information by service providers to group health, disability, severance and other employee welfare benefit plans under section 408(b)(2) of the Employee Retirement Income Security Act.

DATES: The hearing will be held on December 7, 2010, beginning at 9 a.m., EST.

ADDRESSES: The hearing will be held at the U.S. Department of Labor, Room S–4215 (A–C), 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Fil Williams, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, at (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 408(b)(2) of the Employee Retirement Income Security Act, as amended (ERISA), provides relief from the prohibited transaction rules of section 406 for service contracts or arrangements between a plan and a party in interest, as defined in ERISA section 3(14), if the contract or arrangement is reasonable, the services are necessary for the establishment or operation of the plan, and no more than reasonable compensation is paid for the services. Regulations, at 29 CFR 2550.408b–2, clarify the conditions of the exemption. On July 16, 2010, the Department published an interim final regulation amending paragraph (c) of § 2550.408b–2 to require certain service providers to employee pension benefit plans to disclose information to assist plan fiduciaries in assessing the reasonableness of contracts or arrangements, including the reasonableness of the service providers' compensation and potential conflicts of interest that may affect the service providers' performance. As proposed, paragraph (c) of § 2550.408b–2 would have applied to all pension and welfare benefit plans. However, in response to the invitation for comments on the proposal, the Department received a number of comments arguing that the Department's rationales for the proposed rule apply to pension plans, but not to welfare benefit plans. Other commenters argued that if the Department creates a disclosure regime for welfare benefit plan service providers, it should be promulgated separately.

Specific concerns raised by commenters relating to welfare benefit plans included the potential for negative effects on the insurance industry, which, they assert, is highly regulated by State laws. In this regard, commenters asserted that, considering the high level of State regulation, subjecting welfare benefit plans to the disclosure regulation would be unnecessary and redundant because the disclosures contemplated in the regulation are already made available to plan fiduciaries through State regulatory processes. Other commenters noted that most State insurance laws do not require the types of disclosures addressed under the proposed rule and even where such State laws exist, they are loosely enforced. Certain commenters asserted that there are "transparency problems" in general in the health and welfare industry, and that these problems should be addressed to the extent they affect employee welfare benefit plans. At least one commenter addressed specific concerns of pharmacy benefit managers (PBMs), which are intermediaries between drug manufacturers and health insurance plans. This commenter stated that PBMs believe that the reasons for disclosure discussed in the preamble to the proposed rule are inapplicable to them. Other commenters disputed the idea that PBMs should not be subject to the regulation, arguing that the discounts and rebates they receive from drug companies are examples of undisclosed indirect compensation.

As explained in the preamble to the interim final regulation, the Department continues to believe that fiduciaries and service providers to welfare benefit plans would benefit from regulatory guidance regarding fees and conflicts of interest for the same reasons that apply to fiduciaries and service providers to pension plans. The Department acknowledged in the preamble, however, that, taking into account the pubic comments on the proposal, there may be sufficient differences between welfare and pension plan arrangements to justify separate consideration of welfare plan-related disclosures.[1] In this regard, the Department has decided to begin its consideration of welfare plan-related disclosures by holding a public hearing on December 7, 2010. The purpose of this hearing is to obtain information, related data and views from interested persons regarding the application of the standards set forth in interim-final regulation § 2550.408b–2(c) to welfare benefit plans. Specifically, the Department is interested in exploring what particular provisions of the interim-final regulation should not apply to welfare plans and why. The Department also is interested in exploring whether, or to what extent, disclosure rules under section 408(b)(2) should apply to all welfare benefit plans, e.g., group health plans, severance plans, vacation plans, apprenticeship and training plans, etc, or to only a subset, or whether different disclosure standards are needed for different types of welfare benefit plans.[2]

The hearing will be held on December 7, 2010, beginning at 9 a.m. at the Department of Labor, Francis Perkins Building, Room S–4215 (A–C), 200 Constitution Avenue, NW., Washington, DC 20210.

Persons interested in presenting testimony and answering questions at this public hearing must submit, by 3:30 p.m., EST, November 17, 2010, the following information: (1) A written request to be heard; and (2) An outline of the topics to be discussed, indicating the time allocated to each topic. To facilitate the receipt and processing of responses, EBSA encourages interested

[1] *See* 75 FR 41600, at 41603, July 16, 2010.

[2] Section 3(1) of ERISA defines the term "employee welfare plan" and "welfare plan" to mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

persons to submit their requests and outlines electronically by e-mail to *e-ORI@dol.gov*. Persons submitting requests and outlines electronically are encouraged not to submit paper copies. It should be noted that, while reasonable efforts will be made to accommodate requests to testify on the specified issues, it may be necessary to limit the number of those testifying in order to adhere to the hearing's format. Any persons not afforded an opportunity to testify will nonetheless have an opportunity to submit a written statement on the specified issues for the record. The hearing will be open to the general public.

Persons submitting requests and outlines on paper should send or deliver their requests and outlines to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: 408(b)(2) Hearing on Fee Disclosures to Welfare Benefit Plans, Rooms N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. All requests and outlines submitted to the Department will be available to the public, without charge, online at *http://www.dol.gov/ebsa* and at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

The Department will prepare an agenda indicating the order of presentation of oral comments and testimony. In the absence of special circumstances, each presenter will be allotted ten (10) minutes in which to complete his or her presentation. Any individuals with disabilities who may need special accommodations should notify Fil Williams on or before November 17, 2010.

Information about the agenda will be posted on *http://www.dol.gov/ebsa* on or after November 17, 2010, or may be obtained by contacting Fil Williams, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8500 (this is not a toll-free number). Those individuals who make oral comments and testimonies at the hearing should be prepared to answer questions regarding their information and/or comments. The hearing will be transcribed.

Notice of Public Hearing

Notice is hereby given that a public hearing will be held on December 7, 2010, concerning issues related to the transparency of service provider compensation and potential conflicts of interest in the welfare benefit plan industry. The hearing will be held beginning at 9 a.m. at the U.S. Department of Labor, Frances Perkins Building, Room S–4215 (A–C), 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 1st day of November 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2010–27994 Filed 11–4–10; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials: Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of Opening of Additional Materials.

SUMMARY: This notice announces the opening of additional Nixon Presidential Historical Materials by the Richard Nixon Presidential Library and Museum, a division of the National Archives and Records Administration. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the Agency has identified, inventoried, and prepared for public access approximately 265 hours of Nixon White House tape recordings and additional textual materials from among the Nixon Presidential Historical Materials.

DATES: The Richard Nixon Presidential Library and Museum intends to make the materials described in this notice available to the public on Thursday, December 9, 2010 at the Richard Nixon Presidential Library and Museum's primary location in Yorba Linda, CA, beginning at 9 a.m. (PDT). The newly released Nixon White House tapes will also be available on the Web at *http://www.nixonlibrary.gov* at the same time (9 a.m. PDT; Noon, EDT). In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense within 30 days of the publication of this notice. These claims should be sent to the Office of the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Timothy Naftali, Director, Richard Nixon Presidential Library and Museum, 714–983–9120.

SUPPLEMENTARY INFORMATION: The following materials will be made available in accordance with this notice:

1. NARA's Nixon Library is proposing to open approximately 1,802 conversations which were recorded between February and early April 1973. These conversations total approximately 265 hours of listening time. This is the fourteenth opening of Nixon White House tapes since 1980. There are no transcripts for these tapes. Tape subject logs, prepared by the Nixon Library, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each conversation. Each tape log entry includes the names of participants; date and inclusive times of each conversation; location of the conversation; and an outline of the content of the conversation. Listening stations will be available on a first come, first served basis at the Library in Yorba Linda. The newly released tapes will also be available on December 9 on the Web at *http://www.nixonlibrary.gov*. The Nixon Library reserves the right to limit listening time in response to heavy demand.

2. Previously restricted textual materials. Volume: 0.8 cubic foot. A number of textual materials previously withheld from public access have been reviewed for release and/or declassified under the systematic declassification review provisions and under the mandatory review provisions of Executive Order 13526, the Freedom of Information Act (5 U.S.C. 552), or in accordance with 36 CFR 1275.56 (Public Access regulations). The materials are from integral file segments for the White House Special Files, Staff Member and Office Files; National Security Council (NSC Files); National Security Council Institutional Files; and the Henry A. Kissinger (HAK) Office Files, including HAK telephone conversation transcripts.

3. White House Central Files, Staff Member and Office Files. Volume: 56 cubic feet. The White House Central Files Unit was a permanent organization within the White House complex that maintained a central filing and retrieval system for the records of the President and his staff. The Staff Member and Office Files consist of materials that were transferred to the Central Files but were not incorporated into the Subject Files. The following file groups will be

made available: Sanford Fox, Bryce Harlow (accretion) and Lawrence Higby.

4. White House Central Files, Name Files: Volume: 0.2 cubic foot. The Name Files were used for routine materials filed alphabetically by the name of the correspondent; copies of documents in the Name Files were usually filed by subject in the Subject Files. The following Name File folder will be made available: Glass, R.; Richey, A–C; Whiting, A–C.

Dated: October 29, 2010.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2010–28053 Filed 11–4–10; 8:45 am]

BILLING CODE 7515–01–P

OFFICE OF PERSONNEL MANAGEMENT

Senior Executive Service–Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Tammy Van Keuren, OPM Human Resources, Recruitment and Staffing, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 606–1402.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

John Berry,

Director.

The following have been designated as members of the Performance Review Board of the U.S. Office of Personnel Management:

Elizabeth A. Montoya, Chief of Staff;
Elaine Kaplan, General Counsel;
Jeffrey Sumberg, Associate Director;
Kathy Dillaman, Associate Director;
John O'Brien, Director of Healthcare and Insurance;
Joseph Kennedy, Deputy Associate Director;
Mark Reinhold, Deputy Associate Director for Human Resources—Executive Secretariat.

[FR Doc. 2010–28171 Filed 11–4–10; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Wednesday, November 10, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, November 10, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

An adjudicatory matter;

Consideration of amici participation; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: November 3, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–28140 Filed 11–3–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63218; File No. SR–NASDAQ–2010–140]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Flexible 60-Day Trial Period for New Users of Correlix Latency Measurement Services

November 1, 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 October 26, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to change to establish a flexible 60-day free trial period for new users of Correlix latency measurement services, and to codify prices for those services.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room. The Exchange will implement the proposed rule change immediately.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Correlix provides users of the NASDAQ Market Center ("System") real-time analytical tools to measure the latency of orders to and from that System. Correlix shares with the Exchange a portion of the revenues it receives from subscribers.[3] Recently, the Commission approved a one-time 60-day free trial period for parties wishing to evaluate the Correlix RaceTeam offering for the NASDAQ Market Center.[4] That initial one-time free trial period expired on August 28, 2010. The instant filing seeks Commission approval to: (1) Modify the free trial period so that all parties will be eligible for one free 60-day trial period whenever they initially elect to sign-up for the service now or in the future; and (2) codify and make transparent the current fees imposed by Correlix on those using the service to measure latency to and from the Exchange.

The Exchange is proposing the flexible trial period so as to ensure that all potential Correlix users have an equal opportunity to take advantage of an initial free trial period to evaluate the product. NASDAQ also notes that the introduction of more flexibility in determining when to participate in the free trial period will allow Correlix users to introduce the product into their own technology infrastructure at a time of their own choosing and in coordination with other scheduled technology initiatives.

Current pricing for the Correlix RaceTeam product for the NASDAQ market varies depending on the number of unique MPIDs and ports selected by the customer for monitoring by Correlix. For NASDAQ (including the NASDAQ Options Market), the fee is an initial $3,000 monthly base fee for the first unique MPID monitored. For each additional unique MIPD sought to be monitored, an additional monthly charge of $1,000 is assessed. The monthly price for each unique MPID includes the monitoring of up to 25 NASDAQ port connections associated with that particular MPID. Customers that wish to exceed 25 ports per-MPID for monitoring can purchase additional 25 port blocks for an additional fee of $1000 per month per MPID. To enhance transparency, the Exchange proposed to codify these fees.

The Exchange believes that the above proposals will provide users of the NASDAQ Market Center greater transparency into the fees associated with latency measurement services and encourage the use of such services on a trial basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the filing makes transparent uniform fees imposed for latency measurement services.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. In particular, the Exchange notes that the use of Correlix latency measurement services is entirely voluntary and made available on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b–4 thereunder, in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the Correlix service and fees sought to be codified here have already been approved by the Commission, and that accelerated approval of the flexible initial trial period will ensure that the free period is made available to all interested parties without delay. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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.

[3] The specifics of the NASDAQ/Correlix relationship are detailed in SR–NASDAQ–2010–068, a separate filing also recently approved by the Commission. *See* Exchange Act Release No. 62605 (July 30, 2010), 75 FR 47651 (August 6, 2010).

[4] *See* Exchange Act Release No. 62391 (June 28, 2010), 75 FR 38858 (July 6, 2010).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

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–2010–140 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NASDAQ–2010–140. 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–NASDAQ–2010–140, and should be submitted on or before November 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27943 Filed 11–4–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63219; File No. SR–Phlx–2010–152]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Revenue Sharing Program With Correlix, Inc. and Free Trial Period for New Users

November 1, 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 October 26, 2010, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to establish a revenue sharing program with Correlix, Inc. and a free trial period for new users. The text of the proposed rule change is available at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room. The Exchange will implement the proposed rule change immediately.

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 is filing a proposed rule change to establish a revenue sharing program with Correlix. The Exchange has entered into an agreement with Correlix to provide to users of the Exchange real-time analytical tools to measure the latency of orders to and from its systems. Under the agreement, the Exchange will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange's systems. The Exchange will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for the Exchange varies depending on the number of unique MPIDs and ports selected by the customer for monitoring by Correlix. For the Exchange, the fee will be an initial $1,000 monthly base fee for the first unique MPID monitored. For each additional unique MIPD sought to be monitored, an additional monthly charge of $1,000 will be assessed. The monthly price for each unique MPID includes the monitoring of up to 25 Exchange port connections associated with that particular MPID. Customers that wish to exceed 25 ports per-MPID for monitoring can purchase additional 25 port blocks for an additional fee of $1000 per month per MPID.

Under the program, Correlix will see an individualized unique Exchange-generated identifier that will allow Correlix RaceTeam to determine round trip order time [4], from the time the order reaches the Exchange extranet, through the Exchange matching engine, and back out of the Exchange extranet. The RaceTeam product offering does not measure latency outside of the Exchange extranet. The unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscriber firms related to latency. Correlix will not see subscriber's individual order detail such as security, price or size. Individual

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The product measures latency of orders whether the orders are rejected, executed, or partially executed.

RaceTeam subscribers' logins will restrict access to only their own latency data. Correlix will see no specific information regarding the trading activity of non-subscribers. The Exchange believes that the above arrangement will provide users of its systems greater transparency into the processing of their trading activity and allow them to make more efficient trading decisions.

In addition, the Exchange seeks Commission approval to establish a flexible 60-day free trial so parties will be eligible for one free 60-day trial period of Correlix services whenever they initially elect to sign-up for the service, now or in the future. The Exchange is proposing the flexible trial to ensure that all Correlix users have an equal opportunity to take advantage of an initial free trial period. NASDAQ also notes that the introduction of more flexibility in determining when to participate in the free trial period will allow Correlix users to introduce the product into their own technology infrastructure at a time of their own choosing and in coordination with other scheduled technology initiatives.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the filing makes transparent uniform fees imposed for latency measurement services.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. In particular, the Exchange notes that the use of Correlix latency measurement services is entirely voluntary and made available on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b–4 thereunder, in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the Correlix service and its fee sharing model have been previously approved by the Commission for other markets.[9] Waiver of the 30-day operative delay will ensure that the free period is made available to all interested parties without delay. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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–Phlx–2010–152 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2010–152. 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.,

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See* Exchange Act Release Nos. 62605 (July 30, 2010) (Approval of Correlix fee sharing for NASDAQ Exchange), 62928 (September 17, 2010) (Approval of Correlix fee sharing for EDGEA Exchange), and 62929 (September 17, 2010) (Approval of Correlix fee sharing for EDGEX Exchange).

[10] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–152, and should be submitted on or before November 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27944 Filed 11–4–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63220; File No. SR–BX–2010–072]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Revenue Sharing Program With Correlix, Inc. and Free Trial Period for New Users

November 1, 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 October 26, 2010, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by BX. The Exchange has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

BX proposes to establish a revenue sharing program with Correlix, Inc. and a free trial period for new users. BX will implement the proposed change immediately. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at BX's principal office, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX 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 is filing a proposed rule change to establish a revenue sharing program with Correlix. The Exchange has entered into an agreement with Correlix to provide to users of the Exchange real-time analytical tools to measure the latency of orders to and from its systems. Under the agreement, the Exchange will receive 30% of the total monthly subscription fees received by Correlix from parties who have contracted directly with Correlix to use their RaceTeam latency measurement service for the Exchange's systems. The Exchange will not bill or contract with any Correlix RaceTeam customer directly.

Pricing for the Correlix RaceTeam product for the Exchange varies depending on the number of unique MPIDs and ports selected by the customer for monitoring by Correlix. For the Exchange, the fee will be an initial $1,000 monthly base fee for the first unique MPID monitored. For each additional unique MIPD sought to be monitored, an additional monthly charge of $1,000 will be assessed. The monthly price for each unique MPID includes the monitoring of up to 25 Exchange port connections associated with that particular MPID. Customers that wish to exceed 25 ports per MPID for monitoring can purchase additional 25 port blocks for an additional fee of $1,000 per month per MPID.

Under the program, Correlix will see an individualized unique Exchange-generated identifier that will allow Correlix RaceTeam to determine round trip order time,[4] from the time the order reaches the Exchange extranet, through the Exchange matching engine, and back out of the Exchange extranet. The RaceTeam product offering does not measure latency outside of the Exchange extranet. The unique identifier serves as a technological information barrier so that the RaceTeam data collector will only be able to view data for Correlix RaceTeam subscriber firms related to latency. Correlix will not see subscriber's individual order detail such as security, price or size. Individual RaceTeam subscribers' logins will restrict access to only their own latency data. Correlix will see no specific information regarding the trading activity of non-subscribers.

The Exchange believes that the above arrangement will provide users of its systems greater transparency into the processing of their trading activity and allow them to make more efficient trading decisions.

In addition, the Exchange seeks Commission approval to establish a flexible 60-day free trial so parties will be eligible for one free 60-day trial period of Correlix services whenever they initially elect to sign up for the service, now or in the future. The Exchange is proposing the flexible trial to ensure that all Correlix users have an equal opportunity to take advantage of an initial free trial period. NASDAQ also notes that the introduction of more flexibility in determining when to participate in the free trial period will allow Correlix users to introduce the product into their own technology infrastructure at a time of their own choosing and in coordination with other scheduled technology initiatives.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The product measures latency of orders whether the orders are rejected, executed, or partially executed.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the filing makes transparent uniform fees imposed for latency measurement services.

In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. In particular, the Exchange notes that the use of Correlix latency measurement services is entirely voluntary and made available on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b–4 thereunder, in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the Correlix service and its fee sharing model have been previously approved by the Commission for other markets.[9] Waiver of the 30-day operative delay will ensure that the free period is made available to all interested parties without delay. Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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–BX–2010–072 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BX–2010–072. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–072, and should be submitted on or before November 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–27945 Filed 11–4–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] *See* Exchange Act Release Nos. 62605 (July 30, 2010) (Approval of Correlix fee sharing for NASDAQ Exchange), 62928 (September 17, 2010) (Approval of Correlix fee sharing for EDGEA Exchange), and 62929 (September 17, 2010) (Approval of Correlix fee sharing for EDGEX Exchange).

[10] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78(c)(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63222; File No. SR–OCC–2010–18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Accommodate Index Futures That Are Settled in a Non-U.S. Currency

November 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 22, 2010, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which items have been prepared

[1] 15 U.S.C. 78s(b)(1).

primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to revise OCC's By-Laws and Rules to accommodate index futures that are settled in a non-U.S. currency. NYSE Liffe US, LLC ("NYL") is proposing to introduce for trading futures contracts on certain broad-based securities indexes which are settled in Euros ("Euro-Settled Futures"). The proposed rule amendments are drafted generically to apply to other futures contracts that are settled in a non-U.S. currency and in a similar manner.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Futures variation payments typically are settled on each business day based on a price established on the prior business day. However, because of time zone differences and the planned use of accounts at North American and European clearing banks, variation settlements, including final variation settlement, with respect to Euro-Settled Futures will occur on the second business day following the date as of which the settlement value is determined (*i.e.,* a "T+2" basis). Settlement times will vary depending on the clearing bank through which settlement is effected and in any case will differ from those used for option premiums.

To accommodate Euro-Settled Futures, which will settle only on days in which both OCC and the relevant clearing banks are open for business, OCC proposes to provide for a definition of "business day" in respect of such futures which is different from that used in OCC's By-Laws, and to revise its rules governing variation payments and add an interpretation and policy to those rules to accommodate the two-day settlement cycle for Euro-Settled Futures and other futures settled in a currency other than the U.S. dollar. In order to address the possibility that a Clearing Member might fail to meet a settlement obligation in a non-U.S. currency and to avoid the need for OCC to have credit facilities in non-U.S. currencies, OCC reserves the right to make settlement in the U.S. dollar equivalent of the non-U.S. currency if necessary, and, in addition to taking any other actions authorized under its By-Laws and Rules, to draft the Clearing Member's U.S. dollar bank account for equivalent funds, which payment will be deemed to satisfy the Clearing Member's settlement obligation. In order to discourage Clearing Members from failing to settle in the non-U.S. currency and thereby potentially imposing hardship on other Clearing Members, OCC reserves the right to fine or discipline Clearing Members that fail to settle.

In addition, OCC and NYL propose to enter into Schedule C–2 under the Agreement for Clearing and Settlement Services, dated March 9, 2009, between OCC and NYL to accommodate the Euro-Settled Futures.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to OCC because it provides for the prompt and accurate clearance and settlement of securities transactions, ensures the protection of investors and reduces unnecessary costs and burdens on them and persons facilitating transactions on their behalf. It does so by accommodating the two-day settlement date for such futures necessitated by the use of European banks and time zone differences.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iv) of the Act[4] and Rule 19b–4(f)(4)[5] thereunder because it effects a change in an existing service of OCC that does not (i) adversely affect the safeguarding of securities or funds in OCC's custody or control or for which OCC is responsible or (ii) significantly affect the respective rights or obligations of OCC or persons using the service. Euro-Settled Futures are futures within the exclusive jurisdiction of the U.S. Commodity Futures Trading Commission ("CFTC"), and OCC will therefore clear Euro-Settled Futures in its capacity as a registered derivatives clearing organization under the CFTC's regulatory jurisdiction. This rule change will not affect the safeguarding of funds or securities in OCC's possession because OCC will apply the same procedures and safeguards to the clearing of these contracts that it does to the clearing of securities options and security futures over which the Commission has direct regulatory authority. The respective rights and obligations of OCC and Clearing Members with respect to matters within the Commission's jurisdiction will be unaffected.

At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend 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–OCC–2010–18 on the subject line.

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iv).

[5] 17 CFR 240.19b–4(f)(4).

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–OCC–2010–18. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2010–18 and should be submitted on or before November 26, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28059 Filed 11–4–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63217; File No. SR–OCC–2010–14]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Revise Its Rules To Expand the Forms of Collateral Eligible for Incorporation in the System for Theoretical Analysis and Numerical Simulations Risk Management Methodology

November 1, 2010.

I. Introduction

On August 25, 2010, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–OCC–2010–14 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published in the **Federal Register** on September 13, 2010. No comment letters were received on the proposal. This order approves the proposal.

II. Description

This rule change revises OCC's Rules to expand the forms of collateral eligible for incorporation in OCC's System for Theoretical Analysis and Numerical Simulations ("STANS") risk management methodology.

The rule change alters Interpretation and Policy .06 to Rule 601 in connection with expanding the forms of collateral eligible for incorporation in the STANS risk management methodology. Prior to the rule change, OCC incorporated common stock and ETFs [3] in the STANS margin calculation process.[4] When OCC began including common stock and ETFs in the STANS margin calculation process, it noted its belief that the procedure would more accurately measure risk in Clearing Members' accounts and thereby permit OCC to more precisely set margin requirements to reflect that risk. For those same reasons, OCC will now incorporate certain fixed-income, "government securities" into the STANS margin calculation process.

The specific amendments to OCC's Rules that facilitate incorporation of government securities into the STANS margin calculation process can be found at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_10_14.pdf.*

OCC will now incorporate in phases certain "government securities" into the STANS margin calculation beginning with U.S. Government securities.[5] Treasury Inflation Protected Securities and callable U.S Treasury Securities will be excluded from the initial phase, as will be Canadian government securities and GSE debt securities.[6]

Currently, government securities deposited as collateral to satisfy margin requirements are priced on a nightly basis and are assigned a value equal to their current market value less an applicable haircut based on the term to maturity. While this method of valuing collateral has generally served OCC well in the past, OCC believes analyzing cleared positions and margin assets as a single portfolio using STANS provides a more accurate valuation of the Clearing Members' securities deposited as collateral in relation to other account positions. As when OCC began including common stocks and ETFs in the STANS calculation, OCC believes phasing in government securities will align risk-management techniques utilized to manage market risk of cleared positions, for example for Treasury futures contracts, with those techniques used to value margin deposits.

The inclusion of government securities into STANS will be implemented using an approach similar to that used when common stocks and ETFs were added into STANS. The value of the securities deposited in a Clearing Member's account will be determined along with the risk on the margin assets on a portfolio basis with reference to the volatility and correlation of each deposited security to the other positions in the account. Given the conservative nature of the current haircuts applied to deposits of government securities, OCC anticipates a modest increase in their collateral valuation upon the implementation of this change.

As a part of this rule change, OCC will apply a portfolio specific adjustment factor when determining whether there is sufficient margin excess in an account. This will enable OCC to release margin collateral to a Clearing Member on an intraday basis. The adjustment factor is account and security specific

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ETFs fall within the definition of "fund shares" as that term is defined in Article I, Section 1 of OCC's By-Laws.

[4] Securities Exchange Act Release No. 34–58158 (July 15, 2008), 73 FR 42626 (July 22, 2008) (SR–OCC–2007–20).

[5] This would include but would not be limited to Government securities and GSE debt securities.

[6] The government securities being initially excluded will be evaluated by OCC for possible inclusion in STANS as appropriate models are developed.

and is determined by approximating the change in margin requirement caused by depositing or withdrawing a particular security from the Clearing Member's account based on the risk characteristics of that security and its consequent assessed value. OCC believes this process will provide a more accurate projection of the margin impact of collateral withdrawals and substitutions on a Clearing Member's account. This process is already used to analyze the impact of substitutions and withdrawals of equity collateral within the STANS Monte Carlo simulations.[7]

OCC's Rule 601, "Margin Requirements," already provides that margin assets in the form of securities may be incorporated into the Monte Carlo calculations as an alternative to valuing such assets under Rule 604, "Form of Margin Assets." In connection with incorporating common stocks and ETFs into the STANS calculation, OCC adopted Interpretation and Policy .06 under Rule 601 to clarify that margin assets in the form of common stocks and ETFs would be included in the Monte Carlo simulations described in Rule 601 for purposes of determining the minimum expected liquidating value of an account with other margin assets being valued as provided for under Rule 604.[8] OCC is now broadening the interpretation to provide that OCC may designate those margin assets which if deposited into a Clearing Member's account will be valued as provided in Rule 601 rather than Rule 604. This change is intended to facilitate OCC's adoption of certain government securities into the STANS margin calculation process.

III. Discussion

Section 17A(b)(3)(F)[9] requires, among other things, that the rules of a clearing agency are designed to safeguard securities and funds in the clearing agency's possession or control or for which it is responsible. This requires OCC to have the ability to meet its settlement obligations following a member's default. It is therefore necessary that OCC have an effective methodology for calculating margin requirements that are sufficient to enable OCC to complete settlement in the event a member becomes insolvent or otherwise fails to meet its obligations to OCC. The Commission believes that the changes OCC is making to include government securities within the STANS risk management methodology should better enable OCC to fulfill its safeguarding obligations under the Act and therefore is consistent with the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[10] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–OCC–2010–14) be, and hereby is, approved.[12]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–28057 Filed 11–4–10; 8:45 am]

BILLING CODE 8011–01–P

[7] OCC believes the approach currently used to assess the impact of collateral substitutions and withdrawals represents an improvement over that outlined in File No. SR–OCC–2007–20. Interpretation and Policy .01 under Rule 608 generally provides that OCC may specify procedures from time-to-time to assess the impact of collateral withdrawals and substitutions.

[8] Rule 604(f) provides that, in lieu of the valuations provided for in Rule 604, OCC may elect to value any or all margin assets in the form of securities pursuant to Rule 601.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78s(b)(2).

[12] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before January 4, 2011.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to A. B. McConnell, Jr., Chief 504 Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: A. B. McConnell, Jr., Chief of 504 Branch, Office of Financial Assistance, 202–205–7238, *Andrew.mcconnell@sba.gov;* Curtis Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The information collected through these forms from the small business applicants and participating lenders will be used to determine eligibility and to properly evaluate the merits of each loan request based on reasonable and customary underwriting criteria such as character, capacity, credit collateral, etc. This information is collected for the purpose of extending credit under the 504 loan program.

Title: U.S. Small Business Administration Application for Section 504 Loan.

Description of Respondents: 504 Lenders.

Form Number: SBA Form 1244.

Annual Responses: 6,800.

Annual Burden: 15,735.

Title: Eligibility Information Required for 504 Submission (non PCLP).

Description of Respondents: 504 Lenders.

Form Number: SBA Form 2415.

Annual Responses: 5,100.

Annual Burden: 4,675.

Title: PCLP Quarterly Loan Loss Reserve Report and PCLP Guarantee Request.

Description of Respondents: 504 Lenders.

Form Number: SBA Forms 2233, 2234 (Part A), 2234 (Part B), 2234 (Part C) (Note: SBA Form 2234 (Part C) is the only form being revised).

Annual Responses: 1,700.

Annual Burden: 1,558.

Title: Servicing Agent Agreement.

Description of Respondents: 504 Lenders.

Form Number: SBA Form 1506.

Annual Reponses: 7,830.

Annual Burden: 7, 830.

Curtis B. Rich,

Acting Chief, Administrative Information Branch.

[FR Doc. 2010–27925 Filed 11–4–10; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12366 and # 12367]

Puerto Rico Disaster # PR–00011

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster

for the Commonwealth of Puerto Rico dated 10/28/2010.

Incident: Severe Storms, Flooding and Mudslides.

Incident Period: 10/04/2010 through 10/08/2010.

Effective Date: 10/28/2010.

Physical Loan Application Deadline Date: 12/27/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 07/28/2011.

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:

Patillas, Ponce, Salinas, Utuado, Yauco.

Contiguous Counties:

Puerto Rico: Adjuntas, Aibonito, Arecibo, Arroyo, Cayey, Ciales, Coamo, Guanica, Guayama, Guayanilla, Hatillo, Jayuya, Juana Diaz, Lares, Maricao, Maunabo, Penuelas, Sabana Grande, San Lorenzo, Santa Isabel, Yabucoa.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500
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 12366 6 and for economic injury is 12367 0.

The Commonwealth which received an EIDL Declaration # is _____ Puerto Rico.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 28, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–27973 Filed 11–4–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Disaster Declaration # 12368 and # 12369

Puerto Rico Disaster # PR–00012

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA—1946—DR), dated 10/26/2010.

Incident: Severe Storms, Flooding, Mudslides, and Landslides associated with Tropical Storm Otto

Incident Period: 10/04/2010 through 10/08/2010.

Effective Date: 10/26/2010.

Physical Loan Application Deadline Date: 12/27/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 07/26/2011.

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 President's major disaster declaration on 10/26/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Municipalities:

Aibonito, Anasco, Guanica, Guayama, Jayuya, Lares, Las Marias, Maricao, Mayaguez, Patillas, Ponce, Sabana Grande, Salinas, San German, Utuado, Yabucoa, Yauco.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 123686 and for economic injury is 123696.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–27977 Filed 11–4–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Waiver to the Nonmanufacturer Rule for Woven and Knit impregnated with Flat Dipped Rubber/Plastic Gloves.

SUMMARY: The U. S. Small Business Administration (SBA) is granting a class waiver of the Nonmanufacturer Rule for Woven and Knit impregnated with Flat Dipped Rubber/Plastic Gloves, under North American Industry Classification System (NAICS) code 315992 (Glove and Mitten Manufacturing). The basis for the waiver is that no small business manufacturers are supplying this class of products to the Federal government. The effect of this waiver will be to allow otherwise qualified small businesses to supply the products of any manufacturer on a Federal contract set aside for small businesses, Service-Disabled Veteran-Owned (SDVO) small businesses, Participants in SBA's 8(a) Business Development (BD) Program, or Women-Owned Small Business (WOSB) concerns.

DATES: This waiver is effective November 22, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Garcia, Procurement Analyst, by telephone at (202) 205–6842; by FAX at (202) 481–1630; or by e-mail at *amy.garcia@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), and SBA's implementing regulations require that recipients of Federal supply contracts

set aside for small businesses, SDVO small businesses, Participants in the SBA's 8(a) BD Program, or WOSBs, provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. 13 CFR 121.406(b), 125.15(c), 127.505. Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any "class of products" for which there are no small business manufacturers or processors available to participate in the Federal market.

In order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. 13 CFR 121.1202(c). The SBA defines "class of products" based on the Office of Management and Budget's NAICS.

The SBA received a request on August 13, 2010, to waive the Nonmanufacturer Rule for Woven and Knit impregnated with Flat Dipped Rubber/Plastic Gloves under PSC 9999 (Miscellaneous), NAICS code 315992 (Glove and Mitten Manufacturing).

On August 27, 2010, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for the above listed item. 75 FR 38156 (2010). SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. No comments were received in response to this notice. In addition, SBA conducted market research using the Dynamic Small Business Search database and no small business manufacturers that participate in the Federal market were identified. Lastly, on September 16, 2010, SBA posted a Sources Sought notice on *http://www.fbo.gov* that it was soliciting comments and sources of small business manufacturers of this class of products. One comment was received from a small business distributor, not a small business manufacturer of this type of product. Thus, SBA has determined that there are no small business manufacturers of this classes of product, and is therefore granting the waiver of the Nonmanufacturer Rule for Woven and Knit impregnated with Flat Dipped Rubber/Plastic Gloves, under NAICS code 315992 (Glove and Mitten Manufacturing).

Karen Hontz,

Director, Office of Government Contracting.

[FR Doc. 2010–28060 Filed 11–4–10; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0069]

Agency Self-Evaluation Under Section 504 of the Rehabilitation Act of 1973

AGENCY: Social Security Administration.

ACTION: Notice and request for comments.

SUMMARY: We are initiating a self-evaluation of our policies and practices supporting section 504 of the Rehabilitation Act of 1973. Under section 504, Federal agencies are required to provide meaningful access to their programs and activities to qualified persons with disabilities. We are interested in any ideas and suggestions you have about how we should conduct a self-evaluation.

We are particularly interested in ideas and suggestions from persons with disabilities, their family members, and those who work with or advocate for persons with disabilities.

As we proceed with the self-evaluation, we will provide an additional opportunity to interested persons to participate by submitting comments about our policies and practices.

DATES: To ensure that your ideas and suggestions are considered, we must receive them no later than December 6, 2010.

ADDRESSES: You may submit ideas and suggestions by any one of three methods—Internet, fax, or mail. Do not submit the same ideas or suggestions multiple times or by more than one method. Regardless of which method you choose, please state that your ideas and suggestions refer to Docket No. SSA–2010–0069 so that we may associate your ideas and suggestions with the correct document.

Caution: You should be careful to include in your ideas and suggestions only information that you wish to make publicly available. We strongly urge you not to include in your ideas and suggestions any personal information, such as Social Security numbers or medical information. We will not respond to your ideas and suggestions, but we will consider them as we develop our self-evaluation. Please do not send any information or questions about your claim for benefits.

1. *Internet:* We strongly recommend that you submit your ideas and suggestions via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2010–0069. 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 ideas and suggestions to (410) 966–2830.

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

Ideas and suggestions 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: Diane L. Harris, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, 1–877–794–7395. 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

Under section 504 of the Rehabilitation Act of 1973, as amended, Federal agencies are required to provide meaningful access to their programs and activities to qualified persons with disabilities. We are conducting a self-evaluation of our policies and practices to ensure that they comply with section 504 and 45 CFR part 85.

Request for Ideas and Suggestions

As we begin our self-evaluation, we are asking for your ideas and suggestions on how we can best perform the self-evaluation. For example:

- What aspects of our facilities, activities, and programs should we evaluate? Should we perform a self-evaluation of individual facilities or

perform a more general evaluation of our facilities, activities, and programs?

• How can we best provide an opportunity for persons with disabilities, their family members, and those who work with or advocate for persons with disabilities to participate in the self-evaluation? Should we conduct public meetings, obtain ideas and suggestions through the solicitation of written comments, or obtain input through some other method?

You will also have another opportunity to participate in the self-evaluation process when we ask you to submit comments about our policies and practices in a subsequent **Federal Register** notice.

Dated: November 1, 2010.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2010–27922 Filed 11–4–10; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2010–0052]

Privacy Act of 1974, as Amended; Computer Matching Program (SSA/Department of Labor (DOL))—Match Number 1003

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a renewal of an existing computer matching program that will expire on December 4, 2010.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with DOL.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dawn S. Wiggins,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

Notice of Computer Matching Program, SSA With the Department of Labor (DOL)

A. PARTICIPATING AGENCIES

SSA and DOL.

B. PURPOSE OF THE MATCHING PROGRAM

The purpose of this matching program is to set forth our, and DOL's responsibilities for DOL administered disclosure of Part C Black Lung (BL) benefit data to us. We will use the match results to verify that recipients of Part C BL benefits are receiving the correct amount of Social Security disability benefits, as required by the Social Security Act (the Act).

C. AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM

The legal authority for this agreement is section 224(h)(1) of the Social Security Act (Act), 42 U.S.C. 424a(h)(1), which requires any Federal agency to provide SSA with information in its possession that SSA may require for purposes of making a timely determination of the amount of reduction required under section 224 of the Act's workers' compensation (WC) offset.

D. CATEGORIES OF RECORDS AND PERSONS COVERED BY THE MATCHING PROGRAM

We will match the MBR, SSA/OEEAS 60–0090, which contains all data pertinent to the payment of our beneficiaries, with an extract from DOL, Office of Workers' Compensation Programs Black Lung Benefit Payments file, DOL/ESA–30. DOL published an appropriate routine use to permit the disclosures necessary to conduct this match.

E. INCLUSIVE DATES OF THE MATCHING PROGRAM

The effective date of this matching program is December 4, 2010 provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2010–27962 Filed 11–4–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35429]

Mississippi & Skuna Valley Railroad, LLC—Acquisition and Operation Exemption—Mississippi & Skuna Valley Railroad Company

Mississippi & Skuna Valley Railroad, LLC (MSV), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Mississippi & Skuna Valley Railroad Company and to operate over approximately 21 miles of rail line between milepost 21.0 (Bruce Junction) and milepost 0.0 (Bruce) in Yalobusha and Calhoun Counties, Miss.

This transaction is related to a transaction in which Patriot Rail, LLC and its subsidiaries entered into an asset purchase agreement on July 21, 2010, to acquire from Weyerhaeuser NR Company certain rail assets and the rail assets of five of its subsidiaries.

This transaction is also related to six other transactions for which notices of exemption have been concurrently filed: Docket No. FD 35425, *Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Columbia & Cowlitz Railway, LLC, Dequeen and Eastern Railroad, LLC, Golden Triangle Railroad, LLC, Mississippi & Skuna Valley Railroad, LLC, Patriot Woods Railroad, LLC, and Texas, Oklahoma & Eastern Railroad, LLC,* in which Patriot Rail, LLC and its subsidiaries seek to continue in control of MSV in this proceeding and five other newly created noncarrier subsidiaries, upon the latter becoming Class III rail carriers in the following proceedings: (1) Docket No. FD 35426, *Columbia & Cowlitz Railway, LLC—Acquisition and Operation Exemption—Columbia & Cowlitz Railway Company;* (2) Docket No. FD 35427, *DeQueen and Eastern Railroad, LLC—Acquisition and Operation Exemption—DeQueen and Eastern Railroad Company;* (3) Docket No. FD 35428, *Golden Triangle Railroad, LLC—Acquisition and Operation Exemption—Golden Triangle Railroad Company;* (4) Docket No. FD 35430, *Texas, Oklahoma & Eastern Railroad, LLC—Acquisition and Operation Exemption—Texas, Oklahoma & Eastern Railroad Company;* and (5) Docket No. FD 35431, *Patriot Woods Railroad, LLC—Acquisition and Operation Exemption—Weyerhaeuser NR Company, Weyerhaeuser Woods Railroad Operating Division.*

The parties intend to consummate the transaction on or after December 21, 2010.

MSV certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

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 effectiveness of the exemption. Petitions for stay must be filed no later than November 12, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35429 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–27937 Filed 11–4–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35427]

DeQueen and Eastern Railroad, LLC—Acquisition and Operation Exemption—DeQueen and Eastern Railroad Company

DeQueen and Eastern Railroad, LLC (DQE), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from DeQueen and Eastern Railroad Company and to operate approximately 47 miles of rail line between milepost 40.0 (the Oklahoma-Arkansas state border) and milepost 87.0 (Perkins, Ark.), including auxiliary, temporary storage, and spur tracks, in Howard and Sevier Counties, Ark.[1]

This transaction is related to a transaction in which Patriot Rail, LLC and its subsidiaries entered into an asset purchase agreement on July 21, 2010, to acquire from Weyerhaeuser NR Company certain rail assets and the rail assets of five of its subsidiaries.

This transaction is also related to six other transactions for which notices of exemption have been concurrently filed: Docket No. FD 35425, *Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Columbia & Cowlitz Railway, LLC, DeQueen and Eastern Railroad, LLC, Golden Triangle Railroad, LLC, Mississippi & Skuna Valley Railroad, LLC, Patriot Woods Railroad, LLC, and Texas, Oklahoma & Eastern Railroad, LLC,* in which Patriot Rail, LLC and its subsidiaries seek to continue in control of DQE in this proceeding and five other newly created noncarrier subsidiaries, upon the latter becoming Class III rail carriers in the following proceedings: (1) Docket No. FD 35426, *Columbia & Cowlitz Railway, LLC—Acquisition and Operation Exemption—Columbia & Cowlitz Railway Company;* (2) Docket No. FD 35428, *Golden Triangle Railroad, LLC—Acquisition and Operation Exemption—Golden Triangle Railroad Company;* (3) Docket No. FD 35429, *Mississippi & Skuna Valley Railroad, LLC—Acquisition and Operation Exemption—Mississippi & Skuna Valley Railroad Company,* (4) Docket No. FD 35430, *Texas, Oklahoma & Eastern Railroad, LLC—Acquisition and Operation Exemption—Texas, Oklahoma & Eastern Railroad Company;* and (5) Docket No. FD 35431, *Patriot Woods Railroad, LLC—Acquisition and Operation Exemption—Weyerhaeuser NR Company, Weyerhaeuser Woods Railroad Operating Division.*

The parties intend to consummate the transaction on or after December 21, 2010.

DQE certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

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 effectiveness of the exemption. Petitions to stay must be filed no later than November 12, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35427, 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 Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–27964 Filed 11–4–10; 8:45 am]

BILLING CODE 4915–01–P

[1] DQE states that it intends to interchange traffic at De Queen, Ark. with Kansas City Southern Railway Company, at Perkins with Union Pacific Railroad Company, and at the Arkansas-Oklahoma state border with its affiliate, Texas Oklahoma & Eastern Railroad, LLC.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35428]

Golden Triangle Railroad, LLC—Acquisition and Operation Exemption—Golden Triangle Railroad Company

Golden Triangle Railroad, LLC (GTRA), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to: (1) Acquire from Golden Triangle Railroad Company (Old GTRA) and to operate approximately 8.6 miles of rail line between milepost 8.6 (Trinity, Miss.) and milepost 0.0 (Triangle Jct., Miss.), including the side track at Bell Avenue in Lowndes County, Miss.; and (2) acquire by assignment from Old GTRA 10.1 miles of incidental trackage rights over the Kansas City Southern Railway Company (KCS) between mileposts 5.0 and 15.1 in Columbus, Mo.[1]

This transaction is related to a transaction in which Patriot Rail, LLC and its subsidiaries entered into an asset purchase agreement on July 21, 2010, to acquire from Weyerhaeuser NR Company certain rail assets and the rail assets of five of its subsidiaries.

This transaction is also related to six other transactions for which notices of exemption have been concurrently filed: Docket No. FD 35425, *Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings, LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Columbia & Cowlitz Railway, LLC, DeQueen and Eastern Railroad, LLC, Golden Triangle Railroad, LLC, Mississippi & Skuna Valley Railroad, LLC, Patriot Woods Railroad, LLC, and Texas, Oklahoma & Eastern Railroad, LLC,* in which Patriot Rail, LLC and its subsidiaries seek to continue in control of GTRA in this proceeding and five other newly created noncarrier subsidiaries, upon the latter becoming Class III rail carriers in the following proceedings: (1) Docket No. FD 35426, *Columbia & Cowlitz Railway, LLC—Acquisition and Operation Exemption—Columbia & Cowlitz Railway Company;* (2) Docket No. FD 35427, *DeQueen and Eastern Railroad, LLC—Acquisition and Operation Exemption—DeQueen and Eastern Railroad Company;* (3) Docket No. FD 35429, *Mississippi & Skuna Valley Railroad, LLC—Acquisition and Operation Exemption—Mississippi & Skuna Valley Railroad Company,* (4) Docket No. FD 35430, *Texas, Oklahoma & Eastern Railroad, LLC—Acquisition and Operation Exemption—Texas, Oklahoma & Eastern Railroad Company;* and (5) Docket No. FD 35431, *Patriot Woods Railroad, LLC—Acquisition and Operation Exemption—Weyerhaeuser NR Company, Weyerhaeuser Woods Railroad Operating Division.*

The parties intend to consummate the transaction on or after December 21, 2010.

GTRA certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

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 effectiveness of the exemption. Petitions to stay must be filed no later than November 12, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35428, 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 Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 1, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–27967 Filed 11–4–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35430]

Texas, Oklahoma & Eastern Railroad, LLC—Acquisition and Operation Exemption—Texas, Oklahoma & Eastern Railroad Company

Texas, Oklahoma & Eastern Railroad, LLC (TOE), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Texas, Oklahoma & Eastern Railroad Company and to operate approximately 40 miles of rail line between milepost 40.0 (the Oklahoma-Arkansas state border) and milepost 0.0 (Valliant, Okla.), including auxiliary, storage, and spur tracks, in McCurtain County, Okla.[1]

This transaction is related to a transaction in which Patriot Rail, LLC and its subsidiaries entered into an asset purchase agreement on July 21, 2010, to acquire from Weyerhaeuser NR Company certain rail assets and the rail assets of five of its subsidiaries.

This transaction is also related to six other transactions for which notices of exemption have been concurrently filed: Docket No. FD 35425, *Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Columbia & Cowlitz Railway, LLC, DeQueen and Eastern Railroad, LLC, Golden Triangle Railroad, LLC, Mississippi & Skuna Valley Railroad, LLC, Patriot Woods Railroad, LLC, and Texas, Oklahoma & Eastern Railroad, LLC,* in which Patriot Rail, LLC and its subsidiaries seek to continue in control of TOE in this proceeding and five other newly created noncarrier subsidiaries, upon the latter becoming Class III rail carriers in the following proceedings: (1) Docket No. FD 35426, *Columbia & Cowlitz Railway, LLC—Acquisition and Operation Exemption—Columbia & Cowlitz Railway Company;* (2) Docket No. FD 35427, *DeQueen and Eastern Railroad, LLC—Acquisition and Operation Exemption—DeQueen and Eastern Railroad Company;* (3) Docket No. FD 35428, *Golden Triangle Railroad LLC—Acquisition and Operation Exemption—Golden Triangle Railroad Company;* (4) Docket No. FD 35429, *Mississippi & Skuna Valley Railroad, LLC—Acquisition and Operation Exemption—Mississippi & Skuna Valley Railroad Company;* and (5) Docket No. FD 35431, *Patriot Woods Railroad, LLC—Acquisition and Operation Exemption—Weyerhaeuser NR Company, Weyerhaeuser Woods Railroad Operating Division.*

The parties intend to consummate the transaction on or after December 21, 2010.

TOE certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier. Because TOE's projected annual revenues will exceed $5 million, TOE certified to the Board on October 20, 2010, that it had

[1] GTRA states that it intends to continue to interchange traffic (1) at Columbus, Miss., with Alabama & Gulf Coast Railway, LLC, BNSF Railway Company, Columbus and Greenville Railway Company, and KCS, and (2) at Triangle Jct., with Norfolk Southern Railway Company.

[1] TOE states that it intends to interchange traffic (1) at the Arkansas-Oklahoma state border with its affiliate DeQueen and Eastern Railroad, LLC, and (2) at Valliant with BNSF Railway Company, Kiamichi Railroad Company, and Union Pacific Railroad Company.

complied with the requirements of 49 CFR 1150.32(e) on October 20, 2010, by providing notice to employees and their labor unions on the affected line. Under 49 CFR 1150.32(e), this exemption cannot become effective until 60 days after the date notice was provided.

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 effectiveness of the exemption. Petitions to stay must be filed no later than December 10, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35430, 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 Louis E. Gitomer, 600 Baltimore Ave., Suite 301, Towson, MD. 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–27995 Filed 11–4–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35431]

Patriot Woods Railroad, LLC—Acquisition and Operation Exemption—Weyerhaeuser NR Company, Weyerhaeuser Woods Railroad Operating Division

Patriot Woods Railroad, LLC (PAW), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Weyerhaeuser NR Company, Weyerhaeuser Woods Railroad Operating Division (Woods RR), and to operate approximately 21.5 miles of rail line [1] between milepost 8.5 (the connection with the Columbia & Cowlitz Railway Company [2] at Ostrander Junction) and milepost 30.0 (Green Mountain), including auxiliary and temporary storage tracks, in Cowlitz County, Wash.

This transaction is related to a transaction in which Patriot Rail, LLC and its subsidiaries entered into an asset purchase agreement on July 21, 2010, to acquire from Weyerhaeuser NR Company certain rail assets and the rail assets of five of its subsidiaries.

This transaction is also related to six other transactions for which notices of exemption have been concurrently filed: Docket No. FD 35425, *Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Columbia & Cowlitz Railway, LLC, DeQueen and Eastern Railroad, LLC, Golden Triangle Railroad, LLC, Mississippi & Skuna Valley Railroad, LLC, Patriot Woods Railroad, LLC, and Texas, Oklahoma and Eastern Railroad, LLC,* in which Patriot Rail, LLC and its subsidiaries seek to continue in control of PAW in this proceeding and five other newly created noncarrier subsidiaries, upon the latter becoming Class III rail carriers in the following proceedings: (1) Docket No. FD 35426, *Columbia & Cowlitz Railway, LLC—Acquisition and Operation Exemption—Columbia & Cowlitz Railway Company;* (2) Docket No. FD 35427, *DeQueen and Eastern Railroad, LLC—Acquisition and Operation Exemption—DeQueen and Eastern Railroad Company;* (3) Docket No. FD 35428, *Golden Triangle Railroad, LLC—Acquisition and Operation Exemption—Golden Triangle Railroad Company;* (4) Docket No. FD 35429, *Mississippi & Skuna Valley Railroad, LLC—Acquisition and Operation Exemption—Mississippi & Skuna Valley Railroad Company;* and (5) Docket No. FD 35430, *Texas, Oklahoma & Eastern Railroad, LLC—Acquisition and Operation Exemption—Texas, Oklahoma & Eastern Railroad Company.*

The parties intend to consummate the transaction on or after December 21, 2010.

PAW certifies that its projected annual revenues as a result of the transaction will not exceed those that would make it a Class III rail carrier and will not exceed $5 million.

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 effectiveness of the exemption. Petitions for stay must be filed no later than November 12, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35431, 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 Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–27992 Filed 11–4–10; 8:45 am]

BILLING CODE 4915–01–P

[1] PAW states that Woods RR has been used as a spur line only to serve the facilities of Weyerhaeuser NR Company, not as a common carrier railroad. PAW will hold itself out to perform common carrier service for any shipper and intends to operate the line for the purpose of becoming a rail carrier.

[2] After these transactions are consummated, PAW will connect with Columbia & Cowlitz Railway Company, LLC.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35413]

Lancaster & Chester Railroad, LLC—Acquisition and Operation Exemption—Line of Lancaster & Chester Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Correction to Notice of Exemption.

SUMMARY: This document contains a correction to the Notice of Exemption served and published in the **Federal Register** on Friday, October 15, 2010 (75 FR 63,532–33). In the notice, noncarrier Lancaster & Chester Railroad, LLC (L&C Railroad) seeks to acquire and operate under 49 CFR 1150.31 approximately 62 miles of rail line owned by Class III rail carrier Lancaster & Chester Railway Company. The correction relates to the name of the connecting railroad in the description of the rail line. The notice incorrectly indicated that L&C Railroad would connect with Consolidated Rail Corporation at former Survey Station 0+06 (milepost SG–346+2210) in Chester County, S.C. Instead, L&C Railroad will connect with CSX Transportation, Inc. at the specified station in Chester County.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal

Information Relay Service (FIRS) at: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: This notice is related to a concurrently filed notice of exemption also served and published on October 15, 2010 in *Gulf & Ohio Railways Holding Co., Inc., H. Peter Claussen and Linda C. Claussen—Continuance in Control Exemption—Lancaster & Chester Railroad, LLC,* Docket No. FD 35414, wherein the above parties seek to continue in control of L&C Railroad, upon L&C Railroad's becoming a Class III rail carrier.

Decided: October 28, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–27975 Filed 11–4–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35426]

Columbia & Cowlitz Railway, LLC—Acquisition and Operation Exemption—Columbia & Cowlitz Railway Company

Columbia & Cowlitz Railway, LLC (CLC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Columbia & Cowlitz Railway Company and to operate approximately 8.5 miles of rail line between milepost 0.0 (Longview) and milepost 8.5 (Ostrander Junction), including auxiliary and spur tracks, in Cowlitz County, Wash.[1]

This transaction is related to a transaction in which Patriot Rail, LLC and its subsidiaries entered into an asset purchase agreement on July 21, 2010, to acquire from Weyerhaeuser NR Company certain rail assets and the rail assets of five of its subsidiaries.

This transaction is also related to six other transactions for which notices of exemption have been concurrently filed: Docket No. FD 35425, *Tennessee Southern Railroad Company, Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Columbia & Cowlitz Railway, LLC, Dequeen and Eastern Railroad, LLC, Golden Triangle Railroad, LLC, Mississippi & Skuna Valley Railroad, LLC, Patriot Woods Railroad, LLC, and Texas, Oklahoma & Eastern Railroad, LLC,* in which Patriot Rail, LLC and its subsidiaries seek to continue in control of CLC in this proceeding and five other newly created noncarrier subsidiaries, upon the latter becoming Class III rail carriers in the following proceedings: (1) Docket No. FD 35427, *DeQueen and Eastern Railroad, LLC—Acquisition and Operation Exemption—DeQueen and Eastern Railroad Company;* (2) Docket No. FD 35428, *Golden Triangle Railroad, LLC—Acquisition and Operation Exemption—Golden Triangle Railroad Company;* (3) Docket No. FD 35429, *Mississippi & Skuna Valley Railroad, LLC—Acquisition and Operation Exemption—Mississippi & Skuna Valley Railroad Company;* (4) Docket No. FD 35430, *Texas, Oklahoma & Eastern Railroad, LLC—Acquisition and Operation Exemption—Texas, Oklahoma & Eastern Railroad Company;* and (5) Docket No. FD 35431, *Patriot Woods Railroad, LLC—Acquisition and Operation Exemption—Weyerhaeuser NR Company, Weyerhaeuser Woods Railroad Operating Division.*

The parties intend to consummate the transaction on or after December 21, 2010.

CLC certified that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier.

Because CLC's projected annual revenues will exceed $5 million, CLC certified to the Board on October 20, 2010, that it had complied on October 20, 2010, with the requirements of 49 CFR 1150.32(e) providing for notice to employees and their labor unions on the affected line. Under 49 CFR 1150.32(e), this exemption cannot become effective until 60 days after the date notice was provided.

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 effectiveness of the exemption. Petitions for stay must be filed no later than December 10, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35426 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–27978 Filed 11–4–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35438]

Eighteen Thirty Group, LLC—Acquisition Exemption—in Allegany County, MD

Eighteen Thirty Group, LLC (Eighteen Thirty), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire an 8.54-mile line of railroad between milepost BAI 27.0 near Morrison and milepost BAI 18.46 at the end of the track near Carlos, in Allegany County, Md. (the Line). Eighteen Thirty is seeking to acquire the Line as a result of the bankruptcy of James Riffin [1] through an agreement with Mark J. Friedman, Chapter 7 Trustee of the Bankruptcy Estate of James Riffin.[2]

This transaction is related to two simultaneously filed notices of exemption: (1) Docket No. FD 35437, *Georges Creek Railway, LLC—Operation Exemption—in Allegany County, Md.,* in which Georges Creek Railway, LLC (Georges Creek), seeks an exemption under 49 CFR 1150.31 to operate the Line; and (2) Docket No. FD 35436, *Duncan Smith and Gerald Altizer—Continuance in Control Exemption—Eighteen Thirty Group, LLC and Georges Creek Railway, LLC,* in which Duncan Smith and Gerald Altizer, the owners of Eighteen Thirty and Georges Creek, seek an exemption to continue in control of Eighteen Thirty and Georges Creek upon their becoming Class III rail carriers.

This transaction is also related to a petition simultaneously filed by Eighteen Thirty in Docket No. AB 55 (Sub-No. 659X), *CSX Transportation, Inc.—Abandonment Exemption—in Allegany County, Md.,* seeking an exemption under 49 U.S.C. 10502 from

[1] CLC states that it intends to interchange traffic at Rocky Point, Wash., with BNSF Railway Company and Union Pacific Railroad Company, and at Ostrander Junction, with its affiliate, Patriot Woods Railroad, LLC.

[1] The Board authorized abandonment of the Line in *CSX Transportation, Inc.—Abandonment Exemption—in Allegany County, Md.,* Docket No. AB 55 (Sub-No. 659X) (STB served Aug. 25, 2005). By decision served December 14, 2005, WMS, LLC (WMS) was authorized to acquire the Line pursuant to the Board's offer of financial assistance (OFA) provisions at 49 U.S.C. 10904 and 49 CFR 1152.27, and by decision served August 18, 2006, James Riffin was substituted as the acquiring entity in lieu of WMS.

[2] Applicants state that consummation of this transaction is subject to approval by the bankruptcy court. Consummation is also subject to a grant of the petition filed in AB 55 (Sub-No. 659X).

the OFA requirements of 49 U.S.C. 10904(f)(4)(A). The latter provision forbids an entity that has acquired a rail line under the OFA process from transferring that line to any entity other than the abandoning rail carrier from which it was originally purchased prior to the end of the fifth year after consummation of the sale.[3]

Eighteen Thirty states that it intends to consummate this transaction once the bankruptcy court approves its purchase agreement, but no sooner than November 18, 2010, the effective date of this exemption (30 days after the exemption was filed).[4]

Eighteen Thirty certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed $5 million annually.

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 effectiveness of the exemption. Petitions to stay must be filed no later than November 10, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35438, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2010–27968 Filed 11–4–10; 8:45 am]

BILLING CODE 4915–01–P

[3] Eighteen Thirty has attached a letter from CSXT stating that it issued the deed for the sale of the Line of July 10, 2006, but that it will not exercise its statutory right to reacquire the Line and that it waives its rights under the statute.

[4] Eighteen Thirty states that approval by the bankruptcy court could take up to 60 days.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35436]

Duncan Smith and Gerald Altizer—Continuance in Control Exemption—Eighteen Thirty Group, LLC and Georges Creek Railway, LLC

Duncan Smith and Gerald Altizer (collectively applicants), noncarrier individuals, have filed a verified notice of exemption to continue in control of Eighteen Thirty Group, LLC (Eighteen Thirty) and Georges Creek Railway, LLC (Georges Creek), upon Eighteen Thirty and Georges Creek becoming Class III rail carriers. Mr. Smith owns 80% of Eighteen Thirty and 75% of Georges Creek. Mr. Altizer owns a 20% interest in each company and will manage the operations of Georges Creek.[1] Applicants do not currently control any other rail carriers.

This transaction is related to two simultaneously filed notices of exemption: (1) Docket No. FD 35437, *Georges Creek Railway, LLC—Operation Exemption—in Allegany County, Md.,* in which Georges Creek seeks an exemption under 49 CFR 1150.31 to operate an 8.54-mile line of railroad between milepost BAI 27.0 near Morrison and milepost BAI 18.46 at the end of the track near Carlos, in Allegany County, Md., (the Line); and (2) Docket No. FD 35438, *Eighteen Thirty Group, LLC—Acquisition Exemption—in Allegany County, Md.,* in which Eighteen Thirty seeks an exemption under 49 CFR 1150.31 to acquire the Line pursuant to its agreement with Mark J. Friedman, Chapter 7 Trustee of the Bankruptcy Estate of James Riffin.[2]

This transaction is also related a petition simultaneously filed by Eighteen Thirty in Docket No. AB 55 (Sub-No. 659X), *CSX Transportation, Inc.—Abandonment Exemption—in Allegany County, Md.,* seeking an exemption under 49 U.S.C. 10502 and from the OFA requirements of 49 U.S.C. 10904(f)(4)(A). The latter provision forbids an entity that has acquired a rail line under the OFA process from transferring that line to any entity other than the abandoning rail carrier from which it was originally purchased prior to the end of the fifth year after consummation of the sale.[3]

The transaction is scheduled to be consummated no sooner than November 18, 2010, the effective date of the exemption (30 days after the exemption was filed).[4]

Applicants state that: (1) Because Eighteen Thirty will be a non-operating carrier, the railroads will not connect with each other; (2) the continuance in control is not part of a series of anticipated transactions that would connect these railroads with one another or any other railroad in their corporate family; and (3) the transaction does not involve a Class I rail carrier. 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 §§ 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 effectiveness of the exemption. Petitions to stay must be filed no later than November 10, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35436, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2010.

[1] The remaining 5% interest in Georges Creek is owned by Patrick Stakem.

[2] The Board authorized abandonment of the Line in *CSX Transportation, Inc.—Abandonment Exemption—in Allegany County, Md.,* AB 55 (Sub-No. 659X) (STB served Aug. 25, 2005). By decision served December 14, 2005, WMS, LLC (WMS) was authorized to acquire the Line pursuant to the Board's offer of financial assistance (OFA) provisions at 49 U.S.C. 10904 and 49 CFR 1152.27, and by decision served August 18, 2006, James Riffin was substituted as the acquiring entity in lieu of WMS.

[3] Eighteen Thirty has attached a letter from CSXT stating that it issued the deed for the sale of the Line on July 10, 2006, but that it will not exercise it statutory right to reacquire the Line and that it waives its rights under the statute.

[4] Applicants state that consummation of this transaction is dependent upon bankruptcy court approval of the acquisition of the Line by Eighteen Thirty, a process likely to take up to 60 days.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–27993 Filed 11–4–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35437]

Georges Creek Railway, LLC—Operation Exemption—in Allegany County, MD

Georges Creek Railway, LLC (Georges Creek), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate an 8.54-mile line of railroad between milepost BAI 27.0 near Morrison and milepost BAI 18.46 at the end of the track near Carlos, in Allegany County, Md., (the Line).[1]

This transaction is related to two simultaneously filed notices of exemption: (1) Docket No. FD 35438, *Eighteen Thirty Group, LLC—Acquisition Exemption—in Allegany County, Md.,* in which Eighteen Thirty Group, LLC (Eighteen Thirty), seeks an exemption under 49 CFR 1150.31 to acquire the Line pursuant to its agreement with Mark J. Friedman, Chapter 7 Trustee of the Bankruptcy Estate of James Riffin; and (2) Docket No. FD 35436, *Duncan Smith and Gerald Altizer—Continuance in Control Exemption—Eighteen Thirty Group, LLC and Georges Creek Railway, LLC,* in which Duncan Smith and Gerald Altizer, the owners of Eighteen Thirty and Georges Creek, seek an exemption to continue in control of Eighteen Thirty and Georges Creek upon their becoming Class III rail carriers.

This transaction is also related to a petition simultaneously filed by Eighteen Thirty in Docket No. AB 55 (Sub-No. 659X), *CSX Transportation, Inc.—Abandonment Exemption—in Allegany County, Md.,* seeking an exemption under 49 U.S.C. 10502 from the OFA requirements of 49 U.S.C. 10904(f)(4)(A). The latter provision forbids an entity that has acquired a rail line under the OFA process from transferring that line to any entity other than the abandoning rail carrier from which it was originally purchased prior to the end of the fifth year after consummation of the sale.[2]

Georges Creek states that it intends to consummate this transaction once the bankruptcy court approves Eighteen Thirty's purchase agreement, but no sooner than November 18, 2010, the effective date of the exemption (30 days after this exemption was filed).[3]

Georges Creek certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed $5 million annually.

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 effectiveness of the exemption. Petitions to stay must be filed no later than November 10, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to FD 35437, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2010.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2010–27996 Filed 11–4–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Advisory Council on Financial Capability

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The President's Advisory Council on Financial Capability ("Council") will convene its first meeting on November 30, 2010, in the Cash Room of the Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 2 p.m. Eastern Time. The meeting will be open to the public. The purpose of the meeting is to discuss organizational matters and strategic areas of focus.

DATES: The meeting will be held on November 30, 2010, at 2 p.m. Eastern Time.

Submission of Written Statements: The public is invited to submit written statements to the Council. Written statements should be sent by any one of the following methods:

Electronic Statements

E-mail ofe@do.treas.gov; or

Paper Statements

Send paper statements to the Department of the Treasury, Office of Financial Education and Financial Access, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will make all statements available in their original format, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers, for public inspection and photocopying in the Department's library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect statements by calling (202) 622–0990. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Dubis Correal, Director, Office of Financial Education, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–5770 or *ofe@do.treas.gov.*

SUPPLEMENTARY INFORMATION: On January 29, 2010, the President signed Executive Order 13530, creating the Council to assist the American people in understanding financial matters and making informed financial decisions, and thereby contribute to financial stability. The Council is composed of two *ex officio* Federal officials and 12 non-governmental members appointed by the President with relevant backgrounds, such as financial services, consumer protection, financial access,

[1] The Board authorized abandonment of the Line in *CSX Transportation, Inc.—Abandonment Exemption—in Allegany County, Md.,* No. AB 55 (Sub–No. 659X) (STB served Aug. 25, 2005). By decision served December 14, 2005, WMS, LLC (WMS) was authorized to acquire the Line pursuant to the Board's offer of financial assistance (OFA) provisions at 49 U.S.C. 10904 and 49 CFR 1152.27, and by decision served August 18, 2006, James Riffin was substituted as the acquiring entity in lieu of WMS.

[2] Eighteen Thirty has attached a letter from CSXT stating that it issued the deed for the sale of the Line on July 10, 2006, but that it will not exercise its statutory right to reacquire the Line and that it waives its rights under the statute.

[3] Georges Creek states that approval by the bankruptcy court of Eighteen Thirty's purchase agreement could take up to 60 days.

and education. The role of the Council is to advise the President and the Secretary of the Treasury on means to promote and enhance individuals' and families' financial capability.

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, Dubis Correal, Designated Federal Officer of the Council, has ordered publication of this notice that the Council will convene its first meeting on November 30, 2010, in the Cash Room in the Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC beginning at 2 p.m. Eastern Time. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must RSVP with their name as shown on a government-issued ID, organization represented (if any), phone number, date of birth, Social Security number and country of citizenship (if other than U.S.). To register, please go to *http://www.treasury.gov/ofe* and click on the President's Advisory Council on Financial Capability or call (202) 622–5770 by 5 p.m. Eastern Time on November 23, 2010. For entry into the Main Treasury Building on the date of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo and date of birth.

The purpose of this meeting is to introduce the members of the Council and discuss general organizational matters and strategic areas of focus, including providing recommendations to the Administration on means to effectively implement the Federal Financial Literacy and Education Commission's National Strategy for Financial Literacy 2010. Representatives of the Financial Literacy and Education Commission will also be in attendance to present the Strategy to the Council.

Dated: October 29, 2010.

Alastair Fitzpayne,

Executive Secretary, U.S. Department of the Treasury.

[FR Doc. 2010–28063 Filed 11–4–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, December 7, 2010, Wednesday, December 8, 2010, and Thursday, December 9, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel will be held Tuesday, December 7, 2010, from 10:30 a.m. to 12:30 p.m., and 2 p.m. to 5 p.m., Wednesday, December 8, 2010, from 10:30 a.m. to 12:30 p.m., and 2 p.m. to 5 p.m., and Thursday, December 9, 2010, from 9 to 12 p.m. and 1 p.m. to 4 p.m. at the Capital Hilton Hotel in Washington, DC. If you would like to have the Taxpayer Advocacy Panel consider a written statement, please contact Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: November 1, 2010.

Shawn F. Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2010–27929 Filed 11–4–10; 8:45 am]

BILLING CODE 4830–01–P

Reader Aids

Federal Register

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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Mount Stevens and Ted Stevens Icefield Designation Act (Oct. 18, 2010; 124 Stat. 3050)

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